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CRIMINAL SENTENCES.

A good deal of criticism has followed upon Mr. Justice Stephen's sentence of one Henry Perry who, having first robbed his victim in a railway carriage, belabored him with a stick until he was insensible, and then endeavored to throw him out upon the line. The complaint is not of the sentence itself, but of the lecture which accompanied it, which was as follows:—

"Henry Perry—You stand convicted of one of the worst offences I have had the misfortune to try. Everything has been said that could be said for you, with the view to the propriety of proper pleading, and you have no one to blame but yourself for the position in which you find yourself. You obviously, beyond all possibility of doubt or question, wickedly premeditated the outrage which, for a young man in a respectable position, and, I suppose, a decent education, is almost unparalleled. It is perfectly clear to me, and to every one who heard what Lewis stated, that your distinct intention was to stupefy that person by the use of some narcotic, and then to rob him, and, when disappointed in the wicked expectation, and not being able to do that, you did, to the utmost of your force, use a stick with sufficient violence to make him insensible, and it is impossible for me to doubt that you did attempt to drag him to the door of the carriage and throw him out upon the line, whether you intended to cause his death or not. It may be that you had not formed a deliberate premeditated intention to murder him: but it is only too obvious that when you did commit that terrible crime and were thinking how you could avoid the consequences, you tried to throw him out of the carriage, in order that no being might find out that anything had taken place between you and him. I am willing to believe that your character has been a good one; but in this sense, like other criminals, you have had a good character until you have been found out. In the act of which you have been found guilty, you pose as the most cowardly, most brutal wretch that ever stood in the dock, and the sentence upon you must correspond with the severity of the crime you have committed, for I have a duty to perform, and the sentence of the court upon you is that you receive first thirty lashes with the instrument called the "cat"—(the prisoner up to this point had exhibited an apparently calm demeanor, but here burst into tears)—in order that, coward as you are, you may feel somewhat of the pain which you inflicted, and afterward, that you be kept in penal servitude for twenty years."

The prisoner, we are told, "on hearing the sentence, gave a scream, and was then removed from the dock." The scream is a dramatic incident which seems to have disturbed the nerves of the critics. The *Chicago Legal News* says: "The march of civilization does not seem to have ameliorated the rigors of English criminal law to any great extent, if it is to be judged by the above. We suppose Mr. Justice Stephen donned the black cap before passing sentence, but that adornment could have added little to the terror inspired by his words."

It is a fair subject for discussion whether corporal punishments are, upon the whole, advisable in the case of adult criminals. We are not enthusiastic admirers of them, and it is certain that they should be ordered with the utmost caution, and only by magistrates of the greatest experience and intelligence. But if it be admitted that this was a fair case for the application of the most rigorous punishment awarded by the law, we do not find anything extravagant in Mr. Justice Stephen's homily. There is a great fascination in such trials for the depraved, and *quasi*-criminal classes—that is to say, those who have not yet done anything by which they have been "found out." It is well known that the persons who are most likely to yield to temptation are keenly attracted to the courts on such occasions, and who can say how potent a word in season may be to prevent them from straying from the path of rectitude, which, by a warning more impressive than any sermon, and delivered to persons whom no sermon is likely to reach, they find is also the path of safety.

OVERWORK.

The London *Lancet* reads a moral from the sudden death of the Lord Chief Justice of England, to the effect that aged and energetic men who "feel well" should avoid throwing too much work on organisms which must, in the nature of things, be weakly even when they seem strong. This is very true, but it is spoken like a doctor, who looks at the subject from his own point of view. Not to speak of the heroic deeds which have excited the enthusiasm of the world, what would have become of many of the greatest achievements in every department of human action if the actors had studied only personal considerations? Lord Beaconsfield, in *Endymion*, touches upon this with regard to

Lord Roehampton (p. 394):—"To a minister responsible for the interests of a great country they (remonstrances against night-work) are vain, futile, impossible. One might as well remonstrate with an officer on the field of battle on the danger he was incurring."

STEPS TO THE WOOLSACK.

