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CURRENT TOPICS AND CASES.

The principal question decided by our Court of Appeal in *Wood & Atlantic & N. W. Ry. Co.* (Montreal, April 26, 1893) is one of great importance, and it is well perhaps that the case should be taken to a higher court, as we believe is about to be done. The Court of Appeal holds that where land is expropriated for railway purposes, the company is bound to compensate the proprietor not only for the land actually taken, but also for the direct damage to the rest of his land and property, resulting from the construction of the railway or from the future operation of the road. In the case in question, a church was rendered all but useless by the construction and proximity of the railway. The company merely desired to expropriate an overhead passage over a lane. This however, was held sufficient to bring them under the Railway Act, Mr. Justice Hall remarking, "The court is agreed in thinking that the expropriation of an overhead passage gives the right to the enforcement of all the statutory rights which would follow from expropriation of subterranean or surface rights." The actual damage by construction and the value of the land taken were in this case comparatively insignificant, the court below awarding merely $1,367, instead of $16,308, the damages assessed by the arbitrator's award. The great question was whether damage from the future operation of the road could be considered. The general principle is that no one can use his own property

to the detriment of his neighbour, even if the exercise of such right be under the authority of an act of Parliament. Applying that principle, the Court of Appeal came to the conclusion that the arbitrators were justified in taking into consideration the injurious effect upon the present occupation of the property, resulting from the noise and vibration caused by the train service in such close proximity to the church. The original award has therefore been maintained. It is difficult to see how the proprietor would receive the full compensation to which he is entitled unless the whole damage were included in the award. If, however, this overhead passage had not been required by the company the damage to the church would have been nearly the same. Would the court be equally ready to maintain an action for damages resulting from operation of the road, brought by a person in the immediate vicinity, but whose property has not been actually touched by the railway line?

Another decision of importance is that delivered by the Court of Appeal at Montreal, Sept. 27, 1893, in *Forget & Ostigny*. The question was whether a broker could recover a balance due by a customer, on transactions in stocks upon margin, and without any intention to make a real purchase of the stocks. The question was very fully examined both by the Chief Justice and by Mr. Justice Hall who delivered an elaborate dissentient opinion. The result is that by four to one the right of action of the broker is denied. In *McDougall & Demers*, M. L. R., 2 Q. B. 170, the Court of Appeal stood three to two, Justices Monk and Ramsay being the dissentient judges. The circumstances of the two cases are not quite similar, but the view taken by the majority in each case is nearly the same. The present case, it is expected, will be carried to the Privy Council, and the Chief Justice, it may be observed, expressed the hope that it would be taken to the highest

court, in order that a question of such moment might be finally settled.

The bar of Montreal have apparently not shown much interest in the bill submitted to the legislature last session by the Attorney General for the reorganization of the courts. On one occasion when a meeting was convened for its consideration, there was no quorum, and on another occasion the attendance was so small that the meeting was adjourned. It may be remarked, however, that in the latter part of September, immediately following the long vacation, it is not an easy matter for lawyers to get time for meetings. Cases have to be looked up and got ready for the Courts of first instance, for review, for appeal, and for the Supreme Court. It is probable, also, that the feeling that the bill was likely to fail in the legislature owing to the opposition of country members, had some effect in diminishing the interest in the measure. It must not be assumed, however, that the bill will not receive fair and candid consideration from all the lawyers in the legislature, whether they represent country or city constituencies, and at all events it is worthy of the most careful attention from a bar so large and important as that of Montreal.

