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The *Law Journal*, as announced last month, will be continued quarterly from the 1st of January, 1868, in the same manner, and at the same rate of subscription, ($2 per annum), as when first established. While the limits now imposed upon us will make brevity imperative, we shall, nevertheless, endeavor by rigorous condensation, to embrace everything of material interest.

RICHELIEU AND JOLIETTE DISTRICTS.

By proclamation, dated 28th December, 1867, the Court terms in these districts are fixed as follows:—District of Richelieu: two terms of Court of Queen's Bench at Sorel, beginning 1st May, and 8th November; three terms of Superior Court, each of seven days, to be held at Sorel from 13th to 19th January and May, and 3rd to 9th October; three terms of Circuit Court at Sorel, each of six days, from 7th to 12th of January and May, and from 27th September to 2nd October; three terms of five days at Village of Berthier, from 20th to 24th January and May, and from 21st to 25th September; three terms of five days at St. François du Lac, from 24th to 28th February, from 1st to 5th of June, and from 4th to 8th November.

District of Joliette: two terms of Queen's Bench at town of Joliette, beginning 5th of July and 15th November; three of the Superior Court at Joliette, each of seven days, from 16th to 22nd February and October, and from 28th June to 4th July; three terms of Circuit Court at Joliette, each of six days, from 10th to 15th February and October, and from 22nd to 27th June; three terms of Circuit Court, of five days, at the Village of L'Assomption, from the 26th to 30th January, May and October; three terms of Circuit Court, of five days, at Ste. Julienne de Rawdon, from 1st to 5th February and November, and from 6th to 11th June.

APPOINTMENT.

The Hon. Joseph Noel Bossé, of the city of Quebec, Member of the Senate of Canada, and one of Her Majesty's Counsel learned in the law, to be a Puisne Judge of the Superior Court in and for the Province of Quebec, taking rank and precedence next after the Hon. Samuel Cornwallis Monk, (Gazetted, January 24th, 1868).

LORD KINGSDOWN.

The name of Lord Kingsdown, who died on the 7th of October last, in his 75th year, is familiar to the profession here as that of one of the most assiduous members of the Court of final resort. Thomas Pemberton was born in London on the 11th of February, 1793. He read for the bar in the chambers of his uncle, Mr. Cooke, a distinguished equity lawyer. He was called to the bar in 1816, and rose rapidly into extensive practice. In 1829, he received a silk gown, and for many years stood at the head of the bar in his own Court, the Rolls. In January, 1843, the death of his aged and eccentric kinsman, Sir Robert Leigh, placed Mr. Pemberton in possession of a life interest in the Wigan estates, amounting to £17,000 a year. This income raised him to affluence; he retired from the bar, and shortly afterwards entered upon his judicial duties as a member of the Judicial Committee. These duties he performed entirely without emolument for twenty years, with unremitting diligence. In 1858, upon the formation of Lord Derby's Administration, the Great Seal was offered to him, but he refused it. It was in this year that he was raised to the Peerage. The *Times*, in an obituary notice (from which the foregoing facts are gleaned) speaks of the deceased nobleman in these terms: "Although he never filled any prominent office in the State; although he retired from the bar a quarter of a century ago, and has since devoted his great judicial talents and legal experience almost exclusively to the tribunal which does not often challenge public attention; although his whole life has

been singularly retired and uneventful, for he was a man alike devoid of vanity and of ambition; yet those who knew the strength and purity of his unobtrusive career, place him, without hesitation, in the very highest rank of English lawyers; and even to the public his name, associated with some of the most enlightened and important judgments of modern times, carried a degree of weight not always attached to names of higher official authority. The predominant quality of Lord Kingsdown's character was a fastidious refinement, which removed him altogether from the common pursuits of fame and power. "No breath of popularity," as he once expressed it, "ever touched his sail." But, if he was sensitive to the shortcomings and imperfections of others, he was not less exacting in all that concerned himself. Nothing satisfied him in his own productions short of the highest perfection which he was able to attain. Many of his judgments were written several times over; all were revised with elaborate minuteness. In 1858, when the Great Seal was offered him, he had already quitted the Court of Chancery for 15 years, and, strange as it may seem, we suspect that the reason which mainly determined his refusal was a distrust of his ability to perform the duties of the Chancellor, after so long an interval, in a manner entirely adequate to his conception of their importance. Perhaps it is fortunate for the world that not all men are equally scrupulous or conscientious. Lord Kingsdown's qualities as a judge were held by those who sat with him in the administration of justice to be literally unrivalled. The mind he brought to bear on the questions before him was deep, clear, and unruffled; his patience was inexhaustible; his sense of justice and of right even more acute than his love of legal precision and accuracy. He searched and brought out the juridical principle of which the law itself is but the form and expression; and he aimed at framing the decisions of the Court on large grounds of analogy and reason. The wide jurisdiction of the Privy Council was favourable to the application of these principles. The appellate jurisdiction of the Crown over the colonial courts of either hemisphere is now almost the sole link which holds together the British Empire. We have abandoned colonial legislation, we grudge military defence, but the Privy Council is still regarded throughout the colonies as the supreme expositor of the laws of the Empire. That moral influence of a British tribunal is still unshaken; and its authority has in our times been largely augmented by the wisdom, temper, and equity which Lord Kingsdown gave to it." The death of Lord Kingsdown reduces the number of Law Lords to nine, but of these, Lords Brougham, St Leonards, and Wensleydale are precluded by age from discharging their judicial functions The highest Court of Appeal consists, in fact, of six or eight working members, though nominally numbering about thirty.

RIGHT HON. FRANCIS BLACKBURNE.

The late Lord Chancellor of Ireland was born in 1782, called to the bar in 1805, and became King's Counsel in 1822. After having twice held the office of Attorney-General, he was appointed Master of the Rolls in 1842, and Chief-Justice of the Queen's Bench in 1846. In 1852, he was made Lord Chancellor, an office which he held only a few months, in consequence of Lord Derby leaving office. In 1856, he was appointed by Lord Palmerston Lord Justice of Appeal, but again became Lord Chancellor when the present Government assumed office. Failing health compelled him to resign a few months previous to his death, which occurred on the 17th of September, 1867.

THE TRIBUNALS AND THE ADMINISTRATION OF JUSTICE IN THE EMPIRE OF FRANCE.

We have already given the greater portion of the Hon. I. F. Redfield's observations on the Administration of Justice in England. The following, under date Paris, July 20th, is the result of his observations in France.

"One can hardly compare the Courts in

different countries, without the hazard of making unjust or unfounded inferences. And still there is no one thing upon which the real character of free Governments, and indeed of all Governments, more entirely depends. But there is very much in the mere organization of the Courts or judicial tribunals of the French Empire, to indicate the energy and decision with which the government is administered. It is a perfect system of superiority and subordination, from the humblest police magistrate to the High Court of Cassation.

In a few days' visit to the Palace of Justice, although accompanied by a very intelligent advocate, who was entirely competent and very ready to explain all which came under review, one could scarcely expect to acquire very accurate information in regard to the detail of so complex a system as that of the judicial tribunals of a great empire like that of the French. But some of the more important points of difference between our own and the jurisprudence of the French, and the comparison which each bears to that of England, may be briefly noted.

The procedure in France, as in most of the continental countries, is according to the principles and practice of the Roman civil law. In the trial of civil actions of every grade no jury is allowed, the judge deciding everything according to his own sense of justice and propriety. And, as would naturally be expected where everything depends upon the arbitrary discretion of the judge, testimony of almost every grade of conclusiveness, or the contrary, is received, and it often happens that the case is finally made to turn upon very slight circumstances, and is really decided upon evidence, in itself of no great significance, and which, upon the more exact and refined rules of the English common law, would scarcely be considered competent. But this is a result not very different from that which often occurs in jury trials at common law, where causes are made to turn, quite as often, perhaps, upon the bias of the jury, religious or political, or the last words of able and eloquent counsel, or of the judge in summing up, as upon the testimony given in Court, and in that way, perhaps, more complete justice is effected.

The French jury, in the Criminal Courts, consists of twelve, but unanimity is not required, the voice of the majority being sufficient in ordinary cases, there being some few exceptional instances, where the concurrence of two-thirds is required to give a verdict. We sat for a short time in the same court-room where the attempted or would-be assassin of the Czar, Berezowski, had been tried a few hours before. The same jury and the same judges still continued the session; the judges in their scarlet robes, and the minister of justice, in the person of the prosecuting attorney, clad in the same garb, occupying a seat half-way between th bar and the bench. The presiding judge called upon the accused, sitting between two gendarmes, to plead, who stood up and stated briefly their plea, and whether they had or desired counsel. The judge then administered a long oath to the jury, which seemed to embrace a kind of charge as to their duty, and, at the close, called upon each member of the panel, by name, who gave his assent by raising the right hand. The representative of the minister of justice then proceeded with the trial, first examining the accused, giv ng him the full benefit of his own story, if that can fairly be regarded as any benefit, which may, we think, be considered as somewhat questionable.

There is in each *arrondissement* throughout the empire an Imperial tribunal to hear appeals from all the Courts of first instance in that *arrondissement*. Paris, with some few of the adjoining districts, constitutes one *arrondissement*, and has its Imperial Court for hearing appeals from all the Courts of first instance within that district or *arrondissement*. We listened to a brief argument in this Court from an advocate of great zeal and energy, who spoke in a very high key, and after reading some ten minutes from a manuscript, closed by an impassioned appeal to the Court, which seemed to be regarded by them as so much matter of course as to produce no interruption of conversation between the different members of the Court, which had very much the appearance of making light of the graphic flourishes of the argument, but which, we have no doubt, had no such appearance to the speaker. The tribunal, consisting of nine judges, or about

that number, had certainly very much in their looks to recommend them. They were more youthful and had more the appearance of brilliancy than any Court we had seen since leaving America. One would naturally suppose, from their looks only, that they possessed full competence, both of learning and ability, for the satisfactory discharge of their important and responsible functions, and that both their offices and their salary were placed beyond peradventure by the tenure under which they were held, and the stability of the administrative power.

The judges in France hold office during life, or until the age of seventy, in all the Courts; and until seventy-five in the High Court of Cassation. The distinction may be not without reason, since by such a provision, and by removing the most experienced of the judges of the subordinate tribunals into that high tribunal, as vacancies occurred, there would be constantly found in the Court of last resort a considerable proportion of judges of largest experience and most matured wisdom, with presumptively an equal, if not greater amount of learning than could be secured in any other mode. And by extending the term of holding office in that Court to seventy-five, the services of those judges who retained full strength to an exceptional period could be continued in the Court of Appeal.

