The Legal News.

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MARITIME COURT.

The following is the text of the resolutions introduced by the Minister of Justice on the subject of a Maritime Court for Canada :—

That an humble Address be presented to Her Majesty, representing that the Parliament and Government of *Canada* have all the powers necessary or proper for establishing within *Canada* a Court with jurisdiction similar to the jurisdiction of the British Vice Admiralty Courts, now existing in *Canada*, with respect to all matters arising out of or connected with navigation, shipping, trade or commerce.

That by Act of the Parliament of *Canada*, passed in the Fortieth year of Her Majesty's Reign, Chapter 21, intituled : " An Act to establish a Court of Maritime Jurisdiction in the Province of *Ontario*," *the Maritime Court of Ontario* was established, which Court has, as to all matters arising out of or connected with navigation, shipping, trade or commerce on any river, lake, canal or inland water, of which the whole or part is in the Province of *Ontario*, all such jurisdiction as belongs in similar matters within reach of its process to any existing British Vice Admiralty Court.

That it is expedient to make provision by an Act of the Canadian Parliament for the establishment of one Maritime Court for *Canada*, to take the place of the Maritime Court of *Ontario*, and of the British Vice Admiralty Courts now existing in *Canada*.

And praying that Her Majesty may be graciously pleased to take the Address into consideration, and to signify Her Royal pleasure as to withdrawing from *Canada* the existing British Vice Admiralty Courts, in case the Parliament of *Canada* legislate for the establishment of one Maritime Court for *Canada*.

And also, that Her Majesty may be graciously pleased to invite Her Imperial Parliament to grant to the Parliament of *Canada*, the necessary legislative authority to confer upon such Court so much of that part of the jurisdiction of the existing British Vice Admiralty Courts over which the Parliament of *Canada* has not now legislative authority, as Her Majesty may be pleased to think necessary or expedient.

COMPANIES INCORPORATED UNDER IMPERIAL LEGISLATION.

On the 24th of March, a bill to incorporate the " Quebec Timber Company (Limited)" having been referred to the Supreme Court, to examine and report thereon, the following report was made, March 29 :—

The Bill intituled " An Act to incorporate the *Quebec Timber Company (Limited)*, a copy of which said Bill is hereunto annexed, having been referred to the Supreme Court of *Canada* by the Honourable the Senate of the Dominion of *Canada* in Parliament assembled, under section 53 of the Supreme and Exchequer Court Act, to examine and report thereon, and more particularly :—

" 1st. Whether a Company, already incorporated under " The Companies Act of 1862 to 1880," of the Imperial Parliament for the purposes mentioned in the Bill, has a legal corporate existence in *Canada*, and, if so, whether a second corporate existence can, upon its own application as a Company, be given to it by the Canadian Parliament," and

" 2nd. Whether the objects for which incorporation is sought are such as take the Bill out of the exclusive jurisdiction of the Legislature of the Province of *Quebec*."

The said Supreme Court of *Canada* having examined and taken into consideration the said Bill, have to report thereon to the Honourable the Senate as follows :—

As to the first part of the first question submitted, namely : " Whether a Company already incorporated under 'The Companies Act of 1862 to 1880,' of the Imperial Parliament for the purposes mentioned in the Bill, has a legal corporate existence in *Canada?*" The Court pray to be excused from answering this question, on the ground that the question affects private rights which may come before it judicially, and which ought not to be passed upon without trial.

As to the second part of the question: " Whether a second corporate existence can, upon its own application as a Company, be given to it by the Canadian Parliament?" This the Court presume means, " Whether the

Dominion Parliament can give the Company a corporate existence in *Canada?*" The Court are of opinion that the Dominion Parliament can incorporate such a company for objects coming within the jurisdiction of the Parliament of the Dominion.

And as to the second question, namely: "Whether the objects for which incorporation is sought are such as take the Bill out of the exclusive jurisdiction of the Legislature of the Province of Quebec?" The Court are of opinion that the objects mentioned in this Bill are within the jurisdiction of the Dominion Parliament and are out of the exclusive jurisdiction of the Legislature of the Province of Quebec.