Some of the country judges seem to have been unnecessarily sensitive to a supposed imputation upon their ability and usefulness. The whole thing seems to have arisen from a pure misunderstanding. It is evident that neither the bar nor any section of it, formulated any complaint, or had any disposition to do so. Country judges and judges appointed from the country sections have borne too important a part in the work of the courts for many years past, to leave any room for cavil. We may take this opportunity to say that there is too much shallow and ignorant criticism of our superior judges. Very few have so strong a light thrown upon their daily acts as

they. If they are weak, if they seriously fall short of their duty in any particular, it will soon be known. But they should be protected against groundless imputations. A daily journal remarks that there was a time when the conviction was universal with regard to Canadian judges that whatever their previous record they could be entirely trusted as judges, and asks "is this conviction as strong to-day?" If it is not so, it is due chiefly to the habit of evil-speaking which is certainly strong enough in the present generation.

The vacancy on the bench of the Supreme Court of Canada, has been filled by the appointment of Mr. Justice King, of the Supreme Court of New Brunswick.

Mr. King was born in St. John in 1839, and is a son of the late George King, shipbuilder, and a graduate of the Wesleyan University, Connecticut. He studied law and was admitted an attorney in 1863, called to the Bar in 1865, and appointed Queen's Counsel in 1872. He was a partner of the law firm of Morrison & King from 1865 until the death of Mr. Morrison in 1875. In politics Mr. King was a strong supporter of the old Liberal party, and an earnest advocate of Confederation. He was first elected to the New Brunswick Assembly in 1867 along with the late Joseph Coram, on the retirement of Messrs. Gray and Wilmot just after Confederation. He was returned at the general election in 1870 and again in 1874. In January, 1869, he entered the Government of Attorney-General Wetmore without office, and on Mr. Wetmore's election to the bench of the Supreme Court succeeded him as attorney-general, holding that office down to 1878, when he resigned it and left the Local Legislature. In that year he was an unsuccessful candidate for the Commons for the city and county of St. John. On December 10, 1880, Mr. King was appointed a judge of the Supreme Court of New Brunswick.

SALE OF SHARES—DIVIDENDS.

Whether the sale of stock shares carries with it declared dividends is the question that arose in the Supreme Court of this State in the case of *Warner* v. *Watson*. The *National Corporation*

Reporter says the rule obtains that by the declaration of a dividend, it becomes separated from the stock, and after the declaration of a dividend, a transfer of the stock does not transfer the dividend. The general rule is qualified by the custom of the Stock Exchange, where dividends declared pass with the stock, before the books of the company close, but Stock Exchange rules only govern its members and not the general public. This question underwent full discussion and determination in the case of *Hopper* v. *Russell Sage*, 112 N. Y. 530, where it was held that a dividend declared upon corporate stock, belongs to the owner of the stock at the time, although the dividends are made payable at a future time; hence, in the absence of any provision to the contrary, in a contract of sale and purchase of stock made outside of and not subject to the rules of the Stock Exchange, dividends previously declared but made payable thereafter, belong to the seller and are not transferred by contract. The declaration of a dividend is in legal contemplation a separation of the amount from the assets of the corporation, which holds such amount thereafter as the trustee of the stockholder at the time of the declaration of the dividend. In the principal case under consideration plaintiff's assignor had pledged stock for a loan with persons who, before the loan was due, fraudulently and without notice to the assignor sold the stock 'dividend on" on the floor of the Stock Exchange. At the time of the sale dividends had been declared but were not then payable. It was held that though the custom of the Stock Exchange provided that dividends declared passed with the stock until the books of the company closed, such custom did not affect the plaintiff's assignor, he not being a member of the Exchange, and the dividend did not pass with the sale of stock. The dividend for which the action was brought, had been declared by the Delaware and Hudson Canal Co., out of the profits of the year 1891, payable quarterly during the year 1892, to stockholders of record at various prescribed times during that year.—*Albany Law Journal.*

CROSS-EXAMINATION AS AN ART.

