The Legal News.

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THE JUDICIAL APPOINTMENTS.

We expected that the appointments to the vacant judgeships would have been announced before this, but up to the time we write (April 21) there has been no official intimation. With respect to the Superior Court, it will probably be found inconvenient to postpone the appointment much longer. It is well known that one of the learned judges of this Court, having been compelled by ill-health to seek relaxation from duty, has been absent for several months. Mr. Justice Johnson has also been severely indisposed, and there is reason to fear that his illness must be ascribed to overwork. If six judges, with such outside assistance as was available, were unequal last year to the business of the Montreal Courts—and the legislature declared that to be the case—it is obvious that a force consisting of the four judges who have remained on duty during the last six weeks, must have been still less adequate.

It may be said without flattery to the bar, that the number of persons fairly competent for judicial positions is usually in excess of the vacancies to be filled: the appointing power, therefore, has the privilege as well as the responsibility of selection. If we had any act or part—either by way of suggestion or information—in the choice, we should not experience much difficulty on the present occasion. The name of one gentleman has been prominently mentioned in connection with the S. C. judgeship, and it is certainly unusual to find the qualifications necessary for the bench united in so remarkable a degree as in this instance: we need hardly say that we refer to Mr. Strachan Bethune, Q.C. Without derogating from the high position and solid attainments of other gentlemen who would adorn the judicial office, it may be said that Mr. Bethune, by right of seniority, as well as by the possession in a rare degree of the talent and experience which make a brilliant and useful judge, has a prior claim to the preferment. As a matter of fact he is the senior actively practising member of the Montreal section (Mr. Roy, the City Attorney, excepted), and was already an advocate of high repute when the majority of the lawyers as well as some of the judges of this day were in the nursery, and during nearly forty years' practice he has been largely and continuously engaged in the most important causes, not only commercial but civil. Mr. Bethune would make an admirable member of the Court of Appeal, and we hope yet to see him there; but in the meantime his appointment to the Superior Court bench would be eminently satisfactory alike to the profession and to the whole community. The retirement of several judges is spoken of, and in due course there will be further vacancies which will be appropriately filled by the other gentlemen whose names have been mentioned in connection with judicial office; but, in the meantime, any other arrangement than that which we have suggested would simply have the effect of confirming the popular belief which so constantly finds expression in private conversation and in the public press, that governments in their judicial appointments are not always actuated by a pure and conscientious desire to secure the best talent, and to advance as far as in them lies the honor and dignity of the bench.

LAW COSTS.

It is worthy of note that many of the reforms which have been proposed in England from time to time are *faits accomplis* with us. One of the latest suggestions on the subject of law costs, by Mr. Justice Bramwell, is to the effect that solicitors should be paid a lump sum; for instance, so much if proceedings stopped at the writ, so much if they stopped at a further stage, so much if there was a trial; and this sum should vary according to the amount at stake and other circumstances. This might serve as a compendious statement of the principle on which our tariff has been constructed, and although Mr. Justice Bramwell has been ridiculed in some quarters for his proposition, he suggests a method which has been found convenient in practice in a province where suitors are not crushed by ruinous bills of costs.

THE BAR SECRETARYSHIP.

To the Editor of The Legal News:

Dear Sir,—As a young English *confrère* is, I am told, going about among the profession

representing that I have retired from the candidacy for the Secretaryship of the Bar here, will you allow me space enough to say that I have been and still am awaiting the fulfilment of the promise made me two years ago by a large majority of the members of all classes, that as soon as the present incumbent should have received his due share of the honor, they would consider me next entitled to the position.

I remain, &c.,

C. H. STEPHENS.

Montreal, April 20.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, February 26, 1881.

DORION, C. J., MONK, RAMSAY, CROSS, BABY, JJ.

PAIGE et al. (defts. below), Appellants, and EVANS es qual. (plff. below), Respondent.

Insolvent Act of 1875, *Sect.* 133—*Sale in contemplation of insolvency.*

Appeal from judgment of the Superior Court, Montreal, Torrance, J., March 29, 1879. See 2 Legal News, p. 150, for judgment of the Court below.

RAMSAY, J. If words have any meaning the defendant, B. P. Paige, must have contemplated insolvency as a necessary termination to his proceedings for nearly 15 years. It is not very easy to determine precisely the history of Mr. Paige's commercial life; but it is pretty plain that he had had considerable experience of insolvency. In the spring of 1849 he started in partnership with W. Robertson. That partnership lasted till 1854. Then alone, as B. P. Paige & Co., till 1857 or 8, when, according to one statement, H. D. Robertson became a partner. This seems to have come to an end after successful operations. By another account Paige continued his operations *alone* under the name of B. Paige & Co. until 1861, when he failed. The failure is unquestionable. We are next told he began business again in 1868 when he got his discharge. He had then "no capital scarcely." In 1870 he took in W. Stearns as partner. That partnership lasted a year. It was not prosperous. Then there was a sham firm of E. & B. P. Paige. E. Paige was brother of the defendant. This sham firm was dissolved by his brother's death, we are not told when. He owed his brother money. He never took stock, kept no books and avowedly at the time of his insolvency had no idea of his financial position. Yet, he was paying from 14 to 20 per cent., in all about $10,000 a year as interest, and the last year of his business his principal sales (sales of threshing machines) only produced about $12,000. In face of this, in May, he suddenly bethought him of his debt to his daughter, and sold her a property somewhat under its value in May, and in July he gave an hypothec to his sister for $1,500.

The only difficulty appears to me to be as to how far this affects the purchaser. Taking section 133 of the Insolvent Act, it seems that proof of the complicity of the creditor is not required. This is not in accordance with principle, but the terms of the law are express. There is, however, some evidence against her. In the first place she is the daughter of the insolvent, her condition was not such as to render it likely she should have savings to such an amount, a connection of the family says he knows no source from which she could have acquired so large a sum. This evidence might easily have been met, if she really had acquired this money, but she is perfectly silent. It seems to me it is sufficient to throw the burden of proof on her. I think, therefore, that whether we take Section 133 alone, or along with the evidence as it stands, the judgment of the Court below was correct.

Judgment confirmed.

R. J. Gibb, for Appellants.

Macmaster, Hall & Greenshields, for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 21, 1880.

DORION, MONK, RAMSAY, CROSS, BABY, JJ.

MAHER (deft. below), Appellant, and AYLMER (plff. below), Respondent.

Sale—Fraud—Collusion.

Appeal from judgment of the Superior Court, Montreal, Johnson, J., April 30, 1878. See 1 Legal News, p. 232, for judgment of the Court below.

On the appeal, the judgment of the Superior Court was unanimously confirmed, it being held that the sale effected by Henry Aylmer, jr., under his power of attorney, was fraudulent and

collusive, and in reality was made for the purpose of paying his own debts.

Judgment confirmed.

Brooks, Camirand & Hurd, for Appellant.
Ritchie & Ritchie, for Respondent.

SUPERIOR COURT.

MONTREAL, April 19, 1881.

Before TORRANCE, J.

TAVERNIER v. ROBERT et al.

Quebec Election Act — Action for Penalty — Electoral List—Demurrer.

This was an action to recover from the Mayor and Secretary-Treasurer of the Municipality of the Parish of St. Joseph de Chambly, the sum of $200 each, for alleged violation of the Quebec Election Act. The electoral list was in duplicate (section 12), and one duplicate was to be kept in the archives of the municipality, (section 38); the other duplicate should be transmitted to the registrar of the registration division in which was situated the municipality, within eight days following the day upon which such list should have come into force, by the Secretary-Treasurer, or by the Mayor, under a penalty of $200, or of imprisonment of six months in default of payment, against each of them, in case of contravention of this provision. It was charged against the Mayor and Secretary-Treasurer, that in 1880, they had omitted to transmit to the registrar, within the eight days required, the duplicate in question, whereby the penalty of $200 against each was incurred.

By section 39, if in place of the duplicate required by the preceding section, a certified copy of the list had been transmitted to the registrar, such copy should be deemed to be the duplicate required, and should have the same effect as if the duplicate itself had been transmitted.

The declaration did not allege any contravention of this clause.

The defendants demurred to the declaration *inter alia* on the ground that it did not follow that the defendants were liable to the penalty by non-transmission of the duplicate list, because they had the right of transmitting, with the same effect, the copy mentioned in section 39.

PER CURIAM.—The Court is with the defendants on this demurrer. It was incumbent upon the plaintiff to show by his declaration not only that the duplicate referred to in section 38, had not been transmitted, but also that the copy mentioned in section 39 had not been transmitted. This has not been done by the declaration, and the demurrer should therefore be maintained for the seventh reason.

Demurrer maintained.

Lacoste, Globensky & Bisaillon for plaintiff.
Prevost & Prefontaine for defendants.

SUPERIOR COURT.

MONTREAL, April 20, 1881.

Before TORRANCE, J.

CLUB CANADIEN v. BEAUDRY et al., and SYMES et vir, opposants.

Succession—Seizure of immoveable of succession as the property of one of the heirs—Seizure held good for the share of said heir.

The opposants opposed the seizure and sale of land in this matter as the property of the defendant Marie Emma Alphonsine Beaudry. They set up that by a deed of obligation the late Joseph Ubalde Beaudry acknowledged himself to be indebted to opposants in the sum of $5,000, and as security therefor specially hypothecated the land in question: that he died on 11th January, 1876, leaving as his heirs at law his five children issue of his marriage with Dame Marie Alphonsine Caroline Beaudry his wife; that said late Joseph Ubalde Beaudry was *commun en biens* with his said wife; that opposants obtained judgment against said Dame Beaudry and said five children for the recovery of the amount of said obligation on the 19th January last: that said defendants have been in possession as proprietors of said land ever since the death of said Joseph Ubalde Beaudry, and the said Marie Emma Alphonsine Beaudry of only a tenth thereof; that the seizure of said land as belonging to Marie Emma Alphonsine Beaudry alone was and is illegal, null and void, she being only owner of one tenth. The opposants concluded that the seizure be declared null.

Plaintiff declared that he admitted the opposition as to nine undivided tenths of the immoveable, by him seized on the defendant Dame Marie Emma Alphonsine Beaudry, and contested the opposition as to one undivided tenth of the land seized, and for contestation

in law said that the opposition was unfounded in law as to said undivided tenth. 1st. Because it appeared by the allegations of the opposition that the defendant Dame Marie Emma Alphonsine Beaudry, upon whom the seizure had been made, was then proprietor in possession of a tenth of the land: 2nd. because the conclusions of the opposition should only have demanded the nullity of the seizure for the part of the land not belonging to the defendant, and not for the totality.

PER CURIAM. This case is before the Court on a law hearing. The question simply is whether the seizure of the one undivided tenth of the defendant Dame Marie Emma Alphonsine Beaudry remains good, and whether the opposition should be declared unfounded in law as to this tenth. The Court is with the contestant on this question. The rule was so applied in the case of *La Société de Construction Metropolitaine* v. *Pitre dit Lajambe*, and *Felix Pitre dit Lajambe*, opposant, Nos. 486 and 1948, Superior Court, *Coram* Loranger, J., on the 31st March, 1879.

Demurrer maintained as to one tenth undivided share.

S. Bethune, Q.C., for opposants.

C. A. Geoffrion for contestant.

SUPERIOR COURT.

MONTREAL, Dec. 29, 1879.

Before JOHNSON, J.

Ex parte GAUTHIER, on writ of *Certiorari*.

Conviction—Punishment not sanctioned by law.

JOHNSON, J. The conviction in this case is technically bad. The plaint and summons were for an assault, and the defendant pleaded guilty, but the conviction shows a punishment of a kind not warranted by law, viz., a condemnation to pay the doctor's fee for sewing up the lip of the complainant. Whatever may be thought of the apparent reasonableness of such an exercise of jurisdiction, (and I confess to a certain reluctance in disturbing it), there is no authority in the law for it; nor, indeed, did any body appear to support it; but though the defendant will be relieved from illegal consequences under this conviction, I see he pleaded guilty, and I will give him no costs.

Conviction quashed.

Bourgoin & Co. for petitioner.

Geoffrion & Co. for Justices of the Peace.

SUPERIOR COURT.

MONTREAL, December 29, 1879.

Before JOHNSON, J.

DE MONTIGNY v. THE WATERTOWN AGRICULTURAL INSURANCE CO.

Admission by plea without deposit — Costs of Contestation.

JOHNSON, J. The plaintiff insured originally with another Company; and the present defendants assumed the risk. The amount of loss asked for by the action is $1,173, though the actual loss suffered is alleged to have been greater; and the subjects of insurance were two barns designated as barn No. 4 and barn No. 5, and their contents.

The defendants met the action by four pleas. 1st, a plea of over valuation, which is waived: and then two other pleas which it is admitted are not established by evidence; and, fourthly, by a plea (the only one now remaining) to the effect that the 12th condition of the policy stipulated a reference to arbitration, to determine finally the amount of any loss about which the parties might differ, and the plea goes on to say that this arbitration has taken place, and a final award has been made, and they offer the amount of it, that is, they offered it with the costs of the action, before contestation; but they do not make any consignation, so that this is only an admission and nothing more. But it is an admission that the plaintiff is entitled to judgment for that amount, and if the latter contests the case afterwards, he must pay costs if he fails in his contestation.

In my opinion the plaintiff has failed in contesting the amount thus admitted, and has not established anything beyond it. Besides the stipulation in the policy, there was a subsequent agreement after the fire to submit the amount of loss to arbitration to two persons, who were to call in a third in case they differed. All this has been done, and there is judgment for the amount admitted in the plea, *i.e.*, for the sum of $646.10, which includes the costs up to filing of plea; and the plaintiff must bear the costs of contestation after that.

Trudel & Co. for plaintiff.

Davidson, Monk & Cross for defendants.

SUPERIOR COURT.

MONTREAL, Nov. 29, 1879.

Before JOHNSON, J.

ROBILLARD v. SOCIÉTÉ CANADIENNE FRANCAISE DE CONSTRUCTION DE MONTREAL.

Building Society—By-law irregularly enacted.

JOHNSON, J. The plaintiff acquired shares in the Society on the 20th Aug. 1877, from one Lonergan in whose rights he now stands; and he brings his action alleging his right to retire from the Society and to get back the payments already made. This right he assumes to exercise under By-Law No. 13 of the Society.

The defendants answer: 1st, that the plaintiff is a mere *prête-nom*; but that has been already disposed of.* 2ndly. They set up a repeal of By-Law No. 13, by another which was made on the 14th February, 1871, and which substituted other provisions for it; and 3rdly, they plead compensation to the extent of $50.16, even if the by-law No. 13 should be held to be in force.

The plaintiff makes reply that there has been no effective repeal of the by-law under which he brings his action, the provisions of the Statute in that behalf having been disregarded, and the meeting of the 14th Feb., 1871, not having been a general meeting nor convened in the manner required by Sec. 7 of the Statute. He further says that the defendants had no power, under the law regulating these societies, to restrain the right of members to retire when they pleased—a right distinctly recognized by the 1st Section of the Act, Sub-section 4. Then, as to the compensation, he says it is unfounded in point of fact, and is, moreover, an admission of their debt to him.

This case, as regards the essential points of it, has been virtually decided by the case of Prevost against the Société Canadienne Francaise de Construction de Montréal,† in which pretensions precisely similar on one side and on the other were raised, and the plaintiff got judgment during this present month in this Court. Adhering, however, to the original article, the plaintiff must pay what he owes under it, and which is stated by the witness Lapalime to be $48. Therefore, he is only entitled to judgment for the balance, which is $261.50, and interest from service, and costs.

R. & L. Laflamme, for plaintiff.

M. E. Charpentier, for defendants.

* See 2 L. N. 181.
† See 2 L. N. 412.

SUPERIOR COURT.

MONTREAL, March 31, 1880.

Before JOHNSON, J.

BANQUE DU PEUPLE v. VIAU.

Promissory Note—Payment to Endorser.

JOHNSON, J. The action is against the maker of a promissory note drawn payable to the order of Campbell Bryson at the Banque du Peuple. The defendant's plea is that he sent the money to Bryson before the note became due, to take it up; and that after the making of this note he gave Bryson other notes in the course of their dealings, and always sent him the money in the same manner, and they were always retired; that when the present note fell due there was money enough at Bryson's credit in the Bank to pay it; and it was actually paid, though Bryson neglected to withdraw it. Bryson subsequently made an assignment, and the Bank ranked on his estate for other notes.

There is no doubt that the money was sent by the defendant to Bryson; but that would be no defence as against the Bank. Beyond that one fact, and the fact that Bryson paid other notes afterwards, the defendant has proved nothing. Certainly there is nothing proved in the nature of a payment, or that can possibly be considered a payment to the Bank. The latter may have had funds of Bryson's; but not as far as they could know, of Viau's.

There was something said of $4.46 having been received on account; but I see no proof of it, and no *retraxit*; but the plaintiff can credit the defendant with that if he has received it. Judgment for plaintiff.

Geoffrion & Co., for plaintiff.

St. Pierre & Scallon, for defendant.

COURT OF REVIEW.

MONTREAL, Dec. 29, 1879.

JOHNSON, RAINVILLE, LAFRAMBOISE, JJ.

GORDON v. MCDONALD.

Partnership—Joint and Several Liability.

JOHNSON, J. The plaintiff brought his action to recover the value of the hire of some cars used

in constructing a railway. The plea was a general denegation. The defendant was condemned to pay only a part of the amount demanded; but he inscribes the judgment for review upon the evidence, and he contends in his factum, and contended at the argument, that the hire having been made to the firm of Abbott & McDonald, there should be proof that he assumed the obligations of the firm: but the members of the firm, of which Mr. McDonald admits he was one up to July, 1875, do not cease to be individually liable jointly and severally; and as to the amount adjudged, it was said with some plausibility by the plaintiff that it ought to have been larger; but there is no inscription on his part, and the judgment is therefore simply confirmed.

Trenholme & Co. for plaintiff.

Loranger & Co. for defendant.

SUPERIOR COURT, QUEBEC.

Taxes — Demand of Payment—Jurisdiction.—Jugé, que la demande de paiement pour taxes (en vertu de l'article 661 du code municipal) adressée à une femme séparée de biens, et à elle transmise dans une enveloppe à l'adresse du mari, est suffisante.

Que la Cour de Circuit a jurisdiction dans ces causes, quelqu'en soit le montant.—*La Corporation du Village de Bienville* v. *Gillespie et vir* (C.C.), jugement par Casault, J.—6 Q.L.R. 346.

SUPERIOR COURT, MONTREAL.

Pawnbroking—Penalty.—1. An isolated act f pedging will not constitute the exercise of the trade of a pawnbroker, within the meaning of the Quebec Statute, 34 Vict. Ch. 2, S. 69,—*Perkins* v. *Martin*, 25 L. C. J. 36.

2. Payment of a penalty under said Act, in a *qui tam* action brought for its recovery, by depositing the amount with the Clerk of the Court in which the judgment was rendered, will, in the absence of proof of collusion, be an absolute bar in a subsequent action by the Revenue Officer for the recovery of the same penalty.—*Ib.*

3. In the absence of proof that the affidavit required by 27 and 28 Vict. Cap. 34, Sec. 1, has not been filed, such affidavit will be presumed to have been filed, when the writ has actually issued and judgment has been rendered thereon.—*Ib.*

Negligence—Excavation in street.—A proprietor of real estate in Montreal is responsible for an accident arising from the neglect to cover and put a railing round an excavation in the public street, connected with the making of a drain from his property to the public drain, and to put up a light at the spot, when the permit to make such excavation has been granted to him by the Corporation on condition of his making such covering and railing, and putting up such light, notwithstanding that such excavation was made by a contracter over whom the proprietor had no control.—*McRobie* v. *Shuter et al.*, 25 L. C. J. 103.

SUPERIOR COURT, TERREBONNE.

Procedure—Execution.—Le défaut de *fiat* pour l'émanation d'un bref d'exécution n'est pas une cause de nullité du bref lui-même quant aux parties demandéresse et défenderesse.—*De Bellefeuille* v. *Pollock*, 25 L. C. J., 104.

2. Le fait qu'un bref d'exécution contre les meubles a été émané sur un *fiat* ne contenant pas le jour du rapport, et que le régistre des exécutions tenu par le protonotaire mentionnait un jour de retour différant de celui entré dans l'exécution, constitue tout au plus une nullité sans griefs que le défendeur n'a pas d'intérêt à invoquer.—*Ib.*

COURT OF APPEAL, ONTARIO.

Insolvent Act of 1875—*Recovery of debts under Sect.* 68.—Where certain creditors of the insolvent take proceedings under Sect. 68 of the Insolvent Act, 1875, in the name of the assignee, to recover a debt due the insolvent, they are entitled to the amount recovered, and the estate cannot benefit by the recovery in any way unless indirectly, when the creditors' claims are extinguished thereby, and consequently their right to receive further dividends from the estate is gone.

Where in such a case the debt was paid to the assignee, who refused to pay it to the creditors who had taken the proceedings to recover it: *Held*, that their proper remedy was by application to the Judge of the Insolvent Court.—*In re Lewis*, insolvent, (March 23, 1881), 17 C. L. J. 166.

NUISANCES FROM NOISES.

It is often a matter of interest to know how far noises must be endured before there is a possibility of legal redress. A few years ago, a Mr. James Redding Ware, a literary gentleman, occupying chambers in Lincoln's-Inn-fields, applied for an injunction against a Mr. Corpe, to restrain the defendant from doing an act which was alleged to be a nuisance. The plaintiff, it appears, occupied chambers on the third floor, on which he had expended a considerable sum of money, having taken them in a dilapidated condition. The defendant, who occupied chambers on the second floor directly under those of the plaintiff, bought last summer an organ, which was forthwith conveyed to his premises. The approximate dimensions of the said organ, which occupied half of the room, were stated to be 12ft. high, 10ft. wide, and 4ft. or 5ft. deep. The plaintiff, not unnaturally, protested strongly against the introduction of such an instrument into such a place, but to no purpose; the reply was, it would make less noise than a piano, and that no nuisance to anybody would be caused by the playing. We will quote the plaintiff's own words as to the reasons on which he based his application for relief: "The organ," he said, "had been played at different periods since (*i. e.*) last summer, about two or three times a week; he stayed in once for about three hours, during which it was being played, and found that it so interfered with his comfort and the performance of his work that whenever it commenced he had to leave the house. It was usually played from seven o'clock until ten o'clock in the evening, and the vibration was very great, causing an effect very like that produced by a single application of galvanism. On the first day it was played, a Dresden plate in his room was thrown down; the vibration communicated itself to all the articles in his room, composed of china, glass, or metal.* * * The music was very bad, and very common airs were played." The evidence given by the plaintiff was corroborated by other gentlemen who occupied other adjoining chambers, one of whom stated that he was quite incapacitated from doing his work in his sitting-room, where his books and papers were, during the time that the organ was being played. Some contradictory testimony was given on the other side, with the view of showing that no such nuisance as was alleged by the plaintiff did in fact exist. The County Court judge, however, considered the nuisance an "intolerable one," but gave judgment in favor of the defendant, on the ground that it was not such a nuisance as formed the subject matter of an action.

On the above case, the *Law Times* remarked:

"Nuisance," says Blackstone, "is anything that worketh hurt, inconvenience, or damage," but many acts which may properly come under the above definition would not be the subject of an action. In other words, there are nuisances and legal nuisances. The principle upon which the rule of law proceeds is, "*sic utere tuo ut alienum non lædas.*" But it must not be inferred that an action can be maintained for a thing done merely to the inconvenience of another—mere inconvenience or annoyance does not always constitute a legal nuisance. If the authorities on the subject come to be examined, the real test, we apprehend, is this: Is the act complained of such as a man might reasonably commit in the exercise of his rights, having regard to all the circumstances of the case? Or, to use the words of Vice-Chancellor Bruce, Walter *v.* Selfe, 4 DeGex and Sm., 315: "Will the proceedings abridge and diminish seriously the ordinary comforts of existence of the occupiers, whatever their rank or station, or whatever their state of health may be?" See also, Crump *v.* Lambert, L. Rep., 3 Eq., 409. If so, the nuisance is actionable. A reasonable use of a man's property ought in right to be permitted: but if a person puts his premises to unusual purposes, so as to cause his neighbor a substantial injury, the latter is entitled to be protected, because that is not a reasonable use of his property. See the remarks of Lord Selborne, when Lord Chancellor, in Ball *v.* Ray, L. Rep., 8 Ch. App. A man's occupation of his house may be rendered materially uncomfortable, and yet the act complained of, *e. g.*, the noise of a neighbor's children in a nursery, may not be a subject of redress; because, as Lord Justice Mellish said, in Ball *v.* Ray, "the noise is such as he must reasonably expect." Acting on this principle, Vice-Chancellor Bacon decided, in Harrison *v.* Good, 40 L. J., 294 Ch., that the establishment of a national school, however much it might injure and depreciate the adjoining neighborhood, was not an actionable nuisance. The mere fact of the depreciа-

tion of the adjoining property could not establish a nuisance, for, as the Vice-Chancellor truly observed, "in common parlance, nuisance is no doubt applied to a great many things wholly different from, and others not at all like, the definition which by law is given to the word." Cases of nuisances from offensive smells, and the exercise of noisome trades, have always been determined on similar considerations, and the question has always been whether the business or trade which causes the annoyance is carried on in a reasonable manner, and in a reasonable and proper place. There is a reported case tried before Lord Kenyon, Street *v.* Tugwell, Selw. N. P., 13th ed., 1070, which may seem to conflict with these remarks, but does not really do so. There an action was brought against the defendant for keeping dogs so near the plaintiff's dwelling house that he was disturbed in the enjoyment thereof. It appeared that the defendant kept six or seven pointers so near the plaintiff's dwelling-house that his family were disturbed during the night, and were very much disturbed in the day-time. No evidence was given by the defendant, notwithstanding which the jury found a verdict for him, and a new trial was afterward refused. It should be borne in miny, however, that the question of reasonableness is for the jury, and the court would doubtless have upheld the verdict had it been found the other way.

Now, applying the legal test to the case heard at the Westminster County Court, did the defendant, under the circumstances, exercise a reasonable user of his chambers in erecting an organ of the dimensions we have mentioned? There can, we think, be no doubt how this inquiry should be answered; indeed, the learned County Court Judge has found as a fact that the act complained of is an intolerable nuisance, though he has, notwithstanding this, held such an act not to be an actionable one.

RECENT CRIMINAL DECISIONS.

Insanity as a defence.—Evidence as to sleeplessness and nervous restlessness is admissible to prove insanity. Insanity is a complete answer to a criminal charge. To justify the inference of insanity from calmness of manner and indifference to consequences accompanying the killing, there should be convincing evidence of previous insanity, or insane delusion, so recent as, coupled with the causelessness of the killing, to raise the presumption that the paroxysm had not entirely passed away. Moral insanity, consisting of irresistible impulse coexisting with mental sanity, is no defence to a criminal charge. Insanity is a defence which must be proved to the satisfaction of the jury, by the measure of proof required in civil cases; and a reasonable doubt of sanity raised by all the evidence does not authorize an acquittal.—*Brasswell* v. *The State*, Supreme Court, Alabama, January, 1881.

Libel.—It is no defence to an indictment against the editor of a newspaper, that the libellous article was written and inserted by the local editor without the knowledge of defendant, and in violation of a general order forbidding the publication of any article of a libellous nature without first submitting it to the publisher for approval.—*The Commonwealth* v. *Willard*, Supreme Court, Pennsylvania. The Court said: "Aside from the incalculable damage that may and often does result to the innocent from a misuse of the press in the hands of reckless or malicious persons, and the consequent caution proper to be exacted from those managing newspapers as to the selection of the subordinates in whose hands they intrust this dangerous power, there is the peculiarity incident to the profession of a publisher that the publication of a journal, or a magazine, or a book, is not the visible, manual act of the publisher himself, but is made up of the labors of many different persons, in no one portion of which he may have an actual part. He may not be present at or witness any single one of the various processes of work by which the completed book or newspaper is finally produced; he may not even see it when done, and yet the publication is his act. This is in part, no doubt, the reason why the law of libel forms an apparent exception to the usual rule, that one can only be liable criminally for his own individual acts. That such is the law, whatever may be the reason for it, there would seem to be no question. It was established by a long line of cases in England, decided by such judges as Hale, Mansfield, Raymond, Kenyon, Powell, Foster, Ellenborough and Tenterden, and which will be found fully stated in a note in Starkie on Slander, 1st Am. Ed., vol. 2, p p. 30-34.