The publication of the late Lord Campbell's journal, in the biography prepared by his daughter, discloses one remarkable instance of the Chancellor's intense anxiety to get on in the world. At the age of 33, and when making more than a thousand a year, he conceived it to be necessary to learn dancing: "I was at last driven to the resolution of applying to one of the dancing masters who teach grown gentlemen. Accordingly on my return from the circuit I waited upon a celebrated artist from the Opera House. Chassé! Coupé! Brisé! One! Two! Three! I may say I devoted the long vacation to this pursuit. I did not engage in special pleading with more eagerness. I went to my instructor regularly every morning at ten, and two or three times a week. I returned in the evening. You may be sure I was frightened out of my wits lest I should be seen by any one I knew. I might have met an attorney's clerk accustomed to bring me papers, or possibly my own clerk. It required some courage to face this danger, and I give myself infinite credit for the effort I have made. I have been highly lucky; not recognized a single face I had seen before! My morning lessons were private, but to learn figures it was of course indispensably necessary to mix with others. I met several dancing masters from the country, dashing young shop-keepers, ladies qualifying themselves for governesses, &c., &c. I have attended so diligently and made such progress, that I verily believe that I pass for a person intending to teach the art myself in the provinces. I entered by the name of Smith; but my usual appellation is 'the gentleman.'"

THE VALUE OF FRAGMENTS.

The *American Law Review*, for March, has a valuable article, suggesting the desirability of lawyers putting into permanent and accessible form the results of such original investigations as they may have occasion to make in the course of their professional work. The remarks of our contemporary are probably even more applicable in Canada, than in the United States where the law publishers' monthly lists of publications, and the tables of contents of numerous and carefully written Reviews and Journals, indicate that the intellectual activity of the profession is not confined to the exigencies of pending cases. "What we propose by these general remarks," says the *Law Review*, "is to urge upon members of the profession of the law who have much or little learning, but who have enough to know whether or not what they have is sound or useful, not to file it away, or to wait until they are either great or famous; for the probability is that—begging their pardon—the most of us will become neither; but to put it into a useful shape, and find somebody to publish it. Usefulness to the profession is the safe *via media* to begin upon. Whenever any successful attempt is made to put matters which are at stake in law or its practice into an interesting or simply useful form, the response is immediate all over the profession. Probably many a lawyer who does not keep the run of the legal periodical literature, but who has written or said something worth saying about his work in a clear, forcible, and happy way, would be surprised to find how apt it is to be repeated in all parts of this country and in Canada, England, Scotland and Ireland." This, though not in the spirit of Juvenal's exhortation, "*frange, miser, calamos, vigilataque proelia dele*," is sound advice, if discreetly followed.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Feb. 15, 1881.

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

DALY (deft. below), Appellant, & CHEVRIER (plff. below), Respondent.

Serment supplétoire improperly deferred—Costs.

The action was brought by the respondent to recover the amount of an account, $243.32, for goods sold and delivered.

The appellant, by her plea, confessed judgment for $225.

The judgment of the Superior Court was rendered by Torrance, J., as follows:

"The Court, etc....

"Considering that the balance due by defendant, if the evidence for the plaintiff is to prevail, appears to have been $231.48, but that it is right to give some effect to the statements of defendant's witnesses who contradict the indebtedness as to the items:

Bottines	$2 25
2 lbs. tea	1 60
6 bushels potatoes	1 80
Table Cloth	2 50
In all	$8 15

which the Court will allow, less 1 lb. tea, 80 cents, that is to say $7.35, in deduction of the said sum of $231.48, by which the indebtedness of defendant, at the date of the institution of the action, is established at the sum of $224.13, doth condemn defendant to pay to plaintiff the sum of $225 admitted by her plea, in order to avoid the trouble and uncertainty of a contestation with the plaintiff, with interest on $225 from the 27th day of February 1877, day of service of process, and costs of suit as offered by defendant by her plea, to wit until after the filing of the said plea, *distraits* to O. Augé, Esq., plaintiff's attorney; and considering that plaintiff has failed to establish any indebtedness beyond the amount so offered, the Court doth condemn plaintiff to pay to the defendant the costs of the contestation in this matter, *distraits*, &c."

The case was taken by the plaintiff, (respondent) to Review, where the following interlocutory judgment was rendered, Dec. 21, 1878:

"The Court, now here sitting as a Court of Revision, having heard the parties by their respective counsel upon the judgment rendered in this cause on the 17th of June last (1878) by the Superior Court for the District of Montreal, and considering the defendant to be in bad faith, doth, *avant faire droit*, order the plaintiff to answer upon the *serment supplétoire* before this Court, on the thirtieth instant, or any day next term."

The final judgment of the Court of Review was as follows:

"The Court, etc....