DUPUY v. *DUCONDU.*

We note three things in the letter of "N.W.T."

1st. That he, knowing the record, has been unable to find any evidence of a *new* consideration for the special warranty in the second deed;

2nd. That as a substitute, he has produced some evidence as to the non-existence of licenses under the first deed, which has nothing to do with the point;

3rd. That he has not questioned the correctness of the report, (Legal News, p. 72), nor attempted to show by it that our criticism is incorrect (Legal News, p. 84).

This alone is important. R.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, April 15, 1882.

Before TORRANCE, J.

DORION v. DORION.

Cheque given for price of land—Compensation.

The action was to recover the amount of a cheque given by the defendant to plaintiff for $3,333.34, of date 4th February, 1880, for part of the price of a piece of land.

The demand was met by a plea of compensation to the amount of $5,790.96, consisting of the following items: 1. $414.16 for commutation money in favor of the Seminary of Montreal; 2. Corporation assessments paid by defendant for plaintiff, $979.90; 3. $1,000, being amount of a promissory note paid by defendant on the 31st of March, 1880, in discharge of the plaintiff; 4. $1,632, being £408 contained in a discharge and subrogation of date, 25th April, 1866, by Severe Dorion to defendant, who paid him this sum as surety for plaintiff.

By a special answer the plaintiff set up and averred divers larger amounts due by defendant to him.

The pretensions of the plaintiff were: 1. That defendant could not oppose in compensation any of his claims, because the action was founded upon a cheque given in payment of the price of a piece of land, and anterior claims could not be set up in compensation, nor subsequent claims not clear and liquidated. 2. That all the payments that he could make for plaintiff, were made with the moneys of plaintiff which he had in hand to the amount of more than $100,000. 3. That he owes to plaintiff and owed at the date of these pretended payments the three written acknowledgments of 1873, 1874, for $2,881, $1,050, $1000, with interest, further, $1,000, brewery, &c.

PER CURIAM. What the defendant may have paid for the plaintiff will enter into the account which he owes him. What is now claimed is beyond the particulars of this account. It was part of the price of land considered as paid cash by a cheque. The Court is of opinion that the sum of $414 for commutation and the sum of $979.90 for taxes should go in deduction of the cheque sued upon, but no others. These amounts were immediately connected with the sale. It might also be reasonable that the payment of the note for $1,000 made on the 31st March, 1880, should go in deduction of the demand. It was a payment by the defendant immediately after the giving of the cheque. But I do not find the payment of the note sufficiently proved. It ought to have been produced. But the old items should not apply against the cheque. It was intended to be paid at once. 1 Pardessus, Droit Commercial, p. 454. The plea of compensation as to $414 and $972.90 is made out, and it is not destroyed by the matters of the special answer: *Gilbert* v. *Lionais*, 7 Rev. Leg. 339. Plaintiff will, therefore, have judgment for the amount of the cheque, less $1,393 and interest, reserving plaintiff and defendant their recourse if any they have for the other items brought up against each other.

S. Pagnuelo, Q.C, for plaintiff.
Madore for defendant.

SUPERIOR COURT.

MONTREAL, April 15, 1882.

Before TORRANCE, J.

SEIGERT et al. v. CORDINGLEY et al.

Injunction—Interim order.

This case came up on the merits of an exception *à la forme* to a writ of injunction and conservatory seizure obtained and made by plaintiffs as an incident in their action of damages against the defendants for the infringement of a registered trade mark.