It is certainly not a little wonderful that so large a proportion of the American States should prefer to have the office of the judges, from the highest to the lowest, dependent upon popular elections, at short intervals, when the experience of England and France, and of all governments, where there is any pretence of consulting the popular will in administrative functions, has shown most unquestionably that the rights of suitors and of those accused of crime, are most wisely consulted in making the judges as nearly independent of all popular or administrative influence as is practicable. This is not a question which we propose to discuss here. But we cannot forbear to express our matured and settled convictions that the American people are acting under wrong impressions in the conclusion which seems everywhere to prevail, that judges are more reliable when dependent upon popular impulses, or, in other words, when not above being affected by the prevailing popular sentiment. There is no possible instrument more susceptible of easy and unjust perversion by bad men, or which bad men more often use for the accomplishment of their own base purposes, than a suddenly excited and superficial popular impulse. And there is, of course, nothing through which a timid or time-serving judge would be more readily reached, or which would be more naturally resorted to for that purpose. The history of all judicial murders, and it is a dark page, and one by no means restricted to narrow limits—is marked at every step by the most awful extremes of popular frenzy. Neither Charles I., nor Louis XVI., were among the most arbitrary or tyrannical of the English or French Sovereigns. And there can be no fair question in the mind of any sound lawyer and loyal man that both these men were really the victims of rebellion and treason, and that those men who carried them to the scaffold would, in a change of relations, have been guilty of the very same offences which they affected to punish, in greater measure. That, indeed, was abundantly proved in the subsequent history of the two Governments. And still those acts had the most unquestionable sanction of present popular sentiment. And it is equally true that the monarch whom the English people, in the short period of half a generation, recalled to the throne with shouts of acclamation, was in no sense the equal, either in ability or virtue, of his unhappy father, who, by the verdict of the same popular sentiment, justly suffered the penalty of death for imputed crimes of which he is now, by the united voice of the nation, regarded as not guilty, and of which his idolized son was and is considered to be guilty in intent, certainly, if not, in all cases, in act. But it is, perhaps, the most conclusive argument in favor of the independence of the judiciary and of its superiority over all popular and political influences, that these calamitous consequences of popular frenzy, to which we have just alluded, both in England and France, have been the primary and efficient cause of establishing their judicial tribunals upon the high vantage-ground of absolute and unquestionable independence. And it seems wonderful that so unequivocal a testimony of

historical experience should not be more heeded by others.

There is one marked distinction between the jurisprudence of the English common and chancery law, and that the continental countries, based upon the Roman civil law, in regard to which there seems great difference of opinion. In the English Courts, and equally in the American, there is always supposed to be some precise technical rule by which the competency of each particular portion of the evidence is to be measured, and by which it must be rejected if found incompetent; and its effect in the case is supposed to become thereby entirely removed. We know that in practice this is not always possible to be done, and that causes will thus, sometimes, be determined upon the bias of mind unconsciously produced by the knowledge or the belief of the existence of incompetent evidence. But in the continental countries almost everything offered is received by the judge. And in the trial of matters of fact before the common law Courts in England and America, a somewhat similar rule prevails, on the assumption that the Court will be able to eliminate the portion of evidence which is competent, and only give effect to that in determining the case. And in the trial of eases in equity, a somewhat similar course of practice prevails, in allowing all fixed and immoveable exceptions to the competency of evidence to be reserved, and passed upon at the final hearing of the cause. But in France, we found on consulting with the most eminent members of the bar, there existed a very general impression that their Courts were enabled to do more perfect justice, in the particular cause, by disregarding all mere technical exceptions to the evidence, and giving every species of proof just such weight as its impression might be in the mind of the judge. It is asserted there, that the judge is never obliged to say, as is sometimes done in England and America, that although he has not the slightest doubt of the entire soundness of the claim or defence, it cannot be allowed, by reason of some formal defect.

There is another peculiarity in the administration of justice in France, which seems very singular to those who have not seen its practical operation. It grows out of having a separate department of justice in the cabinet, and a distinct minister of justice, who takes cognizance, not only of the administration of criminal law, but who, to a certain extent, assumes the supervision of the civil department of judicial administration, by having some subordinate agent or minister always present in all the higher courts to listen to the trials, and whenever he deems it of sufficient importance, to give his own views to the court in regard to the proper determination of the cause. Upon our first entering the Court of Cassation, the minister of justice, standing within the enclosure appropriated to the judges, was reading from an extended manuscript a formal and elaborate commentary upon a cause, the argument of which had been closed the day before, or perhaps, a few days before. It gave one, whose views of judicial administration were derived from courts constituted like the English or American, the idea of subjecting the Courts too much to cabinet or Governmental influence. It seemed very much like converting the court into a jury, and requiring them to listen to the comments of a superior. We have no means of forming any judgment upon the effect of any such course of trial, but we should expect that it would be likely to be of considerable weight in the determination of causes, if it were so managed as to beget respect, which would certainly be desirable and likely to occur in the administration of a government, so prudent and popular as that of the present Emperor of the French. An able and learned minister, in such a position, could scarcely fail to acquire great control over the decision of causes, and it would enable the ministry to exercise almost irresistible power in the determination of causes of international importance. We found the leading advocates of the French bar seemed to feel the importance of having causes of any considerable public interest, which came before the Court of Cassation, favorably introduced to the minister of justice, and, if convenient, by some advocate in the interest of the administration, or who was supposed to have its confidence. The working of this plan, which has existed for a very long period in some European countries,

has not been specially objected to by suitors, or by any one, so far as we know.

It is impossible not to admire much which exists in the Governmental administration in France. It is, unquestionably, an able and benign Government, and one which gives great satisfaction to the people. It is wonderful how little of aristocratic effect or pretension meets the eye of the traveller in Paris, and most of that character which one does find here, has more the appearance of a temporary importation than of being entirely indigenous.

There is, too, in the municipal administration of the large towns of the French Empire, a very surprising energy and zeal for improvement. The entire city of Paris, extending over many miles, is being pervaded by the opening of great thoroughfares with continuous lines of trees upon each side, and flanked by extended blocks of the most substantial and beautiful stone buildings, thus giving the entire city almost the appearance of a newly built town, with an air of great cleanliness and neatness. This, doubtless, has some disadvantages in constantly removing the evidences of date. All this is done by the municipality of the district. The proprietors of the land and buildings are required either to build, in conformity with the plan furnished by the public authority, or else to sell at reasonable prices. If the proprietors, whether owners or lessees, elect not to build, and demand such prices, either for value or indemnity, as are deemed exorbitant, experts are selected, and all questions of indemnity or compensation are referred to them—and it is said that, practically, no cases of dissatisfaction occur. It seems to be the chief study of the French Government, in every department, to give satisfaction to the people affected by its acts, and in doing so, to consult the future as well as the present, and to act upon the assumption, that the subjects of the empire will be controlled by considerations of reason and propriety, rather than by caprice.

There may be much in the genius of the people to favor the result, but it cannot fail to strike all beholders alike, that in all departments of Governmental administration, as well in the judicial as in the legislative tribunals, and equally in the multiplied ramifications of the executive bureaus, everywhere and at all times, the one great occasion for wonder and admiration is, how it should happen that every one, almost without exception, is made to feel so completely satisfied with all that befalls him, and equally with all that is inflicted upon him. It must be admitted that this is a great desideratum in government, and especially in the judicial administration. We have always regarded it as of scarcely less importance in the determination of causes, whether civil or criminal, that the parties immediately affected by them should feel their justice and propriety, and necessity even, than that they should be absolutely so decided. We know very well that a desire to render a judgment acceptable to the parties to be affected by it, may be carried to such an extent as to become a vice, or a weakness, and thereby most effectually defeat its object. But within reasonable limits, and when pursued by dignified and honorable means, the effort and desire to render governmental administration acceptable to those who are to be affected by it is certainly to be commended."

NATURALIZED AMERICAN CITIZENS.

A point of considerable interest arose at the trial of the Fenian Colonel WARREN. Being charged as a Fenian conspirator he produced his naturalization record as a citizen of the United States, and claimed the right of an alien, under the law of Edward III, to have a jury *de medietate linguæ*. Lord Chief Baron PIGOTT denied the application of the law to the case of WARREN, on the ground that no subject of Great Britain can alienate his allegiance.

This question, affecting the rights of millions of foreigners who have become naturalized in the United States, is, obviously, of considerable importance, and several American journals have urged, with some heat, that naturalized citizens should enjoy the same privileges as natives. It appears, however, that the question is far from being settled. In fact, Chief Baron PIGOTT cited from several American authorities, opinions which seemed to show that the American doctrine is not at variance with that of Great Britain. Thus, Judge STORY says: "There

is no authority which has decided, affirmatively, in respect to the right of expatriation, and there is a very strong current of reasoning opposed to it, independent of the known practices and claims of modern nations of Europe." Chancellor KENT says that the question has never been settled by judicial decision. Speaking of Americans, he adds: "The better opinion would seem to be that a citizen cannot renounce his allegiance without permission of the United States to be declared by law." On the other hand, the Supreme Court of the United States decided in 1827: "In the United States expatriation is considered a fundamental right. The doctrine of perpetual allegiance grew out of the feudal system, and became inoperative when the obligations ceased upon which that system was founded." And WOOLSEY, in his treatise upon International Law, says: "There is no doubt that a State, having undertaken to adopt a stranger, is bound to protect him like any other citizen. The nation which has naturalized him, and has thus bound itself to protect him, cannot abandon its pledges on account of the views of civil obligation which another nation may entertain." *Harper's Weekly*, one of the most moderate and dispassionate of American journals, referring to the case, adds: "Yet as matter of fact, the Government of the United States has always acknowledged that it would not defend a naturalized citizen against the claims of another Government for duties actually due before naturalization. Even Mr. CASS admits a certain claim. He wrote in 1859 to our Minister in Prussia: 'I confine the foreign jurisdiction in regard to our naturalized citizens, to the case of actual desertion, or of refusal to enter the army after having been regularly drafted and called into it by the Government.' Mr. WHEATON, Mr. WEBSTER, and Mr. EVERETT, did not claim as much as Mr. CASS. They held that if a country does not acknowledge the right of a native to renounce his allegiance, it may enforce its claims if he is found within its jurisdiction."