"Considering that there is error in the said judgment of the 17th of June 1878, doth, revising said judgment, reverse the same, and proceeding to render the judgment that ought to have been rendered in the premises;

"Considering that it results from the proof, including the *serment supplétoire* of plaintiff, whose statement under said oath the Court accepts, that he, plaintiff, was and is entitled to judgment against defendant for more than allowed by the judgment complained of, and for more than tendered by defendant, and that the said judgment of the 7th of June, 1878, is erroneous in allowing so little to plaintiff; doth condemn the said defendant to pay and satisfy to said plaintiff the sum of $228.98, with interest thereon from the 27th of February 1877, day of service of process, till paid; with costs in the said Superior Court against said defendant in favor of said plaintiff, and with costs of this Court of Revision against said defendant in favor of said plaintiff, distraction of which costs is granted," etc.

The recorded judgment fully explains the decision in appeal. It is as follows:

"Considérant que cette action n'a été portée que pour la somme de $243.32, et que l'appelante a par ses défenses reconnu devoir sur cette somme celle de $225, pour laquelle elle a offert de confesser jugement;

"Et considérant que l'intime, n'ayant pas pu établir par sa preuve que l'appelante fut endettée en une somme excédant celle pour laquelle l'appelante avait offert de confesser jugement, a, par motion, offert son serment supplétoire, qui n'a pas été admis par la cour de première instance, qui a rendu jugement contre l'appelante pour la somme de $225 et les dépens jusqu'à la production des défenses inclusivement, et condamnant l'intimé aux dépens encourus depuis;

"Et considérant que l'intimé a inscrit cette cause en révision, et que la seule contestation entre les parties sur la révision n'était que pour une somme de $18.32, différence entre la somme de $225, montant accordé par le jugement de la cour de première instance et celle de $243.32, montant de la demande de l'intimé;

"Et considérant que la cour de révision a reconnu par son jugement interlocutoire du 21e jour de décembre 1878, que l'intimé n'avait pas prouvé sa dette au-delà de la somme accordée par la cour de première instance, et se fondant sur ce que l'appelante était de mauvaise foi

elle aurait déféré à l'intimé le serment supplétoire ;

" Et considérant que par ses réponses sur serment supplétoire, l'intimé n'a pu établir qu'il lui était dû par l'appelante qu'une somme de $3.98 de plus que la somme que l'appelante avait reconnu lui devoir, et que nonobstant que l'intimé ait failli de prouver par son propre serment près des trois quarts de la somme en contestation sur sa demande en révision, la cour de révision a condamné l'appelante à payer cette somme de $3.98, avec en outre tous les frais encourus depuis la production des défenses ainsi que tous les frais encourus en révision ;

" Et considérant que rien ne fait voir que l'appelante, qui a réussi pour la plus grande partie des items qu'elle a contestés dans le compte de l'intimé, fut de mauvaise foi, et qu'en outre c'est le commencement de preuve qui autorise la cour à déférer le serment supplétoire, et non la mauvaise foi des parties ou de l'une d'elles ;

" Et considérant que sous les circonstances il n'y avait pas lieu de déclarer, comme la cour de révision l'a fait par son jugement interlocutoire, que l'appelante était de mauvaise foi, ni d'ordonner le serment supplétoire de l'intimé, ni de réformer le jugement rendu par la cour supérieure, et encore moins de condamner l'appelante aux frais considérables d'enquête et de révision pour la modique somme de $3.98 ;

" Et considérant qu'il y a erreur tant dans le jugement interlocutoire du 21 décembre 1878, que dans le jugement final rendu par la cour siégeant en révision le 31e jour de janvier 1879 ;

" Cette cour casse et annule les dits deux jugements, savoir, le dit jugement interlocutoire du 21 décembre 1878, et le dit jugement final du 31 janvier 1879 ; et confirme le jugement rendu par la cour de première instance le 17e jour de juin 1878 ; et condamne l'intimé à payer à l'appelante les dépens suivant le jugement de la dite cour de première instance, avec en outre les frais encourus en cour de révision et sur le présent appel. (*Dissentiente* l'Hon. M. le Juge Baby)."

Judgment reversed.

J. E. Robidoux for Appellant.

Augé & Laviolette for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, Jan. 26, 1881.

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

FAIR et al. (defts. below), Appellants, and DÉSILETS (plff. below), Respondent.

Insolvent Act—Remedy against assignee.

An ordinary petitory action will not lie against an assignee for the recovery of real estate in his possession as assignee.

This was an appeal from a judgment of the Superior Court, Montreal, Sicotte, J., Nov. 13, 1877, dismissing a *défense en droit*, and from the final judgment in the same cause, April 1, 1879, maintaining a petitory action brought by respondent against Mr. Fair in his quality of assignee of Dubrule Brothers, to recover a lot of land and house in Acton Vale. The action was demurred to by Cushing, who intervened as *garant* and took up the *fait et cause* of the assignee, on the ground that under the Insolvent Act assignees are subject to the summary jurisdiction of the Court sitting in insolvency, and that such summary process should have been resorted to in the present instance. The Court below overruled this demurrer, and the action was maintained by the final judgment subsequently rendered.