The action was instituted on the 18th of June, 1881, and on the 9th of July, plaintiffs presented to a judge in chambers a petition representing that they had instituted the above action with a prayer for injunction against defendants. That defendants notwithstanding the action were continuing to sell the spurious article complained of by plaintiffs, and had sold a case of spurious Angostura bitters (the article in question) to a firm of George A. Burns & Co., in Toronto, and that said case was then in the hands of the Grand Trunk Railway Company of Canada as carriers for delivery. They therefore prayed for an order whereby the said case of spurious Angostura bitters might be seized and attached in the hands of said company, and so to remain seized and attached to await the final judgment, and that on the final judgment to be rendered in this cause, the said case of spurious Angostura Bitters, the packing case, bottles, wrappers or labels enclosing the said bottles, and the contents of the bottles be delivered up to be destroyed, &c.

Upon this petition supported by affidavit, the chamber judge gave a temporary order as asked for, subject to security being given to answer costs to the amount of $100. The injunction was then issued, and the case seized. Thereupon the defendants filed an exception to the form, to the writ of injunction, and prayed that the same might be quashed *inter alia*, "because by the law of this Province, no remedy by way of writ of injunction is allowed in the case set forth in the petition in this cause, and because the issuing of the said injunction was and is illegal and contrary to law."

PER CURIAM. This case is not covered by 42 Vic., c. 22, of Quebec. Plaintiff has cited 35 Vic. c. 32, ss. 21, 22, as in favor of his proceeding. Section 21 says the court may, upon giving judgment for the plaintiff, award a writ of injunction or injunctions to the defendant commanding him to forbear from committing, &c. This gives authority to the court on the final judgment.

It appears to the court that as it has power by the final judgment to dispose of the case in question, the plaintiffs are entitled to an interim order to prevent its disappearance. The proceedings of the plaintiffs, therefore, should not be regarded as irregular. Exception dismissed.

D. R. McCord for plaintiffs.

Kerr, Carter & McGibbon for defendants.

SUPERIOR COURT.

MONTREAL, April 15, 1882.

Before TORRANCE, J.

MATHEWSON et vir v. FLETCHER.

Lease—Husband and Wife.

This was a case between landlord and tenant. The action began with a demand for rent due the 1st November, $160 for the quarter payable in advance, and $30 damages for the unlawful removal of straw and manure and fences belonging to the farm. Then followed a petition for an injunction against the defendant, prohibiting him from removing any more manure. Lastly, there was an incidental demand for $400 for the removal of more manure which belonged to the farm.

PER CURIAM. The Court has to dispose of a preliminary objection made by the defendant. The action is by the proprietor of the leased farm, and the lease purports to be between her husband and the defendant. Clearly the wife was principal here and had a right to step in and claim the rent as her's, and she does so with the authority of her husband. It would only be a question of costs if the defendant were taken by surprise. The important question is whether there was any breach of contract by the defendant under his lease. There is no doubt in the mind of the Court that the defendant here has violated his contract. The Court assesses the damages as follows:—$10 for removal of fences and $120 for removal of 120 loads of manure. The evidence here is very conflicting, but the evidence of Mr. Sinnamon for the defence is more satisfactory than that of witnesses produced by the plaintiff. Judgment will therefore go for the rent claimed which has been tendered, $140, and for $130 of damages.

Robertson & Fleet for plaintiff.

Duhamel & Rainville for defendant.

SUPERIOR COURT.

MONTREAL, April 18, 1882.

Before TORRANCE, J.

THE MONTREAL, OTTAWA & OCCIDENTAL RAILWAY CO. v. THE CORPORATION OF THE COUNTY OF OTTAWA.

Subscription to Railway—Damages other than interest for neglect to deliver debentures.