The demand of the Fenian leader for a mixed jury was, we think, one that could not and should not be granted; but it is obvious that in some instances, the rigor of the rule as to allegiance being inalienable must be mitigated. Thus in the war of 1812, it was found impossible for Great Britain to punish as traitors those of her subjects bearing arms against her, who had become naturalized in the United States.

The following account (from the *London Solicitors' Journal*), contains some hints as to the privileges of counsel which may be of interest.

"In the course of the trial of John Warren, one of the prisoners charged with high treason before the special Commission now sitting in Dublin, a point of some interest arose. The prisoner appears to be a natural-born subject, who has become naturalized in the United States, and under these circumstances he claimed, as an alien, to be tried by a jury *de medietate linguæ*. This was opposed by the Attorney-General and refused by the Court. Thereupon the prisoner, having been formally given in charge to the jury, said--

"As a citizen of the United States I protest against being arraigned, or tried, or adjudged by any British subject."

The Chief Baron—"We cannot hear any statement from you when you are represented by counsel."

The Prisoner—"Just a few words, my Lord."

The Chief Baron—"We cannot hear you. Your counsel is heard on your part. You pleaded 'Not Guilty,' and our course is now to proceed with the trial on that plea. We cannot hear any statement now from you when you are represented by counsel."

The Prisoner—"Then I instruct my counsel to withdraw from the case, and I now place it in the hands of the United States, which has now become the principal."

The prisoner's counsel then left the court, whereupon Mr. Adair said he was instructed by the Government of the United States of America to appear on behalf of six prisoners, to watch the proceedings and to report the manner in which the trial was conducted.

Mr. Justice Keogh—"Are you counsel for the prisoner at the bar?"

Mr. Adair—"I have been instructed by the Consul for the United States to watch the proceedings so far as certain cases are concerned, and when counsel withdrew from this he thought it right that I should interest myself on behalf of the prisoner. I want to know how far it is my privilege, as counsel, to act in this matter, and what course I should be justified in taking. I have no wish to interfere improperly in the case, but simply to do my duty."

The Lord Chief Baron—"If you are not acting as counsel for the prisoner we cannot allow you to interfere."

Mr. Justice Keogh—"If, on consideration, the prisoner thinks proper to dispense with the assistance of the other counsel, and to accept you, he is at liberty to do so."

Mr. Adair—"I have not been instructed by the prisoner."

Mr. Justice Keogh—"Then your interference is irregular and unprofessional."

Mr. Adair said he did not wish to interfere; he had simply addressed the court in the discharge of his duty. During the whole of his professional experience he had never volunteered in a case, and he thought the observation from the bench uncalled for and unnecessary.

While we heartily concur in the rule which excludes voluntary services on the part of counsel as a most necessary protection to the court as well as the profession, we cannot but think that Mr. Adair was placed in a position of some difficulty, such as fully warranted him in asking the direction of the court; and although Mr. Justice Keogh was probably right in holding that he could not interfere, the United States' consul not being a party to the proceedings, the manner in which he did so appears to us most uncalled for and reprehensible. Mr. Adair was instructed by the Government of the United States to watch the interests of its citizens; the prisoner pointedly threw the responsibility of his defense on that Government, and it does not seem to us that their consul could well have helped interfering to the extent he did—viz., to put the court in possession of the facts, and ask for their guidance."

PRIVY COUNCIL.

JAMES MACDONALD, Appellant; and JAMES LAMBE, Respondent; and MARY NICKLE et al., Respondents.

Action to recover land, part of a Seigneurie.—Adverse Possession—Prescription.

Action by *Seigneur* to recover possession of a piece of ungranted land forming part of his *Seigneurie*, against a party claiming under an informal deed from one who had no title deed, but who, with the defendant, had been in undisturbed possession for thirty years.

Held (affirming the judgment of the Court of Queen's Bench for Lower Canada) that a plea of prescription of thirty years' possession was a bar to the action, as: first, that it made no difference that during the time of such adverse possession the Seigneur had, under the Statute, 6 Geo. 4, c. 59, for the extinction of feudal and seigniorial rights in the Province of Lower Canada, surrendered the Seigneurie to the Crown for the purpose of commuting the tenure into free and common socage, the issuing of the Letters Patent re-granting the same being *uno flatu* with the surrender to the Crown; and that, both by the ancient French law in force in Lower Canada, as by the English law, prescription ran in favour of a party in actual possession for thirty years; and, secondly, that such adverse possession enured in favour of a party deriving title to the land through his predecessor in possession.

Held, further, that such junction of possession did not require a title, in itself *translatif de propriété*, from one possessor to the other; but that any kind of informal writing, *sous seing privé*, supported by verbal evidence, was sufficient to establish the transfer.

The appeals in these cases were from the decisions of the Court of Queen's Bench in Lower Canada, in two petitory actions brought by the Appellant against the Respondent to recover possession of certain lots of land in the district of Montreal. The facts and pleadings were the same in both cases.

The declaration alleged that, on the 20th October, 1832, the Hon. E. Ellice was, and for more than 20 years had been, in possession of the ungranted lands of the Seig-

neurie of Beauharnois, including the land claimed in the action; that on that date he surrendered them to the Crown, and that the Crown, by Letters Patent, re-granted them to him in free and common socage. The declaration then alleged a title in the plaintiff to the land in question, derived from Ellice, and averred that the defendant, about the year 1850, had taken possession of the land, and ever since kept it from the plaintiff; and prayed that the plaintiff be declared owner, and the defendant adjudged to deliver up the land, and repay the rent and profits he had received.

The case was dismissed by *Smith*, J., in the Superior Court, and this judgment was affirmed by the Court of Appeals, on the ground that the defendant had proved prescription.

The argument of counsel before the Judicial Committee is noteworthy, from the fact of its raising an old question. The following is an extract: "But an important question arises with respect to the governing law of prescription to be applied. We contend that the Court below miscarried in applying the ancient French law to the case. The law that governs it is the English law. The Proclamation made on the cession of Canada, in the year 1763, introduced the English law by right of conquest. It is true the effect of the Proclamation, as to the full extent of the introduction of that law, has been doubted, as it does not mention in express words "English law." The Statute, 14 Geo. 4, c. 83, however, by implication, makes the Proclamation to this extent apply to English law, even if it had not been so before. The Statute, 6 Geo. 4, c. 59, was passed to remove doubts as to certain matters, but section 8 does not abrogate the English law, being the governing law." The counsel for the Respondent answered: "No serious doubt can be entertained that the law to govern the case is the old French law prevailing in Lower Canada. Such a point was never before taken in the numerous appeals to this Tribunal from Lower Canada, where the rights of the parties have always been regulated by the old French law."

Lord Cairns:—The actions in which these appeals are brought were petitory actions to recover possession of two pieces of ground in the 5th range of Russeltown, in the Seigniory of Beauharnois. It was admitted in the argument before us on behalf of the Respondent, that the land in question formed a part of the Seigneurie of Beauharnois, as originally granted in 1729 by the French King, Louis XIV. The judgment delivered in the primary Court in Lower Canada by Mr. Justice Smith in favour of the Respondents proceeds upon the principle that the Respondent and Goodwin, his predecessor, had been in possession of this land from 1807, and that this possession must be taken to have been by permission of the Seigneur, and that, therefore, the Seigneur could not eject the Respondent, but only claim from him rights and dues such as a tenant should render to his Seigneur. This view of the case was again pressed in argument upon these appeals, but their Lordships are of opinion that, although there may be some facts appearing in the evidence which would form a ground for such an argument, the pleadings between the parties render the argument inadmissible. The Appellants in both the appeals allege in their declaration that the Respondent wrongfully, and without any title, took and obtained possession of the land, and has kept illegal possession of it, and pray delivery of it. The Respondent, on the other hand, alleges a seisin of the lands in 1807 by Goodwin, a transfer in 1833 from Goodwin to the Respondent, and that the land has been peaceably, openly, and uninterruptedly possessed and enjoyed by Goodwin and the Respondent, *animo domini*, from 1807 to the present date, and that the Respondent has a right to be declared proprietor and owner of the land. Their Lordships are of opinion, with the Court of Queen's Bench of Lower Canada, that the case is thus put on both sides as one of adverse possession, and that what the Respondent has undertaken to prove is not a tenure, express or implied, under the Seigneur, but a title by prescription,

for thirty years and upwards, against the Seigneur. The first question, therefore, is one of fact: in whom has the possession of the land been for thirty years prior to 1855? If possession has been *de facto* in Goodwin and the Respondent, that possession is admitted to be an adverse possession. It appears that one Levy Petty was in possession of the lot in 1807, in which year Goodwin took possession of it; that a house was built upon it in Petty's time, which Goodwin at first occupied, but afterwards built a house for himself; that there was a pretty large clearing when Goodwin came; that Goodwin laboured and cropped the land, and was a married man living with his family; that Goodwin paid the bridge-tax for the lot, and that the whole of the lot was known as the Goodwin Lot. The possession of the whole by the Respondent from 1833 is still more clearly proved, and was, in fact, little, if at all, disputed. There is, however, a piece of evidence coming from the Seigneur himself, or his agents, which their Lordships look upon as still more conclusive of the fact of possession. It appears that in the year 1828 steps were taken, upon the death of Mr. George Ellice, the former Seigneur, to require from the persons then holding the lands an exhibition of the titles under which they held. A list is given of the persons then found in possession of the lots in Russeltown on whom circular notices from the agents of the Seigneur were served, and the name of David Goodwin is there entered as the person in possession of lot 16 of the third section; service being stated to have been made by delivery of the circular to his wife, and speaking to himself afterwards. His possession is treated as a possession of the whole lot, for a distinction is made in other cases where a lot is possessed in halves by different persons; and the proceedings in 1828 are upon the footing of the persons mentioned in the list having been in possession for some time. The result of these proceedings is, for this purpose, immaterial; but what has been stated is evidence of the most satisfactory description that the agents of the Seigneur, in the year 1828, found Goodwin in possession of the whole lot, and this evidence, coupled with the testimony in the case, establishes, to the entire satisfaction of their Lordships, a possession by Goodwin and the Respondent of the whole lot for upwards of thirty years.