Every lawyer of only five years' practice has discovered what an art cross-examination has become,—to rank with sculpture and painting. May not the tools of the expert cross-examiner be figuratively described as the mallet of manner giving the adroit

stroke; the chisels of rhetoric or of tone of voice for delicate incisions? Must not the touches of the cross-examiner be not less delicate than those of a Praxiteles or a Powers? Does he not before exercising his art of cross-examination and during the direct examination carefully scan and study the witness produced in the aspect of a model? Has he not in such a study, rapid as it must necessarily be, borne in mind maxims of Lavater and Spurzheim, as the sculptor remembers many of Canova? For like the chiselling sculptor, the cross-examiner knows that he must carefully bear in mind the features and form of the model's testimony, and carve these to his own end, especially the features of his own theories applied to the evidence given.

During a dozen years of continuous service as district attorney of New York City, and of a score years in civil actions as counsel for seven sheriffs in whose litigations fraud of debtors was examinable, I possessed very fair opportunities of studying the art of cross-examination as practised by bar-leaders, who as against the people or as retained by claimants against the sheriff were generally employed. This gave opportunity for testing the saying: "Fas est ab hoste doceri." Seven years of a subsequent residence in London, while frequently attending its courts, furnished further opportunity for studying cross-examination as an art and as practised by eminent solicitors before magistrates and by Q.C.'s in the Supreme Court of Judicature, and in that best court for testing the art, the Bankruptcy Court.

Of those in England whom I found to be what I may term professors of the art, I mention George Lewis, who confessedly heads his profession as solicitor; Attorney-Generals Webster and Sir Charles Russell; Solicitor-General Sir Edward Clark, and a battalion of Q. C.'s, who by promotion from the Lord Chancellor, cross-examine in what William Black the novelist in his popular romance entitles "In Silk Attire," and who wear wigs such as covered—I can hardly use the word "adorned"—the brows of two King Henries of the bar, Erskine and Brougham.

While I was a student in the Harvard Law School under Greenleaf and Story, whose memories and learning have worthily graced brilliant successors, I often and in company with such classmates as Rutherfurd B. Hayes and Geo. Hoadley, both of whom became eminent in public life, listened to and studied, in connection with Greenleaf's fitting chapter in his "Evidence,"

the artful cross-examinations of Rufus Choate, whose art is well "kept green" by his nephew Joseph in New York.

While afterwards pursuing the study of civil law in New Orleans, I had occasion to hear cross-examinations of such advocates as John R. Grymes, Alfred Hennen, George Eustis, father of the Minister at Paris, and who was afterward Chief Justice of the State, Thomas Slidell, and Judah P. Benjamin, into whose brilliant eyes all suspicious witnesses found it difficult to look when he practised upon them his art that he masterfully knew, and which, when he became an English Q.C., stood him in great regard from bench and bar and at all the inns and Temples.

At the New York Bar I had opportunities of studying the cross examination arts of Charles O'Conor, Ogden Hoffman, John Van Buren, Edward Sandford, Daniel Lord, James T. Brady, David Dudley and Stephen J. Field, the brothers David and John Graham, Henry L. Clinton, Louis B. Woodruff, who afterward died as Federal Circuit Judge, Attorney-General Ambrose L. Jordan, and William Curtis Noyes, only three of whom survive. Their successors in the art at the New York City Bar were undoubtedly William Fullerton, Joseph H. Choate, Robert J. Ingersoll, Clarence A. Seward, and Messrs. Root, Rollins, Coudert, James, Fellows, Cochran, Nicoll, Holmes, and Parsons. Of those in my list who have passed away, my best representative of the art was, by all odds, David Graham, who can only be remembered by the later generation of the bar as author of a treatise on new trials. I select him as my model of a XX examiner.