This was an action of damages. The plaintiffs said that they were incorporated by 32 Vic., c. 55 (Quebec) under the name of the Northern Colonization Railroad of Montreal; that by 36 Vic., c. 82 (Canada), the said company was authorized to continue the road outside of Quebec, and was declared to be a road for the general benefit of Canada, and fell under the control of the Dominion of Canada. By the Act of Canada, 38 Vic., c. 68, the name was changed to the Montreal, Ottawa & Western Railway Company. On the 12th June, 1872, the defendants passed a by-law, No. 2, authorizing them to take stock in the railway to the amount of $200,000, and pay the same in bonds or debentures. On the 9th July, 1872, the by-law was adopted by the electors, and by 36 Vic., c. 49 was declared valid. By this by-law the Mayor of the Council subscribed the stock on the following conditions:—1. The amount should be payable in debentures of $100 each, payable in 25 years; 2. The subscription was only exigible as the work progressed, not to exceed 50 per cent of the value of the work done, and not to exceed $3,000 on any one mile thereof, such payments to be made monthly, as the work progressed, on the certificate of the company's engineer. The remainder of the subscription, $50,000, payable upon the completion of the road in running order, with rolling stock and appurtenances sufficient for the effectual working thereof, said line to be in running order on or before the first December, 1875. 4. Bridges to be built with substantial stone piers. The rails, if of iron, not less than 60 pounds weight per lineal yard; and if of steel, not less than 48 lbs per lineal yard, &c. That plaintiffs, conformably to law and the by-law, began the works, and in March, 1875, they had constructed to the value of more than $300,000 on a length of 50 miles in the County of Ottawa; that this gave the company the right to claim $150,000, payable in debentures; that plaintiffs (19th June, 1875, date of action), were ready to terminate the works on condition that defendants should fulfil the conditions of the by-law; that defendants failed to pay to plaintiffs said debentures, and caused damage to plaintiffs not only in putting in peril the payment of the $50,000, but also in shaking the credit of plaintiffs and depriving them of considerable sums of money, which plaintiffs would have had a right to, as well from the city of Montreal as from the Quebec Government. Damages were claimed to the amount of $500,000, including interest from 17th January, 1875, on $112,000 of debentures then deliverable.

The defendants set up the by-law No. 2 and its conditions, and said that they were not bound to deliver the bonds or debentures unless the conditions were duly executed. That the road should be completed and in running order on the 1st December, 1875; that the road could not be completed within the said time; that plaintiffs were utterly insolvent. They have not paid for the land and there were judgments against them. They had no title. That by the charter, plaintiffs were authorized to begin operations when $100,000 were subscribed, and no *bona fide* subscriptions were made. That no calls were ever made upon the subscribers. That the subscription by defendants was with the Northern Colonization road, established by 33 Vic. c. 55, and by the Dominion Act the road was changed into the Montreal, Ottawa & Western Railway. That the subscription of stock could not be held to have been transferred to the new company without the consent of the subscribers. That they never consented. That plaintiffs claimed damages for loss of credit and injury by them, suffered by the non-delivery of the debentures; that the only claim plaintiffs could legally make was for the issuing of the debentures or their value in money.

PER CURIAM. I do not see that the transmutation of the Quebec Railroad Company into a Dominion company by 38 Vic., c. 68, is any discharge of the defendants from their obligations under the bye-law. There is no doubt that on the 16th November, 1875, date of the agreement with the Quebec Government, the plaintiffs were unable to meet their engagements, and therefore on the 1st of December, 1875, the road was not in running order according to condition sec. 3, (c) of the bye-law. As to the objections of

defendants that the subscriptions of stock were not *bonâ fide*, and that the land over which the road ran had not been paid for, these grievances do not appear to be established and cannot avail defendants. As to the claim of damages for loss of credit, shaking their credit, and depriving them of the moneys they should have had from the city of Montreal and the Government, these are claims the Court cannot entertain except in a very general way. The defendants are not responsible for the defaults of others. On the 17th of January, 1875, the defendants were put in default to deliver $112,000 of debentures or the money itself, which they could have substituted. A proper demand against them could have been made at that date for the debentures, or for this sum of money. Looking further into the facts and the circumstances of the case, it is impossible for me to believe that the road would have been completed by the 1st of December, 1875, if these debentures now under consideration had been delivered in January, 1875. There were other large corporations in default, rightly or wrongly. Duncan Macdonald was asked on the 16th November, 1878 :—

"Q. Do you state positively that you could have completed it (the road) at your contract prices and with the terms of payment which were stipulated in the contract? A. If the bonds could have been negotiated I believe it could have been done.

Q. Would you not have had to negotiate the bonds in England? A. Of course; what I mean is, if I had the proceeds of the bonds at my credit, if the bonds had been negotiated and the money proceeds thereof put in my hands.

Q. Was the thing either practicable or possible? A. We could not negotiate the bonds.

Q. Is it not a fact that the road is not actually and absolutely completed? A. Yes, it is not fully completed."

As a general rule, in the obligations limited to the payment of a sum of money, damages arising from delay in their fulfilment consist in a condemnation to pay interest. But we must not conclude that in the obligation of a sum of money there cannot be other damages besides the *intérêts moratoires*. C. C. 1077 does not say that. It only provides for the loss resulting from the delay, and for this loss establishes a penalty consisting in the legal interest. But there may be other causes of damages besides simple delay. C. C. 1077 does not provide for them. They fall under the general rule which allows the Court to assess the amount of damages according to the loss really sustained by the claimant. See Journal du Palais for 1879, p. 274, note (4), and authorities there cited.

The conclusion at which the Court arrives is that any damages which the plaintiffs have suffered by the default of 17th January, 1875, so far as proved, are only general, and these are assessed at the sum of $100, with costs as in a first-class action of the Superior Court. This sum does not include any interest, as I do not see that any interest has accrued. These damages are given for the wrong or prejudice suffered by plaintiffs by the non-delivery of the debentures in or after January, 1875.

DeBellefeuille & Bonin for plaintiff.

R. & L. Laflamme for defendant.

COUR DE CIRCUIT.

MONTRÉAL, 19 avril 1882.

Devant MATHIEU, J.

DANSEREAU v. GOULET.

JUGÉ.—1o. *Que le médecin ne peut, par son propre témoignage, prouver la réquisition et l'existence des soins que ses patients nient avoir reçus de lui.*

2o. *Que s'il ne prouve, par un témoin compétent, la réquisition de ses services et qu'iceux ont réellement été rendus, son action sera déboutée.*

3o. *Que lorsque les services du médecin sont admis ou s'il est prouvé, d'après les règles ordinaires de la preuve, qu'ils ont été rendus, il sera, en ce cas seulement, cru à son serment, quant à la nature et à la durée des dits services.* (C. C. Art. 2260, No. 7.)

Le demandeur, médecin, réclamait par son action la somme de $16.50. Partie de cette somme était pour soins donnés à l'épouse du défendeur avant son mariage, et dont le demandeur prétendait le défendeur responsable.

Par son plaidoyer le défendeur repoussa non-seulement la responsabilité de la dette telle que réclamée, mais en niait de plus formellement l'existence.

Le demandeur assermenté, déclara cependant que la somme réclamée lui était légitimement due; que non-seulement il avait rendu les services en question, à la réquisition du défendeur, lui-même, mais que celui-ci avait de plus formellement promis lui en payer le prix.

Sur objection à la légalité de cette preuve, le demandeur fit du défendeur son témoin ; mais ce dernier nia positivement la dette et l'existence même des services.

PER CURIAM. Je ne crois pas le médecin privilégié jusqu'au point de prouver par son propre témoignage, la réquisition et l'existence de ses services, lorsque ceux-ci sont niés, même sous serment, comme dans le cas actuel. Au contraire, il doit prouver sa demande d'après les règles ordinaires, après quoi seulement il est cru à son serment quant à la nature et à la durée de ses services. S'il en était autrement, le public serait à la merci des médecins qui n'auraient qu'à réclamer pour obtenir. Je ne pense pas qu'il soit plus permis au médecin de prouver par son propre témoignage la réquisition de ses services qu'il n'est permis au marchand de prouver lui-même la vente et livraison de ses marchandises. Je n'hésite donc pas à dire que le demandeur n'a pas prouvé sa demande et que son action doit être renvoyée.

Action renvoyée.

Préfontaine & Major, procureurs du demandeur.

J. G. D'Amour, procureur du défendeur.

COURT OF QUEEN'S BENCH.

MONTREAL, January 24, 1882.

DORION, C. J., RAMSAY, TESSIER, CROSS & BABY, JJ.

SAUVÉ, Appellant, and BOILEAU, Respondent.

School Commissioner—Municipal Office.

Motion to reject appeal, the case not being appealable under art. 1033 C.C.P. The action was as to the election of a School Commissioner; it was contended he was a municipal officer.

The COURT held that a School Commissionership was not a municipal office within the meaning of Art. 1033.

Motion rejected.

COURT OF QUEEN'S BENCH.

MONTREAL, January 26, 1882.

MONK, RAMSAY, TESSIER, CROSS and BABY, J J.

EVANS, Appellant, and LARAMÉE et al., Respondents.

Appeal—Interlocutory Judgment.

In this case an application was made for leave to appeal from an interlocutory judgment of 24th December last, referring the present cause and the parties to the Roman Catholic Bishop of Montreal, in order that he may decide whether the marriage tie between appellant and her husband should be broken, and also from a previous judgment of 31st March, 1880, dismissing her demurrer and that part of the conclusions which prayed that the present cause should be so sent to the Bishop for adjudication. [5 Legal News, p. 51.]

J. J. Maclaren and *Doutre, Q. C.*, appeared in support of the application for leave to appeal, and *Bonin* to oppose the application.

The facts were that an action had been brought on behalf of Laramée, who is an interdict, by the father and curator to annul his marriage with Evans, on the ground that the parties had been married by a Protestant clergyman, and that such marriage was invalid as both man and woman were Roman Catholics. The Court below held that it had been proved that both parties were Roman Catholics, and ordered that the cause be sent before the Roman Catholic Bishop as being the proper authority to pronounce as to the nullity of the marriage tie under such circumstances. It was from this judgment that the woman asked leave to appeal. The grounds assigned in support of the application were, first, because the judgment in part decided the issues between the parties. Second, because the Court had no authority to send the appellant for trial to another so-called tribunal which has and can have no jurisdiction over the appellant. Lastly, because the husband of the appellant is an interdict. It was contended that the right of appeal was clear, that the material question in the case had been decided, and that the Court below had virtually refused to pass judgment.

Leave to appeal was granted.

McLaren & Leet for appellant.

Doutre, Q. C., counsel.

DeBellefeuille & Bonin for respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, January 24, 1882.

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

Ross et vir, Appellants, and Ross et vir, Respondents.

Sequestrator to estate after judgment removing executor.

Alice L. Ross, (Mrs. Thayer) co-heir with

Jessie Ross, (Mrs. Kerby) and sole executrix of the will of the late John Ross, is appellant from the judgment of the Superior Court removing her as executrix owing to mal-administration. The Respondent moves to have a sequestrator to the estate appointed. She relies entirely on the judgment of the Court below.

The COURT refused the Respondent's petition. A sequestrator is only appointed on special cause. The judgment is not cause, even if the Court of Appeals has original jurisdiction in the matter, when the application is grounded on facts within the knowledge of the moving party prior to the judgment in the Court below.

Motion refused.

Ritchie, Q. C, and *Carter, Q. C.*, for appellant.
Kerr, Carter & McGibbon for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, January 27, 1882.

MONK, RAMSAY, TESSIER, CROSS & BABY, JJ.

TRACEY et vir et al., Appellants, and LIGGETT et al., Respondents.

Appeal—Interlocutory Judgment.

Motion for leave to appeal from interlocutory judgment. The action is to set aside a donation by a father to his daughter and her future husband by marriage contract, as being in fraud of creditors. The husband, Killoran, is sued to authorize his wife, and not in his own name. He appeared and pleaded with his wife. The case being inscribed on the merits, the judge discharged the *délibéré* in order that the husband should be called in personally, as he had an individual interest, and that time should be given to sell the real estate of the donor, then under seizure.