The other questions in the case are questions of law. Goodwin gave up possession to the Respondent in 1833; but it was contended that the document by which he made over his title was insufficient to connect the possession of Goodwin with that of the Respondent. First, because it was a document *sous seing privé*, and, therefore, without date as regards third parties; and, secondly, because it was not an instrument amounting to a conveyance and *translatif de propriété.** Both these objections were overruled by the Court of Queen's Bench, and, as their Lordships think, rightly: The first of the objections, viz., that the document is *sous seing privé*, was little argued by the Appellant; and their Lordships do not think it necessary to add anything to the reasons for disallowing it given by Mr. Justice Meredith. As to the objection that the paper is not a conveyance *translatif de propriété*, it would, their Lordships think, be somewhat remarkable if, where the real object is to show that an incoming occupier claims under and by way of direct continuation of the occupation of an outgoer, and where at the time there is no real title to be conveyed, an instrument adapted to pass a real title should be required. Their Lordships think, however, as did the Court below, that there is no foundation for this objection in any of the authorities which have been cited. The authorities speak of a predecessor and successor, of the successor claiming by contract or by will, and of a legitimate continuation of possession; and they are careful to negative as a suffi-

* The document was in these terms: "Russeltown, Sept. 21st, 1833. This may certifey that I do this day sell, convay, and give up all right, title, and clame that I have, or ever had, to the lot of land I know receide on to James Lamb, being lot No. seveneteneth in the third section. David Goodwin. James Richardson, Patrick Mahon, Witeness."

cient connection the mere fact that one possession has immediately preceded the other, and they do no more than this. There is in the present case ample proof from the paper, and from the parol testimony, of a *bona fide* sale from Goodwin to the Respondent, and of possession taken and continued under that sale; and this, in their Lordships' opinion, is sufficient.

The Appellants contended, however, that inasmuch as under the Statute, 6 Geo. 4, c. 59, Mr. Edward Ellice, the Seigneur, had, by the surrender of the 20th of October, 1832, vested the Seigneurie, and the ungranted lands thereof, including, as was said, those now in question, in the Crown, to be re-granted in common socage, there was an interruption in the prescription, since no prescription would run against the Crown. Their Lordships do not think it necessary to consider how far, under any circumstances, this argument could be maintained, inasmuch as in the present case they find that no acceptance of the surrender by the Crown was made until the grant of the 10th of May, 1833, so that the land was surrendered and regranted *uno flatu*, and merely as a mode of converting the tenure, and there never was any possession or ownership of the land by the Crown.

Their Lordships have assumed, as was ultimately conceded by the counsel for the Appellant, that the case falls to be decided, so far as any question of law is concerned, by French law. But if principles of English law were to be applied, the prescriptive title of the Respondent would not, in their Lordships' opinion, be less strong. Their Lordships will humbly advise Her Majesty that both these appeals should be dismissed with costs.

RENAUD *v.* TOURANGEAU.

It is with much pleasure that we learn the decision on the appeal to the Privy Council in this suit, confirming the judgment of Mr. Justice TASCHEREAU, and also in accord with the opinions of Chief Justice DUVAL, and Chief Justice MEREDITH. The case may be found reported at length 7 Jurist 238. The history of the case may be summed up as follows:—

The Appeal to the Privy Council was instituted by J. B. Renaud, from two judgments rendered in the Court of Queen's Bench, Quebec, one on the 16th of March, 1863, and the other on the 17th of March, 1865, in favour of Joseph Guillet dit Tourangeau, against whom previous decisions had been given by Mr. Justice Taschereau in the Superior Court. The case turned upon the validity of a clause in the will of Tourangeau's father, whereby the testator directed that Tourangeau should not in any manner, encumber, affect, mortgage, exchange, or otherwise alienate the immoveable property given to him, by the will, until after *twenty years* from the death of the testator. The property, however, became mortgaged by him to Renaud within the twenty years, and upon being taken in execution, at the suit of Renaud, for the satisfaction of this mortgage, Tourangeau, by opposition, pleaded the nullity of the seizure, and the exemption of the property from the payment of debts within the period above mentioned. Mr. Justice Taschereau gave judgment on the 5th May, 1862, dismissing the opposition of Tourangeau on the ground that the clause in the testator's will, prohibiting the alienation, was void under the law of the country, holding that the property so seized should be sold to satisfy the mortgage. From this judgment Tourangeau appealed to the Court of Queen's Bench, which Court, on the 16th March, 1863, reversed the decision of Mr. Justice Taschereau, maintaining that the clause in the will, prohibiting the alienation by way of mortgage, was valid. This judgment was rendered by a bare majority of the Court, consisting of Mr. Justice Aylwin, Mr. Justice Mondelet, and Mr. Justice Berthelot, the two latter acting as Assistant Judges of the Court. Mr. Justice Duval and Mr. Justice Meredith dissented from the decision, being of the same opinion as Mr. Justice Taschereau. The record was accordingly transmitted to the Superior Court for further proceedings on the opposition of Tour-

angeau, the question in appeal having been determined on a mere question of law; and in such a form as not to admit of an appeal to the Privy Council at that stage of the proceedings. In fact the Court of Appeals refused to allow it, on the ground that their judgment was interlocutory and not final. The point came again before Mr. Justice Taschereau, who, on the 15th of April, 1864, gave judgment for Renaud, on the same grounds as those expressed in his former judgment, stating that the judgment of the Court of Queen's Bench having been interlocutory, and an appeal to Her Majesty in Council having been refused on that ground, the judgment was not binding on him, and that he adhered to his former judgment. From this judgment Tourangeau again appealed, when the majority of the Court in Appeal were of the opinion that, although the judgment of the Court below, as to the invalidity of the restriction in the will, was well founded, the former judgment of the same Court was binding on the parties, subject only to revision by the Queen in Council. The Court was then composed of Chief Justice Duval, and Justices Aylwin, Meredith, Drummond, and Mondelet. The Chief Justice and Judge Meredith adhered to their original opinion, and Mr. Justice Drummond coincided with them as to the nullity of the clause in the will, but all three were of opinion that the previous judgment of their Court was final, and bound them to act in accordance with it, although contrary to their own individual opinions. The judgment on the point as rendered by Mr. Justice Taschereau was accordingly again reversed. On this reversal, Judge Aylwin and Judge Mondelet adhered to their previously expressed opinions, as to the clause in the will being valid, but the latter differed from the entire Court, as in his opinion the previous judgment in appeal was merely an interlocutory judgment, and the majority of the Court as composed of Chief Justice Duval, Meredith, and Drummond, could reverse it according to their opinions on the real merits of the clause in the will.

From the judgment of the Court of Queen's Bench, rendered on the 29th September, 1865, and from the interlocutory judgment of the 10th of March, 1863, an appeal was instituted by Renaud to the Privy Council, by which tribunal both judgments were reversed and the two judgments of Mr. Taschereau confirmed, with costs in favor of Mr. Renaud.

SUPERIOR COURT IN REVIEW.

Montreal, Nov. 28, 1867.

DOUGLASS *v.* WRIGHT, and BROWN, opposant.

Insolvency—Assignee—Insolvent Act of 1864.

Held, that an assignment made by an insolvent to an official assignee not appointed as such for the district or county in which the insolvent has his place of business, is null and void.

The question raised in this case was the validity of an assignment made by an insolvent doing business in Sorel, to an official assignee appointed for the district of Montreal.

MONK, J., dissenting, was of opinion that the assignment made in the present case by Wright, an insolvent, resident in Sorel, to Mr. T. S. Brown, an official assignee for the district of Montreal, was legal and valid.—By the Act of 1864, the bankrupt could only assign to an assignee resident within the district or county where the bankrupt had his domicile, but in the amended Act of 1865, this clause had been omitted, and his Honor believed, after careful consideration, that the insolvent might assign to the official assignee of another district. Further, there was nothing in the record to show that there was an official assignee in the district of Richelieu. Apart from this, assignments similar to the present had been made in many cases, and these assignments had been followed by deeds of composition, sanctioned by the Court.

MONDELET, J. The opposant is an official assignee appointed for the district of Montreal, under Sec. 4 of the Insolvent Act of 1864. The defendant is a resident of the District of Richelieu. The moveables of the defendant have been seized at the town

of Sorel, where he resides, in execution of a judgment obtained by plaintiff against him. The opposant, pretending that the defendant has made a legal cession of his estate to him as official assignee, opposes the *saisie et execution* above mentioned. The Circuit Court of the District of Richelieu has dismissed the opposition on the principle, 1st. That Brown is not a *Syndic* or assignee for the District of Richelieu, but only for the District of Montreal. 2nd. That there is at the town of Sorel and there was at the time of said session, a *Syndic* or assignee. The judgment, of course, declares the cession to Brown null and of no effect. I entertain no doubt on this very plain point. By the Insolvent Act, the Board of Trade of any locality may appoint any number of assignees in the county or district wherein is situate such Board of Trade, *or* in the county or district adjacent, where there is no Board of Trade. Now Mr. Brown has been appointed for the District of Montreal and no more. If there be no Board of Trade in the District of Richelieu, the Board of Trade of the adjoining District can appoint an assignee or any number of assignees for the District of Richelieu. If such *syndic* or assignee does exist, of course the cession should have been made to him; if none has been appointed there, no such cession could take place. In either case, the cession to Brown is null and void. In vain is the 2nd section of Chap. 18, 29 Vict., the Amending Act of 1859, invoked: it merely enacts that a voluntary cession may be made to any assignee appointed *under the said Act of* 1864. If under the Act of 1864, the Board of Trade, or the Council thereof, could name assignees only for the County or District wherein it is situate, *or* for the adjacent County or District if therein there is no Board of Trade, it is plain that a cession to a *syndic* not specially named for the County or District where the insolvent resides, and in which the insolvent carries on his trade, is an utter nullity, and in this case very properly so declared by the Circuit Court of Richelieu, (*Loranger*, J.) Besides it is of record that there is no official assignee at Sorel. But, as above remarked, it matters not whether at Sorel there is or is not an official assignee. The sole question is as to whether Brown is or is not appointed for the District of Richelieu. He being an assignee only for the District of Montreal, he had no authority to receive the voluntary assignment of the defendant, though it has or may happen to have been made in the District of Montreal. If the contrary doctrine were maintained, it would open the door to innumerable frauds. An insolvent from Rimouski, or any distant part of the Province, might come up and make an assignment in Montreal, and thus out of sight of his creditors, carry on an operation unknown to them. And inasmuch as that assignee should and ought to be controlled by the Court within the jurisdiction of which is situate *le siége des opérations du failli*, it is easy to apprehend at once *que le failli aurait ses coudées franches*. Wherefore, on the law first, on the consequences, next, I frame my opinion, and conclude by saying that the judgment appealed from is strictly correct and should be confirmed.

Berthelot, J., concurred.

SUPERIOR COURT.

CORNELL v. THE LIVERPOOL AND LONDON INSURANCE COMPANY.

Montreal, June 10, 1867.

Insurance—Prescription.

Monk, J. This is an action on a policy of insurance to recover for loss by fire. There were two points relied on by the defendants; first, that the policy of insurance required a particular statement to be sent in. The Court might, perhaps, have got over this difficulty under the circumstances proved, but the second objection was that under the law it was absolutely necessary that the action should be brought within a year, and in this instance two or three years had elapsed. His Honor was at first under the impression that this prescription was one which the Court need not enforce, but after examining the authorities sent up, he felt satisfied that he was bound to enforce this prescription. The authorities were

almost unanimous, and he had no hesitation in saying that they were conclusive. This action must, therefore, be dismissed with costs.

A. & W. Robertson, for the Plaintiff.

F. Griffin, Q.C., for the Defendants.

SUPERIOR COURT.

Montreal, 5th October, 1867.

MORIN, FILS *v.* MEUNIER.

Settlement of Accounts—Disputed Credits.

MONK, J. It appeared that in 1865 Morin and Meunier entered into an arrangement, under which Morin was to purchase corn for Meunier, and was to receive a certain commission upon the amount of his purchases. He proceeded to purchase corn in virtue of this arrangement to the amount of $5,000 or $6,000. During the existence of this arrangement Meunier was in the habit of paying considerable sums to Morin in liquidation of the amount the latter had paid for the corn. The last of these payments by Meunier to Morin was on the 4th of November, 1865. Immediately after the contract had been executed, difficulties arose between the parties about their accounts. There was one peculiarity in this case that was worthy of notice. Morin sent in a statement of purchases made by him, and both parties agreed that this statement was entirely correct. Morin, although he might be an ignorant man, and not much versed in keeping accounts, nevertheless seemed to have kept his accounts in this matter with great care and exactitude. The difficulties that arose between the parties resulted from payments made by Meunier to Morin. It did not appear that Morin kept any particular account of these payments. It was true there were two statements filed as exhibits which purported to be an account of the payments made, but there was a motion to reject these papers, and this motion must be granted, because the Court did not think that they could be received as evidence. The Court had, therefore, to deal with the receipts given by Morin to Meunier. It appeared that Meunier had sued Morin for a balance due, in another jurisdiction, at Joliette, which action was connected with this affair, but the Court did not regard this as having any importance in connection with the present suit. With his declaration, Morin, the plaintiff, had filed a statement of the corn he purchased, and the defendant acquiesced in the correctness of this statement. The plaintiff also gave credit for certain sums received. There were two items, one of $180, and another of $600, which alone gave rise to any dispute. If the Court had it in its power to dispose of these two items, the case would be clear enough. Taking up first the item of $180, it would appear that this $180 was paid by Meunier's clerk to Morin. There was no dispute on this point, because there was his receipt for the sum. The receipts were all kept by Meunier in two small books, with the exception of the one for $180. The receipt for this sum was written in pencil in a small dirty book which had always belonged to Meunier and had been in his possession. In looking at this receipt, it was manifest to a practised observer that it was originally $200 or $300, and had been changed from that figure to $180. That was the amount paid by Meunier's clerk to Morin. There was no difficulty with regard to the fact that this sum of $180 had been paid. The whole pretension of Morin was that this $180 could not be charged, for this reason: On the the 10th of October Morin received $300, and it was contended by him that the $180 in question was included in the $300 paid at this time, and that the defendant sought to obtain credit for the same sum twice over. Dealing first with this $180, the Court had the receipt before it, and it had also before it another receipt given on the second day after for $300. It was the duty of the Court to say either that this sum of $180 must be included in the $300, or that it must stand alone. There is no principle of law more clearly acted upon than that receipts are by no means conclusive evidence. They do constitute *prima facie* evidence, but it is competent for the parties to prove that the money was not received. Morin had attempted to do this. There was evidence to the effect that Morin, after becoming aware that there was an overcharge of $180, on coming to Montreal, was again desirous of entering into business transactions

with Meunier, by selling him oats. They began to speak of this $180 which had been paid by the clerk, and although there was nothing definite in what was said by either of them, yet it was certain that Morin expressed his belief that this $180 was included in the $300. Meunier seemed struck by this, and appeared desirous of leaving it to the clerk. His Honour was of opinion that it must be assumed the matter was settled according to the pretension of Morin, and he thought there was sufficient to justify him in saying that this $180 was in reality included in the receipt for $300. That point in the case was thus disposed of. Next, as to the receipt for $600; if it was possible for the Court to arrive at a just conclusion upon that point the case was disposed of. It was certain that on the 21st of September an amount of money was paid to Morin. The circumstances were briefly these: Morin was in want of money. He sent a man to Meunier at Montreal. This man said that when he arrived Mad. Meunier told him her husband was absent, and that she could only give him $50. When the messenger returned to Morin with the $50, the latter said he was sorry, as he wanted more. This corroborated the man's statement that he had only received $50, (instead of $100 as pretended,) as it was hardly probable that he would run the risk of abstracting $50 before handing it to Morin. His Honour was inclined to believe from the corroborative testimony that this man only received $50. The following day Morin came to Montreal from Repentigny for more money. Chaput, the clerk, stated that the money was brought out and counted, and put up in *rouleaux* of $10, and packages of $100, to the amount of $500. There was no one present but Morin, Meunier and Chaput. After the money was put up, Morin went in behind the counter to draw a receipt. Just then Meunier's wife came in and said, don't forget the $100 paid yesterday, which would make $600. Chaput went away after seeing Morin begin to write. He did not see him put up the packages, he did not see the money in his possession, but he was certain of all the facts just narrated. Now one theory was that Morin went inside to write a receipt for $500, and that when Madame Meunier came in, he struck his pen through the "5" and wrote "600." It was evident from a careful examination that this receipt was first 50 or 500. On the other hand it was a little remarkable that of all the receipts of Morin, this was the only one in which the amount was not mentioned in writing, but in figures only. His Honour had to bear in mind that there had been a very serious mistake in the first place respecting the $180, and that Meunier had attempted to charge this sum twice. He did not consider that this mutilated receipt was at all conclusive as evidence whereon to base a judgment of the Court. He must see whether it was sustained by the evidence of Chaput. Now, Chaput, besides the fact of his being in Meunier's employ, and of his being mixed up in the affair, had fallen into some contradictions. It also appeared that after his deposition had been begun, he left the *enquête* room, and went into the passage with Meunier. This was a gross impropriety in a witness. From this circumstance, and the fact of their being some peculiar evasions and contradictions in his testimony, the Court was not disposed to place implicit reliance in it. It would have been in Meunier's power to take Morin upon his oath, but he had not done so. The Court had refused to administer the judicial oath, as there appeared to have been a great deal of feeling exhibited in the case. Upon the whole, then, his Honour was inclined to think that there had been an error, he would not say there was fraud. With very great hesitation and difficulty, he had come to the conclusion that the plaintiff's case was made out, and that judgment must go for the amount claimed.

Piché, for the plaintiff.

Jetté & Archambault, for the defendant.

DONEGANI *v.* MOLINELLI, and E. *Contra.*

Statute of Frauds — Commencement of Proof—Tender.

MONK, J., said that this was a case which had given him a great deal of trouble, and it was one of those in which it was difficult for the Court to come to a decided opinion. A poor man named Molinelli came to Montreal and made the acquaintance of Donegani, who advanced him money from time to time in

small sums. Molinelli was a skilful mechanic, and made some repairs for him. In 1865, a provincial exhibition was to take place. At this time Molinelli was trying to work himself into notice in Montreal, and Donegani was co-operating with him. They conferred about the approaching exhibition, and Donegani suggested that it would be a good idea for Molinelli to exhibit a piece of furniture. Molinelli acquiesced in this proposal, and setting to work, made a sideboard nine feet high, an article of great beauty and perfection, but an unusual piece of furniture in size. Very few men would like to have such an extraordinary piece of furniture in their houses; but to have it in a small house like Donegani's would be insanity. Molinelli went on with his work, and Donegani came to inspect it from time to time, and also furnished the old velvet used in the making of it. The sideboard was exhibited, and subsequently taken back to his shop. Donegani now began to be pressing about the money he had advanced, whereupon Molinelli said, here is the sideboard I made for you, worth $700, which will more than pay you, you had better take it. This was in the early part of November, and on the 17th of November Molinelli protested Donegani, and his wife who was separated as to property. He sent a notary and said, this sideboard has been ready a long time; you had better take it. Donegani seemed to have been very much astonished at this, and on the 27th brought the present action for the moneys advanced. The plea was that the sideboard was made for the plaintiff, and was worth more than the plaintiff claimed. There was a good deal of difficulty about the evidence. The first question was a question of law. The defendant had no writing amounting to a *commencement de preuve par écrit.* It was contended that there was a commencement of proof in the answers of Donegani. His Honour had examined them carefully, but did not find anything. The defendant urged that it required very little to constitute a *commencement de preuve*—evasive answers, &c.; but Donegani's evidence did not in any part disclose sufficient to enable his Honour to say that there was a *commencement de preuve.* As to what constituted a commencement of proof, a good deal was left to the discretion of the Court, and would depend upon the circumstances of the case. This was a commercial case, and in these cases we were obliged to have recourse to the rules of evidence laid down by the laws of England. Now, under the English law and the Statute of Frauds, the plaintiff had argued that this evidence was not admissible. It was contended by the defendant that the order could be proved by parol evidence, but on referring to the 539th page of the Consol. Stat. L.C., it would be observed that the provisions of the English Act were extended in Lower Canada to contracts for goods to the value of $48 66⅔, and upwards, "notwithstanding the goods are intended to be delivered at some future time, or are not at the time of such contract actually made, procured, or provided, or fit or ready for delivery, or some act is requisite for the making or completing thereof, or rendering the same fit for delivery." This act was based upon the jurisprudence in England, and the words of this clause clearly met the present case. The prohibition applied to the order as well as to the sale and delivery, and, therefore, it was not in the power of the defendant to produce parol evidence either of the order or the sale, or the delivery; therefore the motion to reject this evidence must be granted. But for the satisfaction of the defendant the Court might go further and examine this testimony. What did it amount to? In the first place his Honour had already adverted to the extreme improbability of any man ordering such a piece of furniture. It was possible that Mr. Donegani might be such a peculiar or extraordinary man as to order an expensive piece of furniture, and then say he did not order it; but unless he was mad he could not have ordered such a sideboard as this. It was too big to go into his room. Further, was it probable, if he had ordered this side-board, that it would have been taken from the exhibition back to the defendant's shop? It was very strange also that the defendant would allow such a length of time to elapse without calling upon the plaintiff to take it. There was another circumstance to be mentioned: On the 17th November, when the defendant tendered the sideboard to Mr. and Mrs. Donegani, it was

not in his possession, but was at the Jesuit's College. He had previously sold it to one Lamontagne. But it was said this was only a transfer by way of pledge to secure advances made to Molinelli who was to make pews there. There was a regular bill of sale, however, so that at the very time that Molinelli tendered the sideboard to the plaintiff, it was in the possession of another man. Then after the contract for the pews was completed, the sale to Lamontagne was resiliated, and the sideboard was taken back to the defendant's store. This, on the other hand, would justify the Court in thinking there could not have been a sale. Further, one Olivier Berthelet was taken one day to Molinelli's shop by Donegani himself, and there he was told in the presence of Molinelli, look at this beautiful sideboard I am getting made for myself. This evidence, however, was illegal; and considering that Molinelli failed to tender the article before the 17th November, and that he had previously transferred it to another man, and taking both the equity and the law of the case, the Court was upon the whole reluctantly compelled to say that the plea of the defendant must be rejected, and the plaintiff's action maintained.