When he rose to cross-examine a hostile witness, he was like a duellist during the time when seconds were measuring the ground. Calm, suave, not exhibiting acerbity in look or tone, ready however, like a good surgeon, to use lancet or probe with full knowledge of the strength of the witness in muscles of prevarication, or of the exact situation of the nerves of the witness, Mr. David Graham's furtive study of the witness during the direct, as well as of the judge and jurors, as determining what effect the adverse testimony was having upon them, presented a fine forensic picture. Nor did he, for a similar purpose, omit to scan auditors also. While the direct proceeded, he was an actor, who could conceal emotion, express surprise, doubt or dissent, with a facial gesture in a timely glance at the jury. Like the duellist of the foregoing illustration, he was ever courtesy itself,

never losing temper or presence of mind. He never committed the average error of counsel in arguing with the witness, or over the witness forestall summing up to the jury through some question. He reserved his appreciation of a telling or of a random shot of evidence, and his comment of facial expression or of rhetoric, to his address to the jury. He never proposed to allow a witness to understand fully the motive of a question. If the witness was subtle, he fought him with suavity, and soon threw him off guard. The too willing or rapid witness he encouraged into quicksands of contradiction or a slough of mis-statement. He never assumed risks with questions that might bring hostile answers. He never threw bait or fly, as t'were into a stream of inquiry, unless he knew the stone under which lay the pike, nor where he suspected that trout were absent.

One of his maxims to students was, "Never on cross-examination ask a question the answer to which in any one possible way might aid the other side and place your own side in jeopardy of dangerous comment." Like a keen marksman, he accommodated his aim of inquiry to the direction in which the wind was blowing. He did not waste time on immateriality for his client by cross-questions.

He had studied the very bull's eye of his case, and tried to bury at times his own bullet in the very opening made by his adversary's bullet. Like the French swordsman, he sought his adverse witness while off guard. His whole play was a standing rebuke to Old Bailey practitioners, who bullied witnesses. He could be severe with hostile witnesses, but preferred to strike them with the gloved rather than the mailed hand. Another Graham maxim was: "If your adverse witness becomes forewarned by your manner or address, he is likely to be aroused to greater antagonism of evidence." On one occasion a witness examined by David Graham, was heard to say, "if anyone testifying could be persuaded into perjury or contradiction or inconsistency, David Graham is the lawyer to accomplish it." He was throughout cross-examination a master in realizing the maxim "ars celare artem." His especial aim was in the main to convert the hostile witness into a witness for his own client. This was a purpose even beyond the ordinary purpose of destroying or weakening the direct.

Above all, he knew when and where to refrain from cross-questions, a great incident in the art. He reminded one of the

skater who never ventures on or near thin ice, although there were no visible signs of "dangerous." In this adroit refraining he probably remembered the anecdote accredited to Curran and his horse-stealing client. The latter said after acquittal: "No thanks to you John Philpot, and I ought to have the fee returned, for you never cross-examined a witness nor made a speech in my favor." "If I had even opened my mouth under the circumstances, the possibilities are, under the view judge and jury seemed evidently taking of your case, that you might then have been convicted." Plausible as David Graham was with the hostile witness, he was equally plausible in commenting to the jury upon the testimony of that witness. He was a thorough disciple of Henry Brougham's celebrated definition of an advocate's duty to his client, that was enunciated in his address to the Lords when defending Queen Caroline, the doctrine of which definition several strict ethical writers have impugned.

It may be observed that the brother, John Graham, still in active practice, seemed to rival the elder by his own methods of adroit and successful cross-examination.

At the New Orleans Bar, as far back as the year of the Mexican War, Judah P. Benjamin seemed to possess and excel in most of the traits in the art of cross-examination already imputed to David Graham. Benjamin especially possessed celerity of thought and ready aptitude in dealing with the demeanor and expressions of a hostile witness. Like single-speech Hamilton in the traditions of the House of Commons, Mr. Benjamin knew when to quit talking; and like a good stage manager, he always arranged a good exit from the witness chair for his actor, who may have there endured forgetfulness of his cues.