The COURT was of opinion that the order to call in Killoran was proper, but that the order to discuss the donor before giving judgment, or to refuse to give judgment until something was done which was not within the control of either of the parties, was irregular.

Leave to appeal granted.

Erratum.—In *Lord et al. & Elliott et al.*, *ante*, p. 124, 15th line of head note, for "delay attributable to the master or crew" read "delay attributable to the appellants." [An appeal has been taken in this case to the Privy Council.]

RECENT DECISIONS AT QUEBEC.

Foreign vessel—Suit for wages.—In a suit for wages brought in the Vice-Admiralty Court at Quebec, by seamen of a United States ship, the U. S. consul, upon receiving notice of suit, made a representation in writing to the Judge, accompanied by accounts showing the promoters to be indebted to the ship, and requested that the case should not be entertained. *Held*, that the jurisdiction of the Court over actions of this nature being discretionary, the court, would under the circumstances, decline to proceed with the suit. —*The Bridgewater*, 7 Q. L. R. 346.

Mutual Insurance Company — Action against policy-holder after cancellation of policy. — The cancellation of a policy by a Mutual Insurance Company is sufficient ground to defeat an action brought against the policy-holder for a call made one month after the cancellation, unless it be shown that the call was made to meet losses anterior to the cancellation.—*Hochelaga Mutual Insurance Co.* v. *Girouard et al.* (Court of Review), 7 Q.L.R. 348.

Contract for towage.—An agreement was made on the Lower St. Lawrence with the owners of three powerful tugs, to tow a vessel to Quebec, and thence to Montreal, and back to Quebec.—*Held*, that the promoters, having towed the ship to Quebec and Montreal, could not substitute an inferior tug (which had two other vessels in tow), for the completion of the contract.—*The Euclid* (Vice-Admiralty Court), 7 Q. L. R 351.

Water-course—Mill.—Le propriétaire d'un moulin qui fait marcher les eaux d'une rivière non flottable, a une action pour les dommages que lui cause la retenue des eaux, par éclusées, pour les besoins d'un moulin de construction plus récente en amont de la même rivière.—*Proulx* v. *Tremblay* (C.R.), 7 Q.L.R. 353.

Procedure—Service.—A witness who, in obedience to a writ of subpoena, comes into a district in which he is not domiciled, may be validly served therein with a writ of summons in a suit in such district.—*Bruneau* v. *McCaffrey* (In Appeal), 7 Q. L. R. 364.

Appeal.—A party obtaining leave to appeal from an interlocutory judgment forfeits such right if security be not given within the delay fixed by the Court.—*Ib.*

Execution—Exemptions from seizure.—Celui qui a une autre occupation, et qui n'exerce qu'accidentellement un métier, n'a pas droit à la distraction de la saisie des outils qu'il y emploie.—*Noel* v. *La erdière*, (C.R.) 7 Q.L.R. 367.

Usufructuary.—A usufructuary who does not allege either that she is in possession of the estate subject to her usufruct, or that she has made an inventory as required by C.C. 463, cannot collect by action a debt due to the estate.—*Abercrombie* v. *Chabot*, (C.R.) 7 Q.L.R. 371.

Vice-Admiralty Court—The Dominion Parliament may confer on the Vice-Admiralty Courts jurisdiction in any matter of shipping and navigation within the territorial limits of the Dominion.—*The Farewell*, 7 Q.L.R. 380.

Colonial Laws.—When an Act of the Parliament of Canada is in part repugnant to the provisions of an Imperial Statute, effect will be given to the former so far only as it does not interfere with the latter. *Ib.*

Surety.—Le jugement rendu sans fraude contre le débiteur principal, est chose jugée contre la caution. La caution, à qui les poursuites contre le débiteur principal n'ont pas été dénoncées, n'est, comme le garant, responsable que des frais de l'exploit originaire jusqu'au rapport de l'action inclusivement, et non des frais subséquents.—*Lamy* v. *Drapeau*, (Q.B.) 7 Q. L. R. 383.