The judgment dismissing the demurrer was as follows :

" La Cour, etc....

" Considérant que l'Acte des Faillites n'a aucune disposition, à l'effet d'enlever aux personnes qui ont été dépouillées de leur propriété, par les faits d'un failli, leur recours pour revendiquer leurs droits d'après le droit commun ;

" Considérant que la revendication d'un immeuble qui n'est pas tombé dans la masse par un fait de la personne exerçant cette revendication, et qui n'a aucune relation d'affaires avec le failli, et ne pouvait faire valoir aucune réclamation contre cette dernière, lui donnant droit d'agir comme créancier de la faillite, et de prendre part aux délibérations du Syndicat, est un fait qui n'est pas affecté par le Statut sur la Faillite ;

" Déclare le demandeur bien fondé à exercer l'action pétitoire par le mode qu'il a adopté, déclare la défense en droit mal fondée, et la déboute avec dépens."

In appeal, the judgment was reversed, the *considérants* being as follows :

"Considering that, under Sect. 125 of the Insolvent Act of 1875, *all remedies sought for enforcing any claim for a debt*, privilege, mortgage, hypothec, *lien* or *right of property* upon, in or to any effects or *property* in the hands, possession or custody of the assignee, may be obtained by an order of the Judge on a summary petition in vacation, or of the Court on a rule in term, *and not by any suit, attachment, opposition, seizure* or other proceeding of any kind whatsoever ;

"And considering that the respondent has by his action claimed from the appellant as assignee to the estate of H. T. Dubrule, a right of property on the real estate described in the declaration in this cause, and which is admitted by the declaration to have been at the time in the possession of the respondent in his said capacity of assignee, and that the respondent should have proceeded by summary petition under the provisions of the Insolvent Act, and not by a petitory action ;

"And considering that there is error in the judgment rendered by the Superior Court sitting at St. Hyacinthe on the 1st of April, 1879 ;

"This Court doth reverse the said judgment of the 1st of April, 1879, and dismiss the action of the said respondent *sauf recours*, and doth condemn the said respondent to pay the costs incurred in the Court below as well as on the present appeal." (Hon. Mr. Justice Monk dissenting). Judgment reversed.

Robertson & Co., for Appellant.

Geoffrion, Rinfret & Dorion, for Respondent.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, March 4, 1881.

Before TORRANCE, J.

GAGNON v. LALONDE.

Separation from bed and board—Attachment of the moveable effects of the community by the wife— C. C. 204.

This was an action *en séparation de corps et de biens*. The plaintiff obtained an order from the judge to attach the moveables of the defendant, her husband, for the protection of her rights in the community. Under this order, a seizure was made in the hands of the Banque Jacques-Cartier. The defendant presented a petition for the removal of the attachment as illegal and informal, because it did not comply with C. C. P. 834; 987.

J. M. Loranger, Q.C., supporting the attachment, cited C. C. 204, and No. 35 S. C. M., *Morgan* v. *Emerson*, decided December 18, 1875.

PER CURIAM. I see no difficulty in this case. The attachment appears to be in form. It would appear that the husband, as a judicial guardian, has a right to claim delivery of the property seized, and may have it on assuming the responsibility of a judicial guardian.

Proof ordered *avant faire droit*.

J. M. Loranger, Q.C., for plaintiff.

A. Mathieu, *R. Laflamme, Q.C.* } for defendant.

SUPERIOR COURT.

MONTREAL, March 5, 1881.

Before TORRANCE, J.

FORGET dit DEPATY v. SENECAL.

Minor — Evidence — Action en déclaration de paternité.

The minor may be interrogated on matters within his cognizance, in causes instituted for him by his tutor.

The action here was *en déclaration de paternité*. The *tuteur* brought the action in the interest of a minor of the name of Marie des Neiges St. Pierre, minor daughter of Amedée St. Pierre, who, the tutor alleged, had been seduced by the defendant.

PER CURIAM. The question here is whether the minor can be interrogated. Jousse, Comm. Ord. 1667, p. 90, says the minor (*pubère*) may be interrogated on matters in his cognizance in causes instituted for him. 1 Pigeau, p. 228, says that as the minor cannot alienate, his *aveu* cannot harm him, but at p. 236, he says : "Mais "on peut faire interroger celui des intérêts de "qui il s'agit, pour corroborer ou compléter la "preuve qui résultera de l'interