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THE ADDUCTION OF EVIDENCE.

The Judges of the Superior Court have long complained of the labor imposed on them, of wading through endless depositions in search of the facts pertinent to the issues. Recently a Judge stated that a week had been required for the examination of a bundle of evidence which might have been read through in a few hours if restricted within proper limits. For the purpose of aiding the Judges in their effort to check this growing prolixity and irrelevancy, the following new Rules of Practice respecting cases inscribed for *enquête* and merits have been framed :—

"It is ordered that in each cause inscribed at Montreal for evidence and merits at the same time, the party inscribing shall file with his inscription for the use of the Judge, a very brief statement of his case, and an articulation of facts consisting of separate and distinct articles upon each fact to be proved by him, said articles numbered in regular order, so that the Judge trying the case may know the precise proof to be offered, and be in a position to direct the noting of the material facts by the Prothonotary, clerk, or stenographer taking notes of the evidence.

"In default of such statement and articulation by the inscribing party, the case shall not be placed on the *role* for trial, or tried, but if on the *role* shall in the discretion of the Court be struck with costs against such party.

"The other party shall within 48 hours after notice of said inscription file a similar brief statement and articulation of the facts to be proved by him, and in default of his so doing, his witnesses shall not, if the Court or Judge see fit, be taxed against the other party."

THE SALE OF POISONS.

A recent decision under the English Pharmacy Act is of some interest. We avail ourselves of the following notice respecting it in the English *Law Times*:—

"The admitted expediency of throwing on those who sell poisonous preparations a full share of responsibility for the consequences of such sales, which general feeling, in fact, gave rise to the Pharmacy Act of 1868 (31 and 32 Vict. c. 121), is sufficient reason for congratulation that, in *Templeman* v. *Trafford*, on the 16th Nov., the Queen's Bench judges saw their way to a decision which will strengthen the hands of those who have to enforce the Act referred to. The Act requires sellers of poison to be duly qualified, and to label the poison with the name and address of the person, and provides that any person on whose behalf any sale is made by a servant is to be deemed the seller.

"In the recent case of *Pharmaceutical Society* v. *London and Provincial Supply Association*, L. Rep. 5 App. Cas. 857, it was held that an incorporated supply association, which was not itself qualified as a chemist, was entitled to sell drugs through a qualified servant, and the House of Lords considered the person who sells, whether master or servant, to be struck at by the Act. This case decided, in effect, that the public were sufficiently protected when the actual vendor was a responsible and qualified person. But then came up the further question, whether an ordinary grocer, or any other trader, who had no qualification as a chemist or druggist, was entitled to retail poisons supplied to him for sale on commission by a duly qualified chemist, with whose name and address the packet was labeled. This was the point raised in *Templeman* v. *Trafford*, and the magistrates declined to convict the retailer under the Act, finding that he was the servant of the qualified person. It seems clear that, if this opinion had been sustained by the Queen's Bench Division, the results might have been very serious. The object of requiring the sale to be by a qualified person, and his name and address to be placed on the poison, is, not to secure the purity or good quality of the poison—that would only tend to make it more deadly—but to insure that such dangerous products should only be dealt in by those who are fully aware of the risk, and act with a sense of responsibility. If any person could sell poisons, furnished to him by a qualified chemist, they would come to be sold over the counter as freely as cheese or candles. A London chemist might distribute poisons all over the country. As it is, it is only too often that rat and beetle poisons are used for a different purpose from that for which they

are intended. Fortunately the Queen's Bench Division declined to make the Act nugatory, and held that the retailer was the seller of the poison under the Act, and that he must be duly qualified, and his name and address appear on the packet. This decision will meet with general approval."

EX PARTE W. BULMER.

We deem it expedient in reporting this case to remind our readers of the *Blossom and Clayton* case, which excited considerable interest at the time it was pending. Those parties and others were tried in the Queen's Bench (C. Mondelet, J.) for conspiracy to kidnap. The Court having charged for a conviction, the jury deliberated for three days, when they were unable to agree, and were dismissed. Defendants were tried a second time by another jury; but this time, after nine days' deliberation, the jury again disagreed, and were discharged. The Court then made the following order:—

"The Court in consequence of the non-"agreement of the jury to a verdict, discharges "them, and it is hereby adjudged and ordered "that the four prisoners be remanded to the "common gaol of this district.

"And whereas, from the positive evidence "adduced in this trial the said prisoners are "not entitled to be bailed, it is adjudged and "ordered that *they do stand committed to the "gaol of this district, without bail or mainprize*, "to stand their trial at the next term of this "Court, and *not to be discharged* without further "orders from this Court."

Notwithstanding this order, Blossom and Clayton petitioned for the issue of a writ of *habeas corpus* to be bailed. They first applied to Mr. Assistant-Justice Monk, in Chambers, but without success, 10 L. C. J. 30. The matter was subsequently submitted, again in Chambers, to Mr. Justice Badgley, who granted the application, Ib. 35. The gaoler, however, being unable for want of possession of the writ, to bring up before the Judge the petitioners in order that bail might be given, the application was once more renewed, before the Court of Queen's Bench sitting in Appeal. The Court were divided in opinion. Mr. Justice Aylwin, and Mr. Justice Mondelet, the Judge who had held the Crown side, were against the petitioners. The Chief Justice (Duval), Mr. Justice (now Chief Justice) Meredith, and Mr. Justice Drummond formed the majority. Blossom and Clayton were liberated on bail, Ib. 46.

As the order was given without any application whatever having been made to the Court, it was considered even by Mr. Assistant-Justice Monk not to be a judgment of the Court. It adjudicated upon nothing; it decided nothing; it disposed of nothing judicially. In this respect a material discrepancy appears to arise between the two cases. But W. Bulmer's motion was merely verbal; it was not written and filed of record. There was consequently nothing upon which a Court of Record could render judgment, and, indeed, the adjudication does not bear the sacramental words, "It is finally determined," which are essential to the judgment of a Court proceeding, as the Crown side of the Queen's Bench does, according to the course of the common law. The adjudication has not even "It is adjudged and ordered;" but the first part of the conclusion, "until otherwise ordered," plainly shows that what precedes, and also the rest as being its conclusion, is an order,—and the last part, "by this Court," leaving, as we shall demonstrate, the adjudication—(for an order is necessarily an adjudication), open to alteration by the other side of the Court, is evidence that it is nothing more than an order.

The present instance thus affording like the other simply an order, we may observe that the words in italics in the latter are not to be found in the former. It seems, nevertheless, that they are in strictness implied in the words "to be there detained," which, together with the following words, are, in so far as the real merits of the question might require, equivalent in law and in good sense to the corresponding part of the order in the *Blossom and Clayton* case And though the two cases differ in fact from each other, inasmuch as these parties prayed only for their freedom on bail, whereas W. Bulmer asked his entire and unconditional liberation, yet the generality of the principles embodied in the decision of that case embraces the bearings of this one.

Mr. Justice Meredith easily removed from the way of the Court in Appeal the objection that the order tended to restrain the action of all the Judges. He said:—". . . The order impugned, ". . . as I read it, in effect provides for the bail-"ing of the prisoner by this Court—the con-

"cluding words of the order being, the pris-"oner 'not to be discharged without further "orders from this Court.' . . . *It* contemplates "the doing of an act which may be done as well "on one side of the Court as on the other; and "there is no reason for saying, or law which re-"quires us to say, that it ought to be done on "one side of the Court rather than on the "other."

Our order concluding "until otherwise ordered by this Court," thereby grants like the former the implied permission to defendant to move the Court to order otherwise; and as it is as general as regards the Court that should give any further order, viz., the Court of Queen's Bench, as it mentions neither side of the Court, defendant is free to apply to the side he likes. Under the terms of the order, the Appeal side may, as well as the Crown side, remand, bail or discharge defendant, as the circumstances of the case admit. And if Mr. Justice Monk's explanations as he was about making the order, mean anything, they clearly convey to the reader the idea that the order was to be framed in such a manner as to allow it. Nay, he was not only indifferent to allow it; he wished it to be done. It became the Appeal side to take cognizance of the matter, especially when we consider that the proceedings that had just been brought to an end there, were the cause of the movement which was now taking place. The Appeal side might, therefore, have investigated, as well as the Crown side, the merits of the issue, and this was done in the *Blossom and Clayton* case.

It will be proper to observe, according to Mr. Justice Badgley's formal opinion, that by the effect of his remand, W. Bulmer has necessarily been thrown back for detention, not upon the indictment, which was only the accusation and charge formed for his trial, and on which by command of the Court of Appeals an acquittal had, in reality, been recorded, but upon the original commitment for the originally charged offence, namely, "shooting with intent to murder." The question to be determined by the Appeal side was then confined to the limits of this narrow compass—whether for the reasons urged on behalf of petitioner, the original commitment had been exhausted.

But disregarding altogether the exclusive terms of the order, we submit to our readers that the Superior Court, and in vacation time, any Judge of the Queen's Bench or of the other Court, might grant relief to petitioner on the principle that that order, though exclusive in its terms, is not exclusive at law. "If it is an "order," says Mr. Justice Badgley, "it is not "exclusive unless it is declared so by the law. . . ." On the contrary, those judicial powers are virtually invested by an express provision of law with concurrent jurisdiction in this matter; for if the Queen's Bench on the Crown side has adjudicated upon it on a motion, they, as well as said Queen's Bench, may do the same on a writ of *habeas corpus*. C. S. L. C., ch. 95, sec. 1, enacts that, "All persons committed or detained "in any prison within Lower Canada, for any "criminal or supposed criminal offence, shall "of right be entitled to demand and obtain "*from the Court of Queen's Bench or from the* "*Superior Court or any of the Judges of either of* "*the said Courts* the writ of *habeas corpus*."

We now quote freely from Mr. Justice Badgley's judgment:—

"The terms of the order are very extraordin-"ary: their legal effect is to exclude *petitioner* "from the pale of the law—plainly to tell *him* "that there is no beneficial law of liberty for "*him*; and, to use . . . forcible language, . . . to "suspend the *habeas corpus* Act as regards him. "It is not easy to discover whence such judicial "authority has been drawn; it does not belong "to English law; it is not within the attributes "of English Judges. If remands, which are "mere commitments in effect, may be coupled "with such orders of exclusion, why should "not all commitments have similar additions? "It is true that the Court of Queen's Bench "has, by common law, the power to exercise "extraordinary discretions, but no instance in "the books can be discovered where its dis-"cretion has been exhibited in such a "manner. . . .

"Now, to justify the detention, the return "must shew it to be founded on legal autho-"rity. There can be no doubt as to the com-"mitment, and as to the remand here—which is "in the nature of a recommitment; further "than this we cannot legally go upon this "order. Hawk., p. 186, says:—'The conclu-"sion should be according to the purpose of "the commitment. At common law the conclu-"sion usually was *there to remain until he shall*

" *be discharged by due course of law.*' And 1 Hale, " p. 584, says :—'If the conclusion be irregular, " the warrant will not for that reason be void, " but the law will reject that which is surplus- " age, and the rest shall stand.' Is this order " to stand as part of the commitment? Clearly " not ; it is the surplusage of Hale. Can it be " allowed to stand as a barrier against co- " ordinate jurisdiction ? Clearly not ; because " it is not supported by the *habeas corpus* Act, " which orders the direct reverse. It is a rule " essential to the efficient administration of " justice, that where a Court has jurisdiction " over the subject matter, and regularly obtains " jurisdiction over the person, its right and " duty is to determine any question which may " arise in the cause without the interference of " any other tribunal; even so, but then it must " rest upon its legal authority. This rule " is not without exception, because though it " is objected herein that the Judge has no " jurisdiction, it must be observed that the pro- " visions of the *habeas corpus* Act are very " general and comprehensive: in every case in " which there is a detention without lawful " authority the party may be released. Why ? " Because when a Court acts without authority " its orders are nullities ; they are not voidable " but simply void, and form no bar to a re- " covery sought, even prior to reversal ; they " constitute no justification ; still, even in such " case as this, the action of the bailing," or dis- " charging, "Judge is not revisory of the " order ; it is simply the exercise of the power " under the law to arrest the execution of a " void order ; it acts directly on the effect of " the order, namely, the imprisonment, but only " collaterally on the order itself. Assuming, " then, the authority to act, notwithstanding " the order—assuming that this order itself " cannot control the statute or the action of co- " ordinate judicial authority—assuming that it " can have no objective effect as to the applica- " tion for bail," or discharge, " that as to the " *prisoner* it was obstructive, and made for the " purpose of putting *him* beyond the pale of the " law, and as to the co-ordinate Judges, it was " preventive of their action under the statute, " it is clear that both as an obstruction and a " preventive it was decidedly void. It carried " its own contradiction in its own terms ; it " impliedly admitted the right of *this person* " to be admitted to bail" or discharged " by anti- " cipating their application for the advantages " of the statute, and obstructing and prevent- " ing the right. Why should such an order " have been made at all if the offence were not " bailable," or if the prisoner were not entitled to liberation? " The order itself admits and " confesses the privilege of the *prisoner* to be " admitted to bail " or discharged.

But in what manner are the merits of the case going to be reached ? The *habeas corpus* does not remove the record, it removes only the prisoner with the cause of his detention. And although on the return to the writ, the Court or Judge may determine the sufficiency or insufficiency of the return and commitment, and act according to what the case appears upon the return, yet they cannot on the bare return of the *habeas corpus* proceed and adjudicate upon the record without the record itself being removed. The record stands in the same force it did, though the return should be adjudged insufficient, and the party discharged thereupon of his imprisonment, and the Court of the record may issue new process upon it, (2 Hale, 211), which, indeed, is expressly allowed by sec. 11 of the *habeas corpus* Act. The only way to avert such an anomaly is to remove the record. Then, will the writ of error operate the removal ?

The order of Court being a re-commitment, and forming as such part of the return to the *habeas corpus*, cannot be considered as of record. The only portion of the record that would prove defective would be the indictment, but petitioner has already availed himself of that defect on a Case Reserved, when he obtained judgment in his favour. There remains nothing on which to assign error, and, consequently, a writ of error is out of the question.

Considering, however, the order, not as a recommitment, which it really is, but as an adjudication by the Court, it is conceived that even in that light a writ of error could not lie; for it would not for all that belong to what is technically known as the record. The record—according to a well-known decision of the House of Lords, *Mellish* v. *Richardson*, 9 Bing. 125,—is compounded of the premises and conclusion of the cause, of what is necessarily accessory to either, and of what raises the invalidity of either as premises or conclusion, and determines

this issue. This was determined in a civil suit, but at common law, there exists no difference between the rules governing criminal and civil pleading. A material defect in any proceeding coming within this scope, affects the whole record, and is ground for writ of error. Final judgments, or awards in the nature of judgments, are decidedly subject to review in Error, because they determine the legal validity of premises or conclusion, (Grady & Scotland, 332, and authorities there collected, and *Samuel* v. *Judin*, 6 Ea. 336.) "But *an* order, says Mr. Justice Badgley, is simply an order; it is not a judgment—it has none of the attributes of a judgment—it could not be got rid of by writ of error . . . .; 10 L. C. J., 42, for the words of the writ are, *si judicium redditum sit*, Co. Lit. 288, b; Bac. Abr. (A), 2. Such orders, says Tindal, C. J., addressing the Lords in the name of all the Judges of England, in *Mellish* v. *Richardson* "do not "fall within the description of any part of the "record; but *they* are strictly and properly "matters of practice in the progress of the "cause . . . The practice of the courts below "is a matter which belongs by law to the exclu- "sive discretion of the court itself; it being "presumed that such practice will be controlled "by a sound legal discretion. It is, therefore, "left to their own government alone, without "any appeal to or revision by a superior court." Thus is Mr. Justice Mondelet's assertion, "Is it "not certain as elementary, that a 'man may not "be delivered from the commitment of a Court "of Oyer and Terminer by *habeas corpus*, with- "out a writ of error? (Salk. 348,)"—not sustained by a reference to the authority, which, on the contrary, is manifestly at variance with his views. There, the King's Bench at Westminster would not discharge Bethell on a *habeas corpus* alone, because the commitment showed only a formal defect. They left him to his writ of error; but the commitment was based on a final judgment, judgment of fine, or imprisonment until payment, after conviction.

There is still another great reason why a writ of error should not be granted in this case. Writs of error issue but from superior to inferior courts, and though our extraordinary system of judicature offers the singular instance of the writ of error issuing, and it issues in no other way, from one side of a court to the other, from the Appeal side of our Queen's Bench to its Crown Side, still the principle of superiority of jurisdiction is preserved, the appellate jurisdiction of the Queen's Bench being above its original criminal jurisdiction. But the jurisdiction conferred by *habeas corpus* is not superior to the other, it is only co-ordinate with it. The different concurrent powers will adjudicate upon the same premises, and remand, bail or discharge. But they will not even look to previous conclusions or orders, and much less will they review and, perhaps, reverse them for error.

The other writ providing for the removal of records, *certiorari*, does not appear to be more serviceable than the writ of error; for it likewise moves from a superior jurisdiction to an inferior one. The principle is formally recognized by statute, in the present case also. 29–30 Vic. ch. 45, sec. 5, allows it from Superior Courts or Judges, to coroners and justices of the peace. The general supervising and reforming control of the Superior Court over the other courts, does not extend to the Queen's Bench, C. S. L. C. ch. 78, sec. 4; and the *certiorari* issued from the latter court for the sole purpose of removing indictments from the Sessions to its Crown side for trial, Ib., ch. 77, sec. 69, but the Sessions are now abolished.

Were it not for that principle, the *certiorari* would answer our object. No error is assignable; what is wanted is *to make certain—certiorari*, there is in the record no cause of detention. *Long's* case, Cro. El. 489, supported by *Groenvelt v. Burwell*, 1 Ld. Raym., 469, is exactly in point A *certiorari* was awarded to Long, to remove an indictment for felony, where on conviction he suffered punishment, but no judgment had been given; for it was determined that a writ of error did not lie.

"Since there is no other mode of bringing "the *record* before the court *or judge*, it "is sufficient," says Baron Parke, *in re Allison*, 29 Eng. Law & Eq. 406, "to produce it verified "by affidavit." "If the court *or judge* cannot "look at a *record* unless it is regularly brought "before it by a writ of *certiorari*, a prisoner, "who was improperly *imprisoned*, could never "obtain relief by *habeas corpus*" (*Per* Alderson, B. Ib.) in the Superior Court or before a judge of the same. With regard to the Queen's Bench and its judges, it is quite different, as it is their own record that is required. And accordingly on account of the words "until otherwise ordered by this Court," the Clerk of the Crown laid the record before the Court in Appeal with-

out any affidavit, in our case (*Ex parte Bulmer*).

We conclude by two words of observation on this *dictum* of Mr. Justice Aylwin in the *Blossom & Clayton* case: "... The sitting was also "as a Court of general gaol delivery, and the "term was to last until such time as it was to be "deemed by the Judge to be closed. The "order of the Judge, therefore, that the "prisoner should be held to remain in gaol, "without bail or mainprize, until the Court "should again meet, was absolutely necessary," 10 L. C. J. 59. To this we submit as a reply, first, that the order was only necessary if justice required prisoner to be incarcerated and deprived of his liberty, and secondly, that the Crown side of the Queen's Bench is not an ordinary court of general gaol delivery. It is, as we are told by the masters of common law, the supreme court of general gaol delivery, and possesses the fullest and most extensive powers.

W. A. P.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 25 and 29, 1881.

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

Ex parte W. BULMER, petitioner for writ of *habeas corpus*.

The Court of Queen's Bench on the Appeal side, will not interfere, upon a writ of Habeas Corpus, with an order to remand a prisoner to gaol made by the Court on the Crown side.

On August 17, 1881, petitioner was, after preliminary examination, committed to gaol to await his trial on a charge of shooting at one Benj. Plow, with intent the said Plow to kill and murder.

On the 27th and 28th September following, he was tried in the Queen's Bench, Crown side, (Monk and Cross, JJ.,) upon an indictment for shooting with intent, and containing six counts. The jury convicted him on the first count, which purported to charge the offence laid in the commitment, but found no verdict on the other counts wherein various intents were averred.

A Case having been Reserved for the consideration of the Court sitting in Appeal, the conviction was quashed, and an entry ordered to be made on record to the effect that defendant should not have been convicted on said indictment (Nov. 18). *The entry was made accordingly.

*A full report of the judgment on the Reserved Case will appear in the L. C. J.

W. A. Polette, for the defendant, thereupon moved (*ore tenus*) the Crown side of the Court (Monk, J.,) to discharge defendant from custody.

C. P. Davidson, Q. C., and *Ald. Ouimet, Q. C.*, for the Crown, resisted the motion.

On the 22nd November, Monk, J., said that he could not, unaided by another judge, establish so important a precedent as the one he was asked to do by the motion. He left that task to a higher Court, where a writ of *habeas corpus* would answer the purpose. The Court gave the following order:—

"On motion to discharge.

"Motion refused and rejected, and prisoner "remanded to common gaol to be there detained until otherwise ordered by this Court."

On the 24th, *Polette* applied to the Court in Appeal for the issue of a writ of *habeas corpus* with a view to liberate petitioner, which was granted.

The next day, on the return of the writ and the production of the body of petitioner and also of the indictment, verdict and above-mentioned entry on record, *Polette* proceeded to argue the merits of the application for liberation, when he was directed by Ramsay, J., to argue the question whether the Court on that side could interfere, under that process, with the order made by the Court on the other side.

That question being discussed, the case was argued on the merits and the application was taken *en délibéré*.

On the 29th November,

RAMSAY, J. said that Mr. Justice Monk, sitting on the Crown side, had already refused to discharge the petitioner. The words "until otherwise ordered by this Court," applied only to the Crown side. The Court sitting here on the civil side could not reverse that decision on a writ of *habeas corpus*. If the prisoner was entitled to a writ of error he should take it. The only question that could be examined on the present petition was whether there was a good detainer, and it was impossible for the Court to say at present whether the commitment had been exhausted.

Petitioner remanded.

W. A. Polette, for the petitioner.

C. P. Davidson, Q. C., for the Crown.

W. A. P.

SUPERIOR COURT.

MONTREAL, January 14, 1882.

Before JETTÉ, J.

ROSS et al., ès-qual., v. THE CANADA AGRICULTURAL INSURANCE CO.

Canada Agricultural Insurance Company—35 *Vic.*, c. 104, 41 *Vic.*, c. 38.—*Action for calls.*

The Acts 35 *Vict*, c. 104, *and* 41 *Vict.*, c. 38, (*Canada*) *are not ultra vires.*

The liquidators under 41 *Vic.* c. 38, *are in the position of assignees appointed by the creditors under the Insolvent Act.*

Illegal acts on the part of the Directors of a Company cannot be set up in defence to an action for calls by liquidators or assignees representing the creditors of the Company.

The questions raised in this case were similar to those involved in the case of *Ross et al.* v. *Guilbault*, 4 Legal News, p. 415.

The judgment fully explains the questions decided and the grounds of the decision:

"Considérant que les demandeurs ès-qualité réclament du défendeur, actionnaire de la Compagnie d'Assurance Agricole du Canada, et propriétaire de 20 actions dans le fonds capital de cette compagnie, une somme de $600, étant pour les 3e, 4e et 5e versements de 10 p. c. chacun, sur les dites 20 actions, dûs respectivement les dits versements, le 17 décembre 1877, le 2 avril 1879, et le 2 juillet 1879;

"Considérant que le défendeur repousse cette demande, disant:

1o. Que le statut 35 Vict., ch. 104, incorporant la dite compagnie, et le statut 41 Vict., ch. 38, qui nomme les demandeurs syndics à icelle, sont inconstitutionnels et *ultra vires*, le premier parce qu'il affecte et restreint les droits civils des actionnaires de la dite compagnie, et le second parce que sans déclarer la dite compagnie en faillite, il enlève la direction de ses affaires à ses actionnaires et à ses directeurs, ce que le Parlement fédéral n'avait aucun droit de faire; Que même si ces statuts sont constitutionnels, les demandeurs ès-qualité sont sans droit pour agir contre lui, défendeur, attendu que l'acte 41 Vict., ch. 38, ne les nomme que syndics officiels et qu'ils n'ont jamais ensuite été nommés syndics définitifs par les créanciers de la compagnie;

2o. Que la compagnie a commencé ses opérations avant d'avoir réalisé les $50,000 requises pour sa charte; qu'aucune demande légale des versements demandés n'a été faite au demandeur; et enfin que la compagnie et ses directeurs ont fait nombre d'actes illégaux et irréguliers, tels que réduction du capital de la compagnie, libération de partie des actionnaires des trois quarts de leur responsabilité, émission d'actions factices, etc., et que ces illégalités libèrent le défendeur;

"Considérant que le statut 35 Vict., ch. 104, incorporant la Compagnie d'Assurance Agricole du Canada rentrait évidemment dans la juridiction du Parlement fédéral, attendu que la dite compagnie n'était pas créée pour un objet purement provincial; et que les diverses dispositions de cet acte n'accordent que les pouvoirs nécessaires à l'existence et au fonctionnement de la compagnie créée et découlant naturellement du droit de former la dite corporation;

"Considérant que le statut 41 Vict., ch. 38, rentrait également dans les attributions du Parlement fédéral, ce statut n'ayant été passé que pour venir en aide à la compagnie susdite, déclarée incapable de continuer ses opérations à raison des pertes par elle faites;

"Considérant que par le dit acte, et par un autre acte passé pendant la même session et étant la 41 Vict., ch. 21, pour la liquidation des compagnies d'assurance insolvables, la dite compagnie sus-nommée s'est trouvée soumise aux dispositions de la loi générale concernant la faillite, alors en force;

"Considérant qu'aux termes de l'article 29 de la dite loi de faillite il est pourvu à ce que les syndics officiels, chargés d'une faillite, deviennent syndics définitifs, si les créanciers à leur première assemblée n'en choisissent pas d'autres;

"Considérant que bien que par l'acte spécial à la dite compagnie 41 Vict., ch. 38, les demandeurs n'aient été nommés que syndics officiels à icelle, il appert néanmoins par la preuve, que d'autres syndics n'ont pas ensuite été nommés par les créanciers de la compagnie, bien qu'ils aient été remis en assemblée, et qu'en conséquence les demandeurs sont restés syndics définitifs à la dite compagnie, et sont comme tels bien fondés à porter la présente demande;

"Considérant qu'il n'a pas été prouvé que la compagnie ait commencé ses opérations avant d'avoir la somme requise de $50,000; que la preuve tend plutôt à établir le contraire et que

même en l'absence de telle preuve la présomption légale repousserait cette affirmation du défendeur ;

"Considérant qu'il est établi en preuve que des demandes régulières ont été faites au défendeur de chacun des versements qui lui sont réclamés, et que la charte de la compagnie ne requiérait pas la publication de telles demandes dans les journaux ;

"Considérant enfin que les illégalités que le défendeur reproche à la dite compagnie et à ses directeurs, et quant à la réduction de son capital, et quant à la libération d'une partie de ses actionnaires, etc., ne peut en aucune façon affecter la responsabilité du défendeur envers la compagnie, et surtout envers les demandeurs ès-qualité qui représentent les créanciers de la compagnie ;

"Renvoie les exceptions et défenses du défendeur, et le condamne à payer aux dits demandeurs ès-qualité la dite somme de $600 courant avec intérêt, etc."

Church, Chapleau, Hall & Atwater for plaintiffs.
Roy & Boutillier for defendant.

RECENT ENGLISH DECISIONS.

Lunar and Calendar Months.—An agreement for the hire of furniture at a weekly rental provided that the first payment should be made on the following Monday, and the succeeding payments on each succeeding Monday, "the said letting on hire to be for the term of 26 months from the date of the first payment herein mentioned." *Held* (by the High Court of Justice, Chancery Division) that the word "months" meant lunar months. Fry, J., said:—"The question is whether, in this contract for letting chattels for twenty-six months, the word "months" means calendar or lunar months. Now, in *Simpson* v. *Margitson*, 11 Q. B. 23, Lord Denman said (p. 31): 'It is clear that 'months' denotes at law 'lunar months,' unless there is admissible evidence of an intention in the parties using the word to denote 'calendar months.' If the context shows that calendar months were intended, the judge may adopt that construction.' Here the context throws no light on the meaning, except that the contract for weekly payments, I think, implies that lunar rather than calendar months are meant. Then it is said that in mortgage transactions months are always calendar months, and that this is a mortgage transaction. But the rule as to mortgages only arises from this, that the interest on mortgage money is a fixed yearly sum, and therefore half a year's interest is for six calendar months. I cannot expand this into a mortgage transaction. The primary transaction is not a mortgage at all; it is simply a contract for the hire of furniture. I therefore hold that the word 'months' means 'lunar' months." *Hutton* v. *Brown*, 45 L. T. Rep. (N. S.) 343.

Contract—for sale of goods—Breach authorizing rescission by other party.—Contract for the sale of 2,000 tons of iron at 42s. per ton, free on board; delivery November, 1879, or equally over November, December and January, at 6*d.* per ton extra. During November the vendor wrote to the purchaser and his broker asking whether he would take the whole or one-third in November. The purchaser's broker replied, first, that the purchaser had not decided, and afterward, that the purchaser would be obliged if none were delivered till December. The vendor then wrote (on the 1st December) to the purchaser saying that the contract was cancelled. In an action by the purchaser against the vendor for non-delivery of 666 2-3 tons of iron in December, 1879, and of 666 2-3 tons of iron in January, 1880, *held* (Brett, L. J., dissentiente), that the refusal of the plaintiff to accept any portion of the iron in November entitled the defendant to rescind the entire contract. Hoare v. Rennie, 5 H. & N. 19, affirmed. Per Brett, L.J. The failure of the plaintiff to accept the first delivery did not disentitle him to insist upon the other two being made. Hoare v. Rennie, 5 H. & N. 19, was wrongly decided. Judgment of Manisty and Field, J J. reversed. Ct. of Appeal, April 1, 1881. *Houck* v. *Muller*, Opinions by Bramwell, Baggallay & Brett, L. J J., 48 L. T. Rep. (N. S.) 202.

Shipping—Jettison of Deck Cargo—Contribution.—Where there is no custom to carry goods on deck, and the voyage is not a coasting voyage, the owner of a deck cargo that has been necessarily jettisoned in the course of a voyage can have no claim for contribution against the ship-owner, or the other cargo-owners, although the contract between him and the ship-owner specifies that the goods are to be carried on deck.—*Wright* v. *Marword*, 45 L. T. Rep. (N.S.) 297.