Without attempting to distinguish, or to extinguish, by mention any of the barristers or Q.C.'s of the London Bar excelling in the art in question, beyond a passing tribute to the careful and meritorious cross-examinations of Messrs. Charles Mathews, Poland and Gill, it may be observed that in this art not one of those cross-examiners can equal the excellence in it of those best known at the American Bar, from Maine to San Francisco; and for the reason that the former are nationally slower and less elastic than the latter. Is not the cross-examiner who "deliberates," like the woman commemorated by the Pope of poets, ' lost"? The average American cross-examiner is in

the battle of testimony like the Zouave, and the Englishman like a heavy dragoon by comparison, the one alert in action and quick with rifle, while the other takes time for drawing his sabre. Moreover, the former thinks for himself, while the other is compelled to think more or less through a solicitor, and is fettered more or less by iron-clad instructions.

It takes the lawyer who joins the bar as a fledgeling a long time often to acquire the art. He finds that he has to cultivate, for success in it, celerity of thought, close observation of human nature, and a study of its various phases, rapid exercise of judgment on the occasion sudden, command of feature and temper, and above all he must know when to stop cross-examination. Playwrights and actors learn how to value the good exit; and the lawyer who is adept in the art of cross-examination arranges an exit for his hostile witness that shall tell in favor of his own client. The young advocate's most frequent short-coming in cross-examination is avidity at it, and eagerness to press questions. His self-sufficiency and indeed conceit will too often tempt to precarious questioning or too much detail in queries. Then how often at Nisi Prius one witnesses a rash although keen "encounter of wits" between cross-examiner and witness, wherein the latter gets the advantage as Beatrice did over Benedict? For cross-examination that makes much ado about nothing degrades the art of it. The lawyer, young or old, must never risk the fate of a client by attempts at merely showing off his art to bench, witness, jury, or audience. Yet how often such a spectacle is witnessed in courts!

Success in the art of cross-examination comes oftenest from happy possessors of a genius for it. Great lawyers have failed in the art, while mere "case lawyers" and those of mediocre learning have succeeded in it, quite as there is a difference between Thorwaldsen and the Italian constructor of plaster casts. Yet the art may be measurably acquired by observation of the ways and means and methods of masters at the Bar, and sometimes from the bench itself, in the art of cross-examination, an alchemy for testing truth or falsehood.—*A. Oakey Hall in the Green Bag.*

SUPERIOR COURT ABSTRACT.

Procedure—Saisie-gagerie accompanied by saisie-arrêt avant jugement en mains tierces—Service of writ on defendant—Endorsement of writ.

Held:—1. Where the plaintiff has combined with a *saisie-gagerie simple* and *saisie-gagerie par droit de suite* a *saisie-arrêt en mains tierces*, without producing an affidavit to justify the *saisie-arrêt*, the omission of the affidavit merely entails the nullity of the seizure as respects effects not *gagés* for the rent, but does not affect the validity of the *saisie-gagerie*.

2. The fact that a copy of the declaration was deposited for the defendant at the prothonotary's office before the service of the writ of *saisie-gagerie* is immaterial, so long as the copy was in the office before the expiry of three days following the service of the writ.

3. The bailiff charged with a writ authorizing him to seize, is not bound to serve the copy of such writ upon defendant before effecting the seizure. The seizure may be effected in the absence of defendant and the writ subsequently served upon him.

4. The endorsement of its title or description upon the back of a writ is not an essential part thereof, and any difference in the title as endorsed upon the several copies served is not a ground of nullity.

5. The plaintiff is not bound to specify, in the writ or declaration of *saisie-gagerie*, the effects he seeks to have seized *par droit de suite*.

6. So long as the seizure of effects which have been removed from the premises is made within eight days after the date of their removal, it is not essential that the writ be served upon the defendant within eight days.—*Beaulieu* v. *Phillips et al.*, & *Kimball et al.*, T. S., Montreal, Doherty J., June 17, 1892.