GENERAL NOTES.

Strange law indeed is that propounded by Judge Advocate General Swaim, who instructed the President that Mason was not guilty of an assault on Guiteau, because Guiteau "being in a reclining position on his cot, a substantial brick wall intervened between him and the line of fire, and he was therefore in absolute security from any effort Mason might make to shoot him at the time." And he finds an authority in the following extract from Wharton: "Where, however, there is wanting apparent and real ability to hurt in any way, there is generally no assault." We do not see how these words can in any way support the monstrous doctrine of the Judge Advocate General, because apparent ability to hurt was not wanting in this case; Mason intended to hurt, and Guiteau believed in his ability to hurt. Bishop says: "There is no need for the party assailed to be put in actual peril, if only a well founded apprehension is created. Therefore if within shooting distance, one menacingly points at another with a gun, apparently loaded, yet not loaded in fact, he commits an assault the same as if it were loaded."

A curious case has lately been decided in California. Nicholas Sepulveda and Francisco Salazar were jointly indicted for the crime of grand larceny, and tried together in the Santa Clara County Court. The jury rendered a verdict in these words: "We, the jury, find the defendences guilty as charged in the inditisment." The clerk, in recording the verdict, corrected orthography, and wrote the word "defendant" for defendences. Upon appeal by Sepulveda to the Supreme Court, it was determined that the record of the clerk must be taken as the verdict rendered; and as there were two defendants on trial, a verdict finding the defendant guilty, without specifying which of the two defendants, was void for uncertainty. A motion was then made in the Superior Court, in behalf of Sepulveda, that he be discharged upon the grounds, first, that he was in jeopardy by the former trial, and as the discharge of the jury was unauthorized and illegal, he was released thereby; secondly, that by the verdict and by the construction of it by the Supreme Court, one of the defendants was acquitted, and as it could not be made to appear which was acquitted, either was entitled to the benefit of the presumption of acquittal. The Court decided that Sepulveda was entitled to his discharge.

Cremation has got into the English courts. In *Williams* v. *Williams*, Chan. Div., March 8, 1882, a testator had directed that his body be given to the plaintiff, and should be burned, and the ashes preserved in a Wedgwood vase. His body, after having been buried a year was disinterred, conveyed to Milan and burned, and the ashes were returned to England in a Wedgwood vase. The action was brought against the executors to recover the expenses of this operation. Kay, J., dismissed the action, holding (1) that by the law of England there was no property in a dead body; (2) that after death, the executors had a *prima facie* right to the custody or possession of the body until it was properly buried; and (3) that a man could not by will dispose of his body, and that the direction in the codicil to the executors to deliver the body to the plaintiff was void, and could not be enforced. The *Law Journal* controverts the soundness of the decision, pointing out that men have frequently been allowed to order the disposal of their bodies, as for dissection, under the Anatomy Act, etc., instancing Jeremy Bentham's case, whose skeleton is to be seen to this day in University College. In 1769 Mrs. Pratt's body was burned according to her testamentary direction. The *Journal* instances old wills disposing of the testator's remains; as that of William Pelham, Kt., who in 1552 bequeathed his body to be buried in the chancel of Laughton, and that of John of Gaunt, who in 1397, directed his body to be buried in St, Paul's, and not to be embalmed or cered for forty days. The *Journal* pronounces the remark in *Reg.* v. *Sharpe*, 7 Cox, 214, that "our law recognizes no property in a corpse," "a mere *dictum*," and concludes: "For hundreds of years, wills have been made and carried out upon the assumption that a testator has a power of disposition over his own body, and the Anatomy Act seems to confirm the assumption. If then a testator has power to dispose of his body at all, he must surely have power to direct it to be burnt instead of, or at all events before, burial."