Moreau & Ouimet, for the Plaintiff.

Loranger & Loranger, for the Defendant.

ONTARIO CASE.

DEVLIN v. MOYLAN.

Toronto, Sept. 30, 1867.

Pleading several matters—Libel — Fair comment on public acts.

The alleged libel purported to be founded on information given to the defendant by a "resident of this city, yesterday" (meaning the day before the publication). One of the pleas sought to be pleaded, alleged that the *gravamen* of the charge was matter of public notoriety and discussion," and that the words used were a fair comment, &c., and making other statements which, it was alleged, would enable defendant to introduce evidence of irrelevant matters.

Held, that a general plea that the publication was a fair *bona fide* comment, &c., might be pleaded; but the plea, as now framed, was inconsistent with the words used in the alleged libel, and could not be allowed.

This was an action for an alleged libel in the *Canadian Freeman*. The words complained of were as follows:— "1844—What became of the repeal rent? An old repealer, a resident of this city, informed us yesterday, that in 1844, Mr. Barney Devlin was the recipient of a considerable sum subscribed towards the cause of repeal, that did not reach the Conciliation Hall; could not Mr. Hanly, or Mr. Brennan, or some of the old residents of Montreal West, ask Barney for some information on this important point? by all means let there be light thrown on the repeal rent."

The defendant proposed to plead, with others, the following plea: "That before, and at the time of the publication of the alleged words, the defendant was a candidate for the representation of the Western Electoral Division of the City of Montreal, in the House of Commons in Canada; that during his candidature, questions arose and were publicly discussed as to certain contributions of money which the defendant had received in 1844, in the public capacity of Treasurer, to promote the repeal of the union between Great Britain and Ireland, and which it was publicly alleged had not been paid over for that purpose; that the said questions as to the receipt and disposition of such money, were matters of public notoriety and discussion, and were and are matters which it was lawful, fit, and proper to discuss in reference to the defendant's said candidature, and the alleged libel was, and is, a fair comment in a public newspaper on the public acts and conduct of the defendant; and the said words were published by the defendant believing the same to be true, and without any malice."

McKenzie, Q.C., opposed the allowance of the plea, because it would enable the defendant, improperly, to introduce evidence of many irrelevant matters, and that the plea, if allowed at all, should be simply, that the publication was a fair comment upon the plaintiff's conduct and proceedings.

ADAM WILSON, J. The alleged libel purports to be founded on information given to the defendant by "an old repealer, a

resident of Toronto, yesterday," that is, the day before the publication; while his plea professes to rest the excuse and justification for the publication, upon the fact that the matters of the libel were the subject of public notoriety. These do not seem to me to be at all consistent with each other. The defendant is apparently shifting his ground from that which was expressly taken at the time of the publication. That which he learned afterwards—assuming that he did so learn it all, can, in the nature of things, be no excuse or justification for what he did before he did learn it. I cannot allow the plea as at present framed; but if the defendant choose to frame it as a general plea, that the publication was a fair and *bona fide* comment, &c., I will allow it for what it may be worth. In an action of this kind, the defendant should be allowed every reasonable opportunity to excuse or justify his conduct, consistent with the plaintiff's rights, and the fair and convenient prosecution of the action.—*U. C. Law Journal.*

RECENT AMERICAN DECISIONS.

Nuisance — Tomb erected on Land. — A tomb erected upon one's own land is not necessarily a nuisance to his neighbor; but it may become such from locality and other extraneous facts. Plaintiff proved that defendant's tomb, erected within 44 feet of the former's dwelling-house, contained, in 1856, nine dead bodies, from which was emitted such an effluvium as to render his house unwholesome; that, after an examination by physicians, the bodies were removed; that the tomb remained unoccupied thereafter until 1865, when another body was interred therein; that the plaintiff's life was made uncomfortable while occupying his dwelling-house, by the apprehension of danger arising from the use of the tomb; and that the erection and occupation of the tomb had materially lessened the market value of his premises. In an action for damages on the foregoing facts: *Held,* a non-suit was improperly ordered. *Barnes* v. *Hathorn,* 7 Am. L. Reg. 81.

Engagement at Fixed Salary—Wrongful Discharge.—Where a person employed for a certain term at a fixed salary, payable monthly, is wrongfully discharged before the end of the term, he may sue for each month's salary as it becomes due; and the first judgment will not be a bar to another action for salary subsequently becoming due. *Huntingdon* v. *Ogdensburgh and Lake Champlain Railroad Co.,* 7 Am. L. Reg. 143.

Liability of Carrier.—A carrier may by special contract limit his liability except as against his own negligence. Where a person delivers goods to a carrier and receives a bill of lading expressing that the goods are received for transportation subject to the conditions on the back of the bill, by one of which the carrier's liability is limited to a certain rate per lb., this constitutes a special contract by the parties, and the carrier, in the absence of proof of negligence, is only liable at the rate agreed upon. *Farnham* v. *The Canadian and Amboy Railroad Co.,* 7 Am. L. Reg. 172.

Carrier.—Plaintiff took passage on the steamer of the defendants, and paid her fare, which included her board on the passage, a state-room, and lodging. She was assigned to the room by the proper officer of the boat: and another woman, a stranger to the plaintiff, was afterwards assigned to the same room. The plaintiff, when she went to bed, left her dress, in the pocket of which was her portmonnaie, with some personal jewelry, and money for her travelling expenses, on an upper unoccupied berth. During the night, while the plaintiff was asleep, the money and jewelry were claimed to have been stolen, but whether by some one from without, or by the other woman within, did not conclusively appear, though the evidence tended to show that it was stolen from without, through a window which the steward of the boat knew to be broken. As to whether the defendants were liable for the property, if stolen, the court were equally divided, two of the judges holding the defendants liable, as carriers, to the same extent an innkeeper would have been for a similar loss by a guest oc-

cupying a room at his inn, and the other two denying such liability.—*McKee* v. *Owen*, 15 Mich. 115.

Evidence.—Upon a trial for rape, if the woman alleged to have been forced is examined as a witness for the State, she may be asked on cross-examination, whether at a specified time and place she had illicit intercourse with a certain person named, other than the prisoner.—*State* v. *Reed*, 39 Vt. 417.

Innkeeper.—The price of entertainment furnished by an innkeeper to an infant, not knowing that the latter is acting contrary to the wishes of his guardian, may be recovered by him, and he has a lien on the baggage of his infant guest for such price, and also for money furnished the infant, and expended by him in procuring necessaries. An innkeeper is bound to entertain all guests apparently responsible and of good conduct; and the mere fact of infancy alone in the applicant would not justify him in refusing. Hence, although an infant may in general avoid his contracts which are not for necessaries, yet the law will not allow him this privilege when the contract is, as in this case, legally compulsory on the part of the adult.—*Watson* v. *Cross*, 2 Duvall 147.

Insurance.—A policy of insurance against fire provided that, in case of loss, the insured should give immediate notice, and as soon as possible render under oath a particular account of such loss, "stating whether any and what other insurance has been made on the said property, *giving copies of the written portions of all policies thereon.*" The insured, in his affidavit, stated that there were $300 additional insurance made on the property; viz: a policy believed to be dated Jan. 27, 1863, and numbered 6,736, in the Mechanics' Mutual, of Milwaukee, Wis., on the building;" and that he was unable to furnish a written copy thereof, because the policy had been mislaid, and the company had no record of the written part of it. *Held*, that the furnishing such copies was a condition precedent to the plaintiff's right of recovery, and that he had not complied therewith.—*Blakeley* v. *The Phœnix*, 20 Wis. 205.

2. When it is provided in a policy of insurance that all claims are to be barred unless prosecuted within a year from the date of the loss, the condition is complied with by commencing an action thereon within the year, and in case that action is abandoned for good cause, and another instituted promptly, but after the expiration of the year, the assured is not barred.—*Madison Ins. Co.* v. *Fellowes*, Disney, 217.

Legal Tender.—A great many decisions are being rendered on this point in the United States, and as we now have legal tender notes in Canada, it may be interesting to cite a few of the American cases.—1. Congress has constitutional power to issue Treasury notes of the United States and make them lawful money, and a legal tender for the payment of debts. 2. The Act of Congress of Feb. 25, 1862, authorizing the issue of such notes, is constitutional. 3. The principal sum which redeems a ground rent is a debt within the meaning of the Act. 4. A ground rent, payable in "——dollars, lawful silver money of the United States of America," is redeemable by such notes.—*Schollenberger* v. *Brinton*, 52 Penn. St. 9, 100.—5. So the half-yearly instalment of a ground rent, payable in "——dollars, lawful silver money of the United States, each dollar weighing 16 dwt. 6 gr., at least."—*Mervine* v. *Sailor*, *ib.* 18, 45, 102. 6. So a certificate of deposit of "625 dollars, gold, payable in like funds, with interest."—*Sandford* v. *Hays*, *Ib.* 26.

Telegraph Company.—In an action by the defendant in error to recover damages resulting from the incorrect transmission of a message from Detroit to Baltimore over the plaintiff's lines, it appeared that the message was written upon a blank furnished by the company, on which was printed a notice calling attention to certain regulations established by them, printed on the back, and requesting them to send the message subject thereto; among others, that the Company would not be responsible for errors or delay in the transmission of unrepeated messages; that an additional

charge would be made for repeating messages; and that it would assume no liability for the errors or neglect of any other company over whose lines the message might be sent to reach its destination. The plaintiff's lines only extended to Philadelphia, to which point the message was correctly sent. It also appeared that the defendant had never read these regulations nor had his attention called to them, and that he did not in fact know that the message would pass over any other lines on its way to Baltimore. *Held*, that telegraph companies, in the absence of any provision of the statute, were not common carriers, and that their obligations and liabilities were not to be measured by the same rules, but must be fixed by considerations growing out of the nature of the business in which they are engaged; and that they do not become insurers against errors in the transmission of messages, except so far as by their rules and regulations, or by contract, they choose to assume that position; that in such a case as the present, the printed blank was a general proposition to all persons of the terms and conditions upon which messages would be sent, and that by writing the message and delivering it to the company, the defendant accepted the proposition, and it became a contract on those terms and conditions, and that the regulations were reasonable.—*Western Union Tel. Co.* v. *Carew*, 15 Mich. 525.

BANKRUPTCY—INSOLVENTS.

(From the Canada Gazette.)

December 14.—Wm. Davis, St. Catharines; Jos. H. Dunning, Montreal; Geo. Earle, Point Edward; Jules Fournier, Montreal; Henry Gawler; G. W. Johnson; Thos. Lewis, Richmond; Alex. W. Macdonald, Toronto; Jas. L. McLellan, Harley; Wm. Morris, M.D.; John A. Nellis; Chas. Quevillon, Montreal; Manly Conyne Roblin, Wyoming; Joshua Smith, Ottawa; John Taylor, Lachute; Robt. Virtue (of Virtue & Boon), Montreal.

December 21.—Wm. Begg, Kingston; Wm. Cowan, Merrickville; Zephirin Pilon, St. Lin; John Ogilvy Moffatt, Montreal; Germain Pelletier, Sorel; Geo. Flinn, Niagara; John Joslin, Chatham; Jeremiah Hilliker, Waterloo; Roy & Bédard, Quebec; Alex. Wallace, Barrie; Sam. Snider, Brantford; Geo. W. Anger, Simcoe; Edw. Papin, L'Assomption; G. Crépeau, St. Norbert d'Arthabaska; Narcisse Palin, St. Cyprien de Napierville; James Shannon, Kingston; Louis Gorth, Galt; Andrew Hall Reed, Belleville; Wm. E. Phelps, Brantford; Geo. Scroggie, Galt; Jules Leger, Montreal; Wm. Earl, North Gwillimsbury; Francis Michell Woolcock, Barrie; Richard C. McDonagh, Quebec; Hugh Jefferson, Toronto; Olive A. Crépeau, St. Norbert d'Arthabaska; Robt. McGregor, Brantford; Chas. Weyms, Brantford; Donald and Angus Morrison, Bothwell; Chs. Rapin, St. Jean Chrysostome; Michael Gannon, Montreal; Jas. Walker, Camp d'Or; Chs. Daigle, St. Ferdinand d'Halifax; John Alex. Taylor, Belleville.

December 28.—F. W. Gates and J. O. Macrae, (F. W. Gates & Co.,) Hamilton; John Hill, Merrickville; John Cox, Seaforth; Jas. Blakeley, Napanee; Thos. Edwards, Montreal; Edw. Erratt, Merrickville; Chas. Leclère, St. Paul de Chester; Patrick David Dunn, Montreal; Chas. Nelson, St. Hyacinthe; Jos. N. Duhamel, Montreal; Isaac Brock Markle, Berlin; John Kennedy, Galt; Jas. Edgar, St. Catharines; Wm. H. Delisle, Brantford; John St. George Detlor, Napanee; George White, Bryanston; S. M. Yarwood, Port Stanley; Geo. Alexander, Guelph; Patk. Langan, Toronto; M. B. Ford, Mount Forest; John Johnston, Grafton; Hill & Erratt, Merrickville; Wm. Palen, Ottawa.

1868. January 4.—Andrew Gage, Hamilton; Thos. Knight, St. Thomas; Ferdinand Firmin Perrin, Montreal; Caroline Gintler, wife of M. Gauthier, Montreal; Joseph Meunier, Repentigny; Joseph Wright, Dundas; Thos. Howard Mackenzie, Dundas; Almond Dean, Hamilton; Jacob Winger, Dunnville; Thomas Hughes Graydon, St. Catharines; Geo. Murray, Windsor; Henry Roots, London; Wm. Bates, East Nissouri; Edw. McGarvey and Wm. F. Thompson, Sarnia; John C. Fox, Kingston.

January 11.—Richard P. Strickland, Lennoxville; John Vanatter, Stratford; Alex. McLennan, Stratford; Edw. Hiscott, St. Catharines; Chas. and James Shields, Smith's Falls; Robt. Bickell, Hope; David Williams, Murray; David Fenton, Brampton; Olivine Heroux, wife of Timoleon Poirier, St. Isidore; Geo. Lougheed, Albion; John M. Thornton, Hamilton; Jas. Arbuthnot McNaughton, of McNaughton & Brown, Montreal; Donald McDonald, Kingston; W. H. Rice & Son, Montreal; Narcisse Palin, St. Cyprien; Hy. Duffin, Toronto; Wm. C. Matchitt, Lindsay; Jas. Alex. Ovas, Berlin; Walter Hyde Martin, Brantford; Geo. Winter, Brantford; Thos. Atkins, Owen Sound; Samuel Hopkins, Montreal; A. M. Greenwood, Stanstead Plain; Don Carlos Curtis, Belleville; Levi Jones, Toronto.

January 18.—Hubert B. Lefebvre, of Beaudry & Lefebvre, Montreal; Ferdinand Legendre, Three Rivers; Wm. Baker, Belleville; Jas. S. Kelley, Quebec; Wm. Stuart, Galt; C.A. Starke & Co., Montreal; David Brown,, of W. & D. Brown, Montreal; David C. Honsberger Dunnville; Philip H. Niger, Welland; Wm. N. Barrie and John McMartin, L'Orignal; John Hubnar, Oakville; W. T. Gemmill & Co., Montreal; Jas. Payton, Rawdon; Jesse Thayer, Montreal; A. & D. Shaw, Kingston; A. J. Desjardins, of Desjardin & Quevillon, Montreal; Antoine Deguire, St. Clet; Archibald McAlpine, Esquesing; Isidore Bernardin, Buckingham; William Crépeau, St. Norbert d'Arthabaska; Octave Lachance, Sorel.

MISCELLANEOUS.

HANDCUFFING. — The Fenian prisoners, charged with the murder of policeman Brett, were handcuffed during their examination before the magistrates at Manchester. Their counsel, Mr. Ernest Jones, demanded that the irons should be removed, and, on the refusal of the magistrates, threw up his brief. The conduct of the magistrates is generally approved, for though the practice of handcuffing is unusual, yet it has never been pretended that prisoners have a right to be free from restraint, where there is reasonable ground

for apprehending a rescue or escape. A correspondent of the *Law Times* mentions a case in 1864, where three men, arrested at the instance of the United States, with a view to their extradition on the charge of piracy, were kept handcuffed for three days, during the hearing before the Court of Queen's Bench on a *habeas corpus*, and were only freed from their irons when the Court gave judgment for their discharge from custody.

LEGAL ETIQUETTE.—The *Spectator* has an article on the rules of etiquette observed by the English bar. Some of them are rather fanciful, not to say absurd. Thus, a barrister is not allowed to go into the coffee-room of a hotel while on circuit. "It is not every circuit that allows its members to go inside a hotel. On the Western Circuit, we believe, barristers are still compelled to take lodgings." "As for a barrister dining with an attorney, that is a high crime and misdemeanour, which, in one instance, was visited by a fine of five guineas." "A barrister must wear a black waistcoat. He must not bring a blue bag into Court. He must not buy a red bag. A red bag must be given him by a Q.C., and he must pay a great deal more than its value to the wine fund of the mess." "Some say a barrister may not tell an attorney that he is coming on the circuit where the attorney lives; others add that he may not ask a friend or relation to tell an attorney that he is coming on that circuit, or ask a friend to ask an attorney to give him business. If a friend chooses to do this of his own accord, there is no harm in it. But you may not jog your friend's memory. If you want a place under Government, there is no harm in asking for it, in getting others to ask for it, in asking others to get others to ask for it. A barrister may move all his friends and acquaintances to procure him an assistant commissionership at the rate of five guineas a day. But a guinea brief is far more valuable and more sacred, and must be adored in silence."

RHYMED DEED.—The following is an ancient rhymed deed:—

"I, John O'Gaunt,
Do give and do grant
To Roger Burgoyn,
And the heirs of his loin,
Both Sutton and Putton,
Until the world's rotten.
There is no seal within this roof,
And so I seal it with my tooth."

A FASTIDIOUS JUDGE.—At the last sitting of the Tunbridge County Court, the judge, Mr. J. F. Lonsdale, made the following observations: In consequence of several parties having business in the court coming in their working apparel, he wished to state that all persons who came to that court, which was the Queen's court, should be properly dressed, and not in their working clothes, and had they any claim for expenses he should disallow them. He considered the court had dwindled down in this respect as bad as the old court of conscience. Of course, if parties had no better clothes to put on they were to be pitied, but generally speaking persons when they went out on the slightest occasion put on their best clothes. Very frequently people came to the County Court just as if they had been fetched out of the street to a police court. It was very disrespectful to himself, and very annoying to a well-dressed person, to sit beside a miller or a baker who was in his working clothes. He certainly should be very strict in this matter in future, and should most decidedly disallow any person expenses who came to court dressed in a manner which he considered was disrespectful to himself and the court. — It is difficult to believe that Mr. Lonsdale was in earnest when he decreed that nobody should come into his presence unless clothed in his "Sunday best." A baker, hot from the bakehouse, a miller, fresh from the mill, is not a pleasant neighbor in a crowded court; still less so is a chim ney-sweep; but courts of justice are for all classes and all callings, and the well-dressed and the fastidious must submit to an occasional dusting of their coats, or offending of their noses, in return for the

advantages they derive from the existence of tribunals which secure to them the possession of the good things with which a happier lot has blessed them. Certainly a judge travels out of his proper province when prescribing how suitors and witnesses shall be clothed; and to refuse costs to a man because he wears a dirty coat is a stretch of power which would invite grave censure were it not so utterly ludicrous. We trust Mr. Lonsdale will reconsider his hasty resolution, and we are sure that no judge will follow his example.—*The Law Times.*

After the grand jury at the last Cork quarter sessions had concluded their business, it was discovered that the book upon which they had been swearing witnesses was not a Testament, but a copy of "Thomas a Kempis," and the whole of the proceedings had to be recommenced.—*Solicitors' Journal.*

A Short Will.—The will of Mr. Kenneth Macaulay, Q. C., formerly M.P. for Cambridge, is contained in these few words: —"One thousand pounds to my brother Tom, all the residue to my dearest wife absolutely.—Kth. Macaulay." The will is without date, but was written by the testator on April 22 or 23, 1865. The testator was cousin of the late Lord Macaulay.

Tenure of land in Great Britain. — In a recent lecture in Manchester it was stated, that in 1770, there were 250,000 landlords who owned land, while now there are less than 30,000, of whom nearly 9,000 are in Ireland. Five noblemen, the Earl of Breadalbane, the Dukes of Argyle, Athol, Sutherland and Buccleugh, own one-fourth of the land in Scotland. Twelve possess one-half, and half of England belongs to about one hundred and fifty persons. The income of the 30,000 land owners was estimated at £150,000,000 per annum.

An amusing and somewhat uncommon lawsuit has just been made known. Plaintiff, M. David, a carpenter; Defendant, Charles IV., reigning Prince of Monaco; bone of contention, the paltry sum of 35f., claimed by the carpenter for having repaired the prince's saloon railway carriage. Fancy a monarch, regardless, perhaps, of all counsel and advice, incurring such tremendous expense! Well, the *Juge de Paix* has condemned his Serene Highness to pay for it; but, on the other hand, the king has forbidden his territory to the daring carpenter. Evidently the only thing that the latter has to do is to have the principality seized and sold by auction.—*Law Times.*

Lord Brougham has left for Cannes, in the South of France. He is to travel at easy stages, and prolonged over several days, so as not to fatigue him unduly. His yearly departure from Brougham Hall greatly distresses him. Last year, just before leaving, he went through every apartment of the old place, weeping disconsolately, as if it was his last farewell of a familiar scene.

Deposits in Banks.—A case of some interest to depositors in banks in France has been submitted to the Tribunal of Commerce. A merchant, named Maguet, opened an account with the Société Générale pour Favoriser le Developement du Commerce et de l'Industrie. The book given him—*carnet* the French call it—showed that he had made at different times deposits amounting to 26,007 francs. One of the deposits entered bore the date of the 5th of January, 1867, and was of 6,000 francs. But the Bank alleged that it had only received 20,007 francs, and refused to acknowledge itself liable for more. Its books, it said, showed that a deposit of 6,000 francs had been made on the 22nd of December, 1866, and that it formed part of the said 20,007 francs; but that no deposit of 6,000 had been made on the 5th of January, and that it was by error that the receipt of such a sum on that date was recorded in the *carnet*, and certified by the initials of the cashier. The question, consequently, was, whether the bank was to be bound by its own entry in the *carnet*, or the customer by that in the bank books. The court ruled that "it was impossible to admit that in the relations which are now established between banks and depositors, the latter can be exposed to discussions upon deposits made by them personally, or by other parties on their account, which have

been regularly inscribed in the *carnet*, which inscription is proof for the depositor of the deposit having been made." It accordingly condemned the bank to credit M. Maguet with the 6,000 francs, and to pay him interest thereon.

A STORY OF THE FRENCH BAR.—M. Paul Girard, in a sketch of the eminent French advocate, Maître Emmanuel Arago, gives a curious illustration of the license which the members of the bar in that country occasionally allow themselves on behalf of their clients. The case in which M. Arago first made a reputation was the trial of a young man named Huber, and Mad'lle Laure Gouvelle, for a plot against Louis Philippe. M. Arago, in defending the former, exclaimed, "Huber is a man whom I esteem, whom I love, whom I shall never forget, as I hope he will never forget me—a man, a gentleman, whom I could desire to be my own brother. Surely you will give him back to me." At the close of this singular peroration the impassioned counsel fell upon his client's neck and embraced him. The jury, however, took their own view of the case, and returned a verdict of guilty. When the prisoner appeared to receive sentence, M. Arago again hugged his client, while M. Jules Favre, who defended Mad'lle Gouvelle, flung himself into her arms and kissed her—perhaps a more natural and pleasant proceeding. "In fact," as M. Girard remarks, "there was a great deal of embracing in that case."

—Lawyers often indulge in grim humor, as an incident, related of a certain London barrister, shows. On one occasion, being a candidate for an election, he gave liberal orders to all the tradesmen whose votes he hoped to secure. This generous course involved him in the ordering of a handsome coffin from a flourishing undertaker who had a vote. After the election, the coffin was, to the great dismay of the family, sent home in a handsome hearse. The servant refused to admit it, but the lawyer himself, coming to the rescue, directed that it should be placed under his bed for the present; but to this proceeding his indignant spouse would not consent. The servants of the house also threatened to leave. So the lawyer sent the obnoxious article to his office, where it now lies, containing voluminous law reports and other records of dead cases. If a brother lawyer wishes to borrow a law book, he is coolly referred to the coffin, and he generally remarks that it is "no matter—he'll step into the next office." In this way the legal coffin proprietor preserves his law library intact.

—During Abraham Lincoln's practice of his profession of the law, long before he was thought of for President, he was attending the Circuit Court which met at Bloomingdale, Illinois. The prosecuting attorney, a lawyer by the name of Lamon, was a man of great physical strength, and took particular pleasure in athletic sports, and was so fond of wrestling that his power and experience rendered him a formidable and generally successful opponent. One pleasant day in the fall, Lamon was wrestling near the court-house with some one who had challenged him to a trial, and in the scuffle made a large rent in the rear of his unmentionables. Before he had time to make any change he was called into court to take up a case. The evidence was finished, and Lamon got up to address the jury, and having on a somewhat short coat, his misfortune was rather apparent. One of the lawyers, for a joke, started a subscription paper, which was passed from one member of the bar to another as they sat by a long table fronting the bench, to buy a pair of pantaloons for Lamon, "he being," the paper said, "a poor but worthy young man." Several put down their names with some ludicrous subscription, and finally the paper was laid by some one in front of Mr. Lincoln, on a plea that he was engaged in writing at the time. He quietly glanced over the paper, and immediately took up his pen and wrote after his name, "I can contribute nothing *to the end in view*."—*Bench and Bar.*

Hatton once uttered a capital pun: "In a case concerning the limits of certain land, the counsel on one side having remarked with explanatory emphasis, 'We lie on this side, my lord;' and the counsel on the other side having interposed with equal vehemence, 'We lie on this side, my lord,' the Lord Chancellor leaned backwards and drily observed, 'If you lie on both sides, whom am I to believe?"—*Jeaffreson.*

SUSPENSION FROM PRACTICE.

We have received from the Secretary Treasurer of the General Council of the Bar an official notice of the suspension of Mr. Theophile Gauthier from practice, for two years, from the 5th October, 1867. The judgment of suspension not having been appealed from stands confirmed. The charge against Mr. Gauthier was exceedingly grave, and the Council of the Bar appear to have dealt leniently with the offender. The judgment is as follows:

"Having seen and considered the *acte d'accusation* fyled in this cause, the 1st of June, 1867, signed by the Syndic, and the affidavit of Julie Bousquet referred to therein, seen also the plea of defense of the accused, the said Theophile Gauthier, having also heard, seen and examined all other the exhibits, papers and evidence of record; Having heard the accused by his Counsel, Hugh McCoy, Esq., Advocate, and also J. A. Perkins, Esq., Advocate, Counsel for the said Julie Bousquet, upon the merits; Considering it proved that on or about the 14th of December, 1866, at Montreal, the accused obtained from said Julie Bousquet, in consideration of the receipt mentioned in the said *acte d'accusation*, said receipt purporting to be signed by "Lesage & Jette," her note for $218, of record, under pretence by said Theophile Gauthier, of settling the cause No. 766, Ludger Ayotte, Plaintiff, against Dame Julie Bousquet et *Vir*., the signature "Lesage & Jette, Avts. du Demandeur," to which said receipt was counterfeit and was not written or authorized to be written by said Lesage and Jette or either of them; Considering that said receipt is proved to be in the handwriting of the accused and to have been by him delivered to said Julie Bousquet, that he is responsible for said signature to said receipt; Considering that the charge against the accused has been proved, said charge involving an offense affecting and derogatory to the honor and dignity of the profession or Bar. The Council so represented and acting upon vote, *vivâ voce*, as prescribed by law, do *unanimously* find him, the accused, the said Theophile Gauthier of Montreal, Advocate, *guilty*, to wit, of the offense and misconduct so charged against him in this cause or prosecution, and in consequence, do deprive him for the term of two years, from the date hereof, of the right of voting at, and even of the right to assist at the meetings of the Section of the Bar of the District of Montreal, and do further adjudge and sentence him, the said Theophile Gauthier, to be suspended from his functions as a member of the Bar, Advocate, Barrister, Attorney, Solicitor, and Proctor, for the term of two years from the date hereof, and do condemn him to pay costs to said Julie Bousquet, said costs taxed at four pounds sixteen shillings, *distraits* to J. A. Perkins, Esq.

(Signed) Robt. Mackay, Rouer Roy, A. A. Dorion, F. Cassidy, A. Cross, A. Robertson, J. O. Joseph.

CURIOUS ANCIENT TENURES: — THE LATE SHERIFFS OF LONDON AND MIDDLESEX.—During the afternoon of Thursday, the 31st ult. the usual formalities were gone through at the Queen's Remembrancer's Office, Chancery-lane, with respect to the representation of the warrant for the appearance of the late sheriffs to account, and as to rent services due to the Crown by the Corporation of London. The Secondary, the City-Solicitor, and the late sworn under-sheriff (Mr. Crossley) attended, and the usual warrants being put in and read by the secondary, the Queen's Remembrancer ordered them to be filed and recorded. Proclamation was then made:—'Tenants and occupiers of a piece of waste ground called the "Moors," in the County of Salop, come forth and do your service.' Upon which the City-Solicitor cut one fagot with a hatchet and another with a billhook. Another proclamation was then made, viz:—'Tenants and occupiers of a certain tenement called the "Forge," in the parish of St. Clement Danes, in the County of Middlesex, come forth and do your service.' Upon which the City Solicitor counted six horse-shoes and sixty-one nails, and the Queen's Remembrancer having said 'Good number,' the proceedings terminated.—*Law Journal.*