Communauté—Clause de réalisation—Propres conventionnelles—Art. 1385, *C. C.*

Par le contrat de mariage des intervenants, en date du 8 février 1858, il fut stipulé qu'il y aurait communauté d'acquêts entre les futurs conjoints, et que tout ce qui pourrait échoir à la femme par succession, donation, legs ou autrement, lui sortirait nature de propre à elle et aux siens de son côté, estoc et ligne.

Une somme d'argent étant échue à l'épouse par le testament de son père, un créancier du mari la fit saisir entre les mains du tiers-saisi qui la déposa en cour.

Jugé:—(Infirmant le jugement de la cour inférieure, Davidson, J., *dissentiente*): 1. Que cette stipulation de propre n'a pas eu l'effet d'empêcher les biens ainsi réservés de tomber dans la communauté, mais qu'elle donne seulement à la femme le droit, lors de la dissolution de la communauté, de prélever, avant partage, la valeur de ces biens, avec préférence sur ceux qui seraient trouvés en nature.

2. Que le mari, comme chef de la communauté, peut disposer librement de tous les biens ainsi réservés par la femme, comme biens de la communauté, et que partant ces biens peuvent être saisis pour dettes du mari ou de la communauté.

3. Que dans l'espèce, pour enlever au mari le contrôle de ces biens, la femme aurait dû stipuler le droit exclusif d'administrer ces biens ou d'en disposer. *Veronneau* v. *Veronneau*, C. R., Montréal, Johnson, J.C., Davidson, Pagnuelo, JJ., 4 mars 1893.

Prescription—Action for bodily injuries—Minor—Interruption by judicial demand—Arts. 2262, 2269, 2224, *C.C.*

Held:—1. The prescription of the action for bodily injuries under Art. 2262, C.C., runs against minors as well as against persons of full age. (Art. 2269, C.C.)

2. A judicial demand or action has no effect to interrupt prescription, unless it be served upon the person whose prescription it is sought to hinder, before the expiration of the time required to prescribe.—*O'Connor et al.* v. *Scanlan*, S.C., Montreal, Doherty, J., 10 December, 1892.

Procédure—Signification de pièces.

Le rapport de signification de l'inscription au mérite était fait non sur l'inscription elle-même mais sur un papier qui fut ensuite annexé à cette inscription. De plus, l'huissier faisait rapport qu'il avait "signé à Bonin" sans dire quelle était la qualité de la personne à qui il avait remis cette inscription.

Jugé:—Que ce rapport de signification était irrégulier et que le jugement rendu sur cette inscription devait être mis de côté.—*McNamara* v. *Gauthier et al.*, & *Bernard et al.*, en révision, Montreal, Johnson, C.J., Loranger, Davidson, JJ., 28 février 1893.

Absence—Curatelle à l'absent—Nouvelles de l'absent—Art. 92 C. C.

Jugé:—Les mesures ordonnées par la justice pour la protection des interêts des absents, et notamment une curatelle à l'absent, sont de nature conservatoire et sont essentiellement favorables, et la connaissance de l'existence de l'absent, qu'aurait pu avoir, lors de l'ordonnance, un parent qui n'a pas assisté au conseil de famille, ne peut seule mettre fin à ces mesures. Il appartient, au contraire, aux tribunaux de maintenir ces mesures provisoirement lorsqu'ils jugent qu'il est de l'intérêt de l'absent qu'il en soit ainsi. L'absent, d'ailleurs, peut toujours faire cesser les effets de ces mesures par son retour ou sa procuration, mais tant qu'il ne juge pas à propos de le faire, elles peuvent être maintenues.—*Chaput* v. *Chaput*, & *Leclerc, es qual.*, intervenant, en révision, Montreal, Johnson, J.C., Jetté, Mathieu, JJ., 28 février 1893.

Servitude—Transfer—Signification.

Held:—1. A clause in a deed of sale, by which the purchaser of a portion of an immovable obliges himself towards his vendor, who retains the rest of the land, to do a particular thing, as, for example, to erect a fence on the part acquired by him, near the river which separates their respective portions, does not constitute a servitude on the purchaser's property, but merely imposes a personal obligation to construct a fence.

2. Although the vendor's right to compel the purchaser to conform to his obligation may be transferred by the vendor to anyone who subsequently acquires the portion of the land retained by him, the transferee has no right available against the purchaser above mentioned until a copy of the transfer has been duly served upon the latter.—*McCuaig* v. *Chenier*, Montreal, Doherty, J., November 14, 1892.

Libelle—Injure—Fuite et mauvaise réputation du demandeur—Mitigation de dommages.

Jugé:—La fuite et la mauvaise réputation du demandeur, qui réclame des dommages contre un journal, pour publication d'articles faux et diffamatoires, ne constituent pas une défense valable alors qu'il y a eu injure, et ne servent qu'à mitiger la condamnation que le tribunal aura à prononcer contre les propriétaires de ce journal.—*Brunet* v. *La Cie d'Imprimerie et de Publication du Canada*, en révision, Montréal, Jetté, Gill, Loranger, JJ., 31 janvier 1893.

Registration—Hypothec granted by purchaser before registration of his title—Priority.

Held:—Where a deed of sale of real property creating a bailleur de fonds right for the balance of the price, is not registered until after thirty days from the sale, and a hypothec on the property granted by the purchaser in the interval is immediately registered, the *bailleur de fonds* claim ranks before that of the hypothecary creditor.—*Roch* v. *Thouin*, C. R., Montreal, Johnson, C. J., Tait and Davidson, JJ., January 31, 1893.

COURT OF APPEAL ABSTRACT.

Diffamation—Droit de défense—Vérité des propos diffamatoires.

Jugé:—1. Le défendeur, dans une action en dommages pour diffamation, est admis à plaider la vérité et la notoriété des faits dont l'imputation constitue le propos diffamatoire, cause de l'action.

2. Il en est autrement du caractère et de la conduite générale de celui à qui le propos diffamatoire se rapportait. Ils ne peuvent être invoqués comme moyen de défense.—*Beauchêne & Couillard*, Baby, Bossé, Blanchet, Hall et Wurtele, JJ., Québec, 4 avril 1893.

Assurance contre le feu—Droits et recours de l'assureur—Subrogation conventionnelle et légale aux droits de l'assuré—Responsabilité de l'auteur du sinistre—Preuve—Arts. 1155, 1156, 2584, 1053, *C. C.*

Jugé:—1. La preuve faite incidemment sur une inscription de faux forme partie du dossier à toutes fins, et le demandeur peut l'invoquer, au mérite, au soutien des allégations de son action.

2. L'assureur qui a payé le montant de l'assurance en deux versements (dont le dernier au moyen d'un billet promissoire) à l'assuré, ne peut obtenir de ce dernier, au moment du deuxième versement, une subrogation conventionnelle de ses droits contre l'auteur du sinistre, les termes de l'art. 1155, C. C., "cette subrogation doit être expresse et faite en même temps que le paiement," s'y opposant.

3. Cet assureur ne pouvant être rangé sous aucun des cinq chefs de l'art. 1156, C. C., ne peut invoquer, non plus, la subrogation légale aux droits de l'assuré contre l'auteur du sinistre.

4. Aucune cession des droits de l'assuré n'ayant été faite à l'assureur lors du paiement de l'assurance, ce dernier ne peut pas invoquer contre l'auteur du sinistre le bénéfice de l'art. 2584, C. C.

5. L'assureur qui a payé le montant de l'assurance à l'assuré, a, pour se faire rembourser, contre l'auteur du sinistre, le recours en dommages de l'art. 1053, C. C.—*Cedar Shingle Co. & La Compagnie d'Assurance, etc., de Rimouski*, Baby, Bossé, Blanchet, Hall et Wurtele, JJ., Québec, 20 juin 1893.

Testament—Forme de testament—Testament fait à l'étranger—Legs —Interprétation—Procédure—Droit d'invention—Institution de charité.

Jugé :—1. L'ancien droit français, en force dans la province avant la promulgation du code civil, ne reconnaissait le testament fait à l'étranger qu'autant qu'il était fait dans la forme pourvue par la loi du pays où se trouvait le testateur, suivant la maxime, '*locus regit actum.*'

2. Les lois de l'Etat de New-York, en 1865, permettant aux étrangers de disposer par testament, suivant les formes autorisées par les lois de leur domicile, le testament olographe fait alors par une personne domiciliée à Québec est valable.

3. La disposition testamentaire conçue en ces termes: "I "hereby will and bequeath all my property, assets and means "of any kind to my brother Frank who will use one half of them "for public Protestant charities in Quebec and Carluke, say, the "Protestant Hospital Home, French Canadian Missions, and "amongst poor relations, as he may judge best," est valide et ne saurait être attaquée comme vague et incertaine, comme ne désignant pas suffisamment les bénéficiaires, ni comme laissée à la discrétion du légataire, Frank Ross.

4. Dans une action intentée pour faire prononcer la nullité d'un testament qui contient un legs en faveur d'individus, au choix du légataire universel, appartenant à des classes ou catégories désignées, tous ceux sur lesquels ce choix pourrait légalement tomber ont un intérêt suffisant pour être admis parties intervenantes.

5. Une maison d'éducation est une institution de charité dans le sens de la disposition testamentaire ci-haut citée.—*Ross & Ross*, Québec, Sir A. Lacoste, J.C., Baby, Blanchet, Hall et Wurtele, JJ., 4 mai 1893.

GENERAL NOTES.

SCUTTLING SHIPS.–In the High Court of Justiciary in Edinburgh, before Lord Kyllachy, on August 8, David Hobbs, shipbroker in Dundee, and Joseph Severn, ship-captain, were indicted for scuttling four ships off the Scotch coast, and with setting fire to a fifth in Inverkeithing Harbour—in each case with intent to defraud insurers. Hobbs pleaded guilty as to two vessels and Severn as to one. Severn appears to have been employed by Hobbs as his tool in effecting his frauds on underwriters, and in consideration of his subordinate position only received five years' penal servitude, whereas Hobbs was sentenced to seven years. No serious danger to life seems to have been involved by their operations, or the punishments would be inadequate. The *modus operandi* seems to have been the old-fashioned plan of boring holes in the ship's side, plugging them, and drawing the plugs when out at sea.

MISTAKEN IDENTIFICATION.—A very curious case has come under the notice of the Coroner for Bombay, Allan F. Turner. On Sunday week a police ramoosee doing duty at the Greaves Cotton Mills at De Lisle Roads, while going his rounds discovered the body of a young Hindoo lying face downwards in a pool of water and mud by the roadside. The police caused a battaki to be beaten in the usual way, and among others the family of a man who had been missing for some days came forward. A woman at once identified the body as that of her son Sakhia Mulhari, a mill hand, about twenty years of age, and two other sons also identified it. An inquest was held in due course, and evidence was tendered to the effect that the lad was a mill hand, but had been very sick for the past two or three months. He was discharged from the Jamsetjee Jejeebhoy Hospital about a fortnight before, and was then very feeble, and only able to walk with difficulty. On Saturday he was seen limping along in the direction of Currey Road, and on the following day came the discovery made by the ramoosee.—A verdict was returned in accordance with the testimony to the effect that Sakhia had come to his death by falling face downwards in a pool of mud while in a feeble state of health, and the body was then taken away to the burning ghats. Before the funeral party reached the ghat, however, a younger member of the family stopped it with the cry, 'Sakhia's come home!' And so it proved. The dead man, despite his identification by Sakhia's relatives, was not Sakhia at all; and after a second inquest had been held, he was finally disposed of as unknown.