The Legal News.

VOL. XI. FEBRUARY 18, 1888. No. 7.

A collection of cases decided by the King's courts in England during the first half of the thirteenth century has now for the first time been published. The manuscript of this collection, containing about two thousand decisions, was acquired by the British Museum in 1842, but no steps were taken to print it. In 1884, Prof. Vinogradoff, of Moscow, in a letter to the *Athenæum*, expressed the opinion that the collection was compiled for Bracton, and annotated by him. The editor, Mr. F. W. Maitland, calls it "Bracton's Note-book," and contends that Bracton was the owner. In our copy of "Cowell's Interpreter," (London, A.D. 1637,) the following notice of the supposed owner of the "Note-Book" appears :—"*Bracton* (otherwise called *Henry of Bracton*) was a famous lawyer of this land, "renowned for his knowledge both in the "common and civill lawes, as appeareth by "his booke everywhere extant. Hee lived "in the daies of *Henry* the Third. *Stawnf. prærо. f.* 5 *b.*, and, as some say, Lord Chiefe "Justice of *England*."

The evidence given to-day by the Recorder of Montreal before the Labor Commission will serve to dissipate a good deal of misconception on the subject of apprentices and their punishment. No one will attempt to defend the chastisement of a young woman of eighteen by a man after the fashion in which infants are corrected; but in the case of boys between twelve and sixteen who have been caught pilfering from their employers, there can be no doubt that a birching, or a confinement for a few hours in the factory, is a far more merciful and salutary form of punishment than imprisonment in the common gaol. In the one case, the knowledge of their offence hardly passes beyond the walls of the factory; in the other they are stamped for life as convicts, and subjected to the influence of degrading and dangerous associations.

THE LATE MR. WM. H. KERR, Q.C.

The death of Mr. Kerr, on Sunday the 12th instant, of pneumonia, after a few days' illness, was a painful surprise to his friends, for although aging somewhat, and less robust, as was to be expected after forty years' toil in the courts, his active mind and vigorous frame gave promise of fifteen or twenty years of added life. In the early part of January he was confined to the house for a short time, but subsequently reappeared in the courts, and during the January Appeal term was actively engaged in pleading the causes in which he was retained. No one supposed then that his busy career was so near its termination.

Mr. Kerr was born in 1826, and admitted to the bar in 1847. He appears to have practised for a time in Montreal, for we remember that the late Mr. Henry Bancroft, who was admitted to the bar in 1850, mentioned that Mr. Kerr was associated with him in one of the first cases before the Criminal Court in which he was engaged. Subsequently Mr. Kerr practised for several years at Quebec, and returned to Montreal in the end of 1860 or beginning of 1861. At this time his business was chiefly at the Crown side of the Court of Queen's Bench, and he evinced from the outset considerable skill in the conduct of criminal cases, and mastery of the subtleties of criminal law. His style of address was rather cold and unimpassioned for juries, and contrasted strongly with the fiery harangues of his principal competitor, the late Mr. Devlin. Opposed to him was Mr. F. G. (now the Hon. Mr. Justice) Johnson, then Crown Prosecutor, who in eloquence, ability and experience was more than a match for the counsel for the defence. Mr. Kerr's progress was fairly rapid, but it was not until some years had elapsed that he displayed the full extent of his powers. Practice in the criminal courts in Montreal has not usually opened the way to a large or profitable business on the civil side. Mr. Kerr's brother-in-law and subsequent partner, the late Mr. Edward Carter, was an exception, but for a considerable time Mr. Kerr continued to be occupied chiefly with defences in criminal cases. He was retained in a large number of important affairs, and this

prominence brought upon him an attack which he felt keenly and resented strongly at the time. The late Mr. Parsons, then editor of the *Evening Telegraph*, (it was about twenty years ago), criticized him in his usual impulsive style, and insinuated broadly that Mr. Kerr, in giving his professional aid to certain criminals who had sought refuge in Montreal, was no better than an accomplice of thieves. Mr. Kerr brought an action for libel against the proprietors of the newspaper, but fared badly at the hands of the jury. The verdict was substantially a victory for the defendants. Mr. Kerr hoped for better things from the Court, but after the case had been argued and taken *en délibéré*, it was not pressed to judgment, at the suggestion, it was currently stated, though we are unable to vouch for the truth of the report, of Mr. Justice Berthelot, the presiding Judge, who felt that it would be better to allow the case to drop. This affair, in which Mr. Kerr probably did not exceed the bounds of professional duty, exposed him to some obloquy for a time, but his real merits as an advocate soon prevailed over all obstacles, and a few years later he attained an important position among counsel engaged in civil business. He never relinquished his practice in the criminal courts, but during the last fifteen years, while the leader at the criminal bar, he has also been retained in a large number of important civil causes. In the recent suit of the Quebec Government against the commercial corporations, he acted as the leading counsel for the insurance companies, and pleaded the case before the Judicial Committee of the Privy Council. His failure to convince that tribunal was a serious blow to him, as he was firmly persuaded of the justice of his cause and hoped for its triumph before the court of last resort.

In 1871, Mr. Kerr published a commentary on the Magistrates Acts of 1869, with notes for the use of magistrates, Forms, Precedents, etc. He took an active part in the establishment of *La Revue Critique*, and a few years ago, projected a revival of that work. He was also Dean of the Law Faculty of McGill University, and lectured on International Law.

In his relations with his professional brethren, Mr. Kerr was uniformly courteous and dignified. He did a great deal to maintain the *esprit de corps* of the profession, and to discourage dangerous innovations. His firmness and independence of character sometimes impelled him to assume a position which was not palatable to the majority. An instance of this occurred some years ago when additional judgeships were under consideration. Mr. Kerr resented the exclusion of English-speaking counsel from the bench, and expressed his sentiments pretty freely at a meeting which was called to consider the subject. For this he was punished by being excluded, at the next election, from the Council of the Bar, and, we believe, was never again elected up to the time of his death. Such treatment, naturally, was irritating, and disposed him to take a somewhat jaundiced view of the future of the profession. More recently, he played a prominent part in the complaints made against the administration of justice in this district.

Mr. Kerr would, we believe, have made a sound and impartial judge, and it reflects no credit upon our system of appointments, that he should have been repeatedly passed over in favor of less able and less experienced juniors. As a counsel he always did his best for his client, but without incurring animosity from his opponents. He was impressive and dignified in his address, and was always heard with respect and attention from the bench. As he grew older he seemed to gain more warmth and energy, rather than exhibit any abatement of force. Considered fairly and impartially, he was a man of no common parts, and the profession has suffered a loss in his sudden removal which cannot easily be repaired.

SUPERIOR COURT.

SHERBROOKE, Jany. 31, 1888.

Before BROOKS, J.

EASTERN TOWNSHIPS BANK v. W. W. BECKETT, and THE PLAINTIFFS, opposants, and A. E. BECKETT, contestant.

Privileged Costs.

HELD :—*That the costs of an action brought by*

a creditor to set aside as fraudulent a deed of sale of property made by his debtor, are not privileged as against a third party, owner of an undivided interest in the property, and who has neglected to file an opposition afin de distraire to the sale by the Sheriff, but who files an opposition afin de conserver on the proceeds of sale.

PER CURIAM:—The plaintiffs, on a judgment against W. W. Beckett and Henry Beckett, seized and sold by the Sheriff certain emplacements in Sherbrooke, and $825.17 was returned into court for distribution. Plaintiffs filed an opposition *à fin de conserver*, alleging, that on the 18th of November, 1884, the defendant W. W. Beckett and the contestant A. E. Beckett sold these lots to the defendant H. R. Beckett and Son, and on the 20th of the same month, H. R. Beckett and Son sold these same lots to Ernest R. Beckett. That plaintiffs caused the said deeds to be set aside as fraudulent with costs against H. R. Beckett, E. R. Beckett and H. R. Beckett and Son, taxed at $330.15. That these costs, being made in the interest of the mass of the creditors, they had a right to be paid by special privilege out of the proceeds of the sale of these lots.

Contestant filed an opposition *à fin de conserver*, alleging that he was the owner of ¼ (or rather ⅜ reduced to ¼)—That he should be paid ¼ of the proceeds by special privilege.

The Prothonotary drew up a report awarding the plaintiffs by special privilege out of the proceeds $330.15, and giving to the contestant ¼ of the balance after paying the costs of the suit and distribution.

The report was contested by A. E. Beckett as to items 5 & 6, (costs $330.15 and costs of opposition $16.50 = $346.65), alleging that as against him the acknowledged owner of ¼ of the property sold on W. W. Beckett, plaintiffs can have no privilege for the costs of their former action to set aside the deeds of sale, but in any event, if such costs are privileged, they could only be so as regards the proceeds of the ¾ of W. W. Beckett the debtor of plaintiffs, and not as against contestant as owner of ¼ of the lots sold. Plaintiffs say, you have benefited by our action, you had conveyed your rights by deed; we caused said deed to be set aside and it inured to your benefit, because, having made over your right, by the cancelled deed, to Beckett & Son, it reverted to you and the costs we made were for your benefit and you should pay your proportion, these costs were made for the creditors of W. W. Beckett's ¾ and your ¼. This is changing the issue.

Their opposition claimed these costs as having been made in the interest of the mass of the creditors. The collocation was on that assumption. But when contested, the plaintiffs by their answer to the contestation try to enlarge their claim by saying, "we are entitled to this, not only on the ground upon which we claimed it, and upon which it was allowed, but also on the additional ground alleged in the answer." This cannot be. The issue is as raised by the opposition, collocation and contestation of the report. Do these costs come under the provisions of the law?

The privilege was claimed and allowed under 2009, C. C. A great deal of discussion and diversity of judgments have existed as to what costs shall be privileged, see *Tansey & Bethune et al.*, 1st, Montreal Law Reports (Queen's Bench,) page 28. In this case it was held that costs of defence on which realty was sold were privileged—Ramsay, J., dissenting. Recently, a majority of the Court of Review at Quebec, have held a directly contrary doctrine, Quebec Law Reports, Vol. 13, page 302, *Langlois* v. *The Corporation of Montminy*. But that is not the question here. It is this:—Is a proprietor who has failed to oppose the sale obliged to pay, when costs have been made to bring the property to sale against a debtor, and such costs alleged to be in the interest of the mass of the creditors of such debtor, his proportion, or should such costs come out of the amount levied of the property of such debtor? The plaintiffs have succeeded in selling the ¾ of the realty belonging to their debtor, and ¼ belonging to contestant. Should contestant pay ¼ of these costs which were not made for him as he was not a creditor and not alleged to be such, and when these costs are claimed by plaintiffs and allowed to them as made in the interest of the mass of the creditors? It is said that Art. 2006 C. C., gives a privilege

on the immovables, but upon what immovables? I think upon the immovables of the debtor, out of which, and which only, the creditors have a right to be paid their claims such as they are, unless some law is found to extend this. The funeral expenses, the expenses of the last illness, claims of builders, servants' wages, are all mentioned in Art. 2009 C. C. If such had existed in the present case, could it be pretended that they should come out of contestant's share or out of the property of the debtor? I think there could be no doubt in such cases. But have we any law fixing and determining what costs should be paid by the contestant? Our code of procedure, C. C. P. 729, declares that after the law costs, such claimants as contestant are collocated deducting such debts as *they* may be bound to pay and as have become payable in consequence of the sale of the immovable and the costs mentioned in the preceding article—C. C. P. 728. Are these amongst those enumerated? Plaintiff says under Sub. Sect. 6. Recently in the case of *Beaudry & Dunlop*, the Court of Appeals restricted the privilege of attorneys, that is for costs, to the costs of suit in the Superior Court, and rejected their claims for costs in the Court of Appeals and the Privy Council. These are costs incurred either in the Court below or in Appeal, upon proceedings incidental to the seizure and necessary to effect the sale of the immovables. In the first place it is not upon this ground that the plaintiffs claimed and were allowed their privilege, and in the second place, I do not think this applies to the present case, but these proceedings, namely the proceedings referred to in Sub-Sect. 6, are incidental to the cause in which the immovables are sold, that is, the incident must be either in the court below or in appeal, and if they could be allowed, they would come before not after, the costs of suit, as in the report complained of. Claiming under this provision is an afterthought of plaintiffs. Then come costs of suit as in Art. 606, C. C. P., which are not contested. I was much struck with Mr. Justice Casault's remarks in Quebec Law Reports, Vol. 13, page 302, *Langlois* v. *The Corporation of Montminy*. He says "Qu'on n'oublie pas qu'il s'agit d'un privil-"ége, que les privilèges n'ont pas d'autre "existence que celle que leur donne la loi "(C. C. 1983,) et que, quelque faveur que "puisse en général, ou dans des cas partic-"uliers, mériter une créance, elle ne peut "jamais être privilégiée, si la loi ne lui donne "pas expressément ce caractère." Aubry & Rau, vol. 3, page 124, and Laurent, vol. 29, page 317.

I do not think these costs are such as are mentioned in Art. 728, C. P. C., and that when Art. 2009, C. C. gives the privilege, it is on the immovable of a debtor, and not on that of a third party, and consequently, I think that the contestation should be maintained, and the report altered so as to give the contestant his ¼ after taking out the costs of suit and report.

If contestant had filed his opposition *à fin de distraire*, he would not have been liable to any costs, and would have had his ¼ as owner. The opposition *à fin de conserver* gives him the money represented by his ¼, except as modified by Art. 729 C. P. C.

Judgment maintaining contestation of items 5 & 6, and giving contestant ¼ of the sum awarded plaintiffs, (opposants) by same items, as the owner of ¼ realty sold.

Hall, White & Cate, for Plaintiffs.
Camirand, Hurd & Fraser, for Contestant.

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*COURT OF QUEEN'S BENCH—MONTREAL.**

Opposition en sous-ordre—Moneys deposited in hands of prothonotary—C. C. P. 753.

HELD:—Affirming the judgment of MATHIEU, J., M. L. R., 2 S. C. 143, but resting the decision on other grounds, that where moneys have been attached by garnishment and deposited in the hands of the prothonotary to abide the result of a contestation, and subsequently, by a final judgment, the said moneys have been declared to be the property of the contestant, and the prothonotary, by a judgment of the Court has been ordered to pay the same to the contestant, such moneys cannot be claimed by an opposition *en sous ordre*, there being no longer any suit pending in which such opposition could be

* To appear in the Montreal Law Reports, 3 Q. B.

made; and the claimant's recourse should be by *saisie-arrêt* founded upon affidavit as required by law.—*Barnard & Molson*, Dorion Ch. J., Cross, Baby, Church, JJ., Sept. 17, 1887.

Perjury—Deposition on which perjury is assigned—Proof that stenographer, who took deposition, has been sworn—Answers on 'faits et articles'—Notes of stenographer.

HELD:—1. That the fact that the stenographer, who took a deposition in a civil case, on which perjury is assigned, has been sworn, must be proved by the record or proceedings in the case in which the deposition was taken.

2. That a party summoned to appear in one division of the Superior Court, at Montreal, to answer upon *faits et articles*, and who has appeared and been sworn in another division of the same Court, where he has given his answers, may be convicted of perjury on the answers so given.

Quaere.—Whether it is now necessary, under 47 Vict. c. 8, that the notes of the stenographer should, in all cases, be read to the witnesses?—*The Queen* v. *Donald Downie*, Dorion, Ch. J., Crown Side, Nov. 15, 1887.

Appeal Bond—Judgment reversed by Queen's Bench, but restored by Privy Council—Death of party during pendency of suit.

HELD:—1. (Affirming the decision of JETTÉ, J., M. L. R., 2 S. C. 58), that the death of several of the plaintiffs, during the pendency of the suit, does not render a judgment pronounced in their name absolutely null; the nullity being relative, and such as can be invoked only by the legal representatives of the deceased, on the ground that their rights have been prejudiced by the judgment.

2. (Reversing the decision of JETTÉ, J.), that a bond given as security for debt, interest and costs, on appeal by a defendant from the Superior Court to the Court of Queen's Bench, to the effect that the bondsmen will pay the condemnation money in case the judgment be confirmed, is binding, though the judgment of the Queen's Bench reversed the judgment of the Court below, if the original judgment of the Superior Court has been restored by the Judicial Committee of the Privy Council, and the effect is the same as if the judgment of the Superior Court had been affirmed by the Court of Queen's Bench. *Lourey et al. & Routh*, Tessier, Cross, Baby, Church, Doherty, JJ., (Baby and Doherty, JJ., *diss.*), Dec. 22, 1887.

Married woman—Action for personal wrongs—Evidence of attorney ad litem—Mitigation of damages.

HELD:—1. A married woman, authorized by her husband, can bring an action of damages in her own name for personal wrongs.

2. The evidence of an attorney *ad litem* in behalf of his client is admissible, but such testimony is repugnant to the discipline of the profession.

3. The fact that the injurious statements complained of were made principally in the privacy of the family, and that evidence of the slander was obtained by concealing a witness for the purpose of overhearing what transpired, will be considered in mitigation of damages.—*Waldron & White*, Monk, Ramsay, Tessier, Cross, Baby, JJ., (Monk, J., *diss.*), June 30, 1886.

Continuation of Community—Demand for—CC. 1323.

HELD:—Where a community existed between husband and wife, and there was one child, issue of the marriage, and the wife dying intestate, the surviving consort failed to have an inventory made of the common property, and (the child being a minor) married a second time without marriage contract—that in the absence of any demand on the part of the minor for a continued community, a tripartite community did not exist between the surviving consort, his second wife, and the child of the first marriage.—*Beckett & The Merchants Bank of Canada*, Cross, Baby, Church, Doherty, JJ., Dec. 22, 1887.

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*SUPERIOR COURT—MONTREAL.**

Compagnies insolvables—Liquidation—Permission spéciale—Délibéré.

JUGÉ:—Qu'aux termes de la loi relative à la liquidation des compagnies insolvables, aucune procédure ne peut être commencée

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* To appear in Montreal Law Reports, 3 S.C.

ou continuée sans permission spéciale ; et qu'une cause prise en délibéré, sous de telles circonstances, sans que l'ordre préalable apparaisse au dossier pourra être déchargé du délibéré à la demande d'une des parties.—*Molleur* v. *La Compagnie de Pulpe et de papier de St. Laurent*, Jetté, J., 23 déc. 1887.

Action en séparation de corps—Frais et déboursés.

JUGÉ:—Que lorsqu'une femme est autorisée en justice à poursuivre son mari en séparation de corps, elle a le droit, si elle n'a pas les moyens de faire elle-même les déboursés et que son mari peut les faire, d'obtenir une ordonnance de la Cour contre le mari lui enjoignant de payer les déboursés.—*Desoliers* v. *Lynch*, Mathieu, J., 24 déc. 1887.

Acte des Licences de Québec—Ivrognes—Défense—Dommage—Quantum.

JUGÉ :—Que d'après " l'Acte des Licences de Québec," la pénalité imposée contre toute personne qui vend ou livre de la boisson enivrante à une autre personne qui a l'habitude de boire, après qu'il y a eu défense de lui en vendre ou livrer par quelqu'un ayant le droit de faire telle défense, n'est qu'à titre de dommages-intérêts à raison du tort éprouvé ou du gain perdu ; et que dans le cas où il n'y a aucune preuve de dommages soufferts, la somme de $10.00, c'est-à-dire, le minimum fixé par le dit statut (sect. 96) sera considérée suffisante.—*Sauvage* v. *Trouillet dit Lajeunesse*, Jetté, J., 23 déc. 1887.

Liste électorale parlementaire—Qualification—Rôle d'évaluation.

JUGÉ :—1o. Que d'après l' "Acte électoral de Québec" la qualification foncière exigée des électeurs parlementaires doit exister au moment de la confection de la liste et que le rôle d'évaluation ne fait foi que de l'estimation des biens fonds.

2o. Que lorsqu'un électeur dont le nom est porté sur la liste électorale n'est pas qualifié de la manière indiquée sur la dite liste, mais qu'il est réellement qualifié d'une autre manière, son nom ne doit pas être retranché de la liste.

3o. Que pour les locataires, il n'est pas nécessaire que le montant du loyer soit porté au rôle pour avoir le droit d'être inscrit au rôle, il suffit qu'il soit de fait qualifié suivant la loi.

4o. Que lorsqu'une personne est propriétaire d'une partie distincte d'un immeuble porté au rôle d'évaluation, mais que cette partie n'est pas évaluée séparément du reste de l'immeuble, elle n'a pas le droit d'être portée sur la liste électorale.—*Mongeau* v. *La Corporation de la paroisse de St. Bruno*, MATHIEU, J., 16 déc. 1887.

AGREEMENT IN RESTRAINT OF TRADE.

The case of *Davies* v. *Davies*, 50 Law J. Rep. Chanc. 481, was one of the earliest important decisions of Mr. Justice Kekewich, in which he gave evidence of the possession of a welcome freshness of judicial style, but in which, as we ventured to point out on June 11 last, he appeared to have travelled rather too fast over the ancient highways of law and equity. The view which the Court of Appeal take of his judgment will be seen by the report, 56 Law J. Rep. Chanc. 962. The most important of the questions involved is, whether the old rule of law and equity, that contracts in restraint of trade are against public policy unless carefully limited, has become obsolete in modern days. The Court of Appeal give Mr. Justice Kekewich credit to some extent for endeavoring to change, or rather to be the first to record the change, of the rule of public policy on this head. The learned judge appears, however, not so much to have attempted this ambitious task as to have undertaken to put into a form which would fully save the interests of public policy an agreement in restraint of trade which the parties had preferred not to reduce into particulars, but to leave open for the law to fill up for them by the simple expedient of spreading their net as widely as they could, while protesting that they only meant to catch what the law allowed. The arguments in the case appear to have been fortified by a great array of decisions, amounting in all to more than four and twenty, and the Lords Justices go back

as far as the Year-books. The judgments were, however, orally delivered, and would bear some condensation.

It is unnecessary to recall the facts to the reader's memory, further than to say that the defendant and the plaintiff were half-brothers, with whom their father had been in partnership as iron-workers; that on the surrender by the defendant of his interest in the partnership, he had covenanted to retire wholly and absolutely, not only from the partnership, but, 'so far as the law allows,' from the trade or business thereof in all its branches, and not to trade, act or deal in any way so as to either directly or indirectly affect the remaining partners. The partnership had done business in London and Wolverhampton, and the defendant proposed to start a business of the same kind in London at a certain place, and the injunction restrained him from so doing at that place. Lord Justice Cotton, in dealing with the injunction, points out, as had been pointed out in these columns, that the agreement enforced was in the nature of an executory agreement; but he guards himself against declining to entertain an application to perform the original agreement by directing a proper deed to be executed. He puts his decision, however, on the ground that the covenant in question is contrary to public policy. In this respect the judgment of Lord Justice Cotton differs somewhat from that of his colleagues, who prefer to leave the matter open, suggesting that if there is to be an alteration in public policy it should be made by the House of Lords. The course taken by Lord Justice Cotton on this point will be most approved, and the view of the learned Lords Justices seems to have a somewhat dangerous tendency. The House of Lords has no greater power over the law than the humblest judge in the country, except in the sense that it may overrule the decisions of inferior tribunals, not because it makes new law, but because they are not law. Lord Justice Bowen says: 'It appears unnecessary to consider or decide whether the old doctrine of the common law that covenants absolutely unlimited both in space and time are void ought to be modified, having regard to the altered character of the commercial intercourse of the world;' and he puts his decision on the ground that, even assuming the possibility of such a contract being legal, there was nothing to show that such a contract was necessary or reasonable in this case. Lord Justice Fry, while agreeing with Lord Justice Bowen in reserving the question of the applicability of the rule of the common law to modern life, holds that the words 'as the law allows' make this particular agreement too vague to be enforced, thus deciding what Lord Justice Cotton does not decide, and leaving undecided what Lord Justice Cotton decides. Lord Justice Cotton, in the course of considering the question he proposed to himself, entered upon a very interesting investigation of the history of the decisions on the subject. It undoubtedly shows that there has been a gradual relaxation of the strictness of the common law. The rule was at first absolute, then was modified in favour of agreements for a sufficient consideration and with reasonable restrictions, and lastly, the element of the sufficiency of the consideration was eliminated. Mr. Justice Kekewich had gone many steps further, and decided not only that an absolute restraint of trade may be good, but that it will be good without showing any necessity under the circumstances for it, if it is accompanied by the saving clause "so far as the law allows." Lords Justices Bowen and Fry show some sympathy with the first of these steps, but decline to follow Mr. Justice Kekewich's second step, while Lord Justice Cotton declines to take any step at all.

The suggestion appears to be that the altered character of the commercial intercourse of the world has made the rule an anachronism. If that could be shown there would be no reason why any judge should shrink from modifying the application of the rule. The rule in its sternest form is illustrated by the case in the Year-books of 2 Hen. V., to which Lord Justice Bowen refers. This was a case of a bond conditioned on a man not exercising his craft for six months in a certain town—what would in modern days be looked upon as a mild and reasonable condition. On hearing the bond read, Mr. Justice Hull was guilty of this

outburst: 'Par Dieu! if he were here, to prison he should go, just as if he had committed an offence against the king.' In the *Ipswich Tailor Case* (11 Rep. 101) there is a longer but almost equally quaint passage, in which it is said 'the law abhors idleness, the mother of all evil, *otium omnium vitiorum mater*, and especially in young men who ought in their youth, which is their seed-time, to learn and practise lawful sciences and trades which are profitable to the commonwealth, and whereof they may reap the fruit in their old age, for idle in youth, poor in age, and therefore common law abhors all monopolies which prohibit any from working in any lawful trade.' Since those days, the scale on which buying and selling are carried on has extended enormously. A tradesman no longer sits in his shop with a couple of apprentices crying 'What do you lack?' to passers by, but he has an army of agents going all over the world; and when he has made his fortune, he does not shut up his shop and retire into the suburbs, but he sells his business probably to a joint-stock company. This alteration in commercial life necessitates a modification of the old prohibition of restraint on trade, but does it necessitate its abolition? There is not any likelihood of the House of Lords saying that it does: but if the thing is to be done, the duty of saying whether he will do it or not lies on every judge, as Lord Justice Cotton appears to consider, and cannot be shifted to another tribunal as *dignus vindice nodus*. The idea that the House of Lords can modify the law in any other sense than that it can get rid of bad law, and that judges below are to anticipate their doing so, imperils the legal system.—*Law Journal* (*London*).

INSOLVENT NOTICES, Etc.

Quebec Official Gazette, Feb. 11.

Curators appointed.

Re François Xavier Crevier.—W. A. Caldwell, Montreal, curator, Feb. 7.

Re Isaac C. Grant, hotel-keeper.—A. F. Riddell, Montreal, curator, Feb. 7.

Re O. Proulx.—Kent & Turcotte, Montreal, joint curator, Feb. 9.

Re J. E. A. Renaud.—C. Desmarteau, Montreal, curator, Feb. 9.

Re D. B. Viger & Co.—Kent & Turcotte, Montreal, joint curator, Feb. 9.

Dividends.

Re Bessette, Lefort & Co.—First dividend, payable March 5, Kent & Turcotte, Montreal, joint curator.

Re André Gagnon.—Final dividend, payable March 5, Kent & Turcotte, Montreal, joint curator.

Re L. A. Sauvé.—Dividend, payable March 5, Kent & Turcotte, Montreal, joint curator.

Separation as to Property.

Julienne Lasalle vs. Isaie Riopelle, Joliette, Feb. 6.

Quebec Official Gazette, Feb. 18.

Judicial Abandonments.

William Wallace Morency, Sherbrooke, Feb. 8.
John C. Purkiss, West Brome, Feb. 14.

Curators appointed.

Re John Baptist and James Dean (George Baptist, Son & Co.,) Three Rivers.—John McIntosh and George Hyde, Montreal, curators, Feb. 13.

Re P. C. de Grandpré, Berthierville.—Kent & Turcotte, Montreal, joint curator, Feb. 14.

Re J. G. Hamilton Brown & Co.—A. W. Stevenson and W. A. Caldwell, Montreal, joint curators, Feb. 7.

Re Joseph Lepage, wholesale grocer.—H. A. Bedard, Quebec, curator, Feb. 16.

Re Théodore Malo.—Kent & Turcotte, Montreal, joint curator, Feb. 14.

Dividends.

Re Onésime Boisvert, district of Richelieu.—Dividend, payable March 5, Kent & Turcotte, Montreal, joint curator.

Re Dupuis, Brien, Coutlee & Co.—Dividend, payable March 5, Kent & Turcotte, Montreal, joint curator.

Re A. H. Weston.—First dividend, payable March 5, James M. Paul, Montreal, curator.

Separation as to Property.

Julie Lainé vs. Joseph Marcotte, hotel-keeper, township of Durham, Feb. 3.

Marie Louise O'Keeffe vs. Louis Flavien Timoléon Buisson, Three Rivers, Feb. 14.

Adeline Robitaille vs. Alfred Ballard, laborer, St. Hyacinthe, Feb. 9.

Separation from Bed and Board.

Ann McCarthy vs. Thomas Hughes, farmer, township of Durham, Feb. 4.

GENERAL NOTES.

The Hon. S. Rivard, a member of the Montreal Bar, and Legislative Councillor for Alma Division, died Feb. 4, aged 53. Mr. Rivard was Mayor of Montreal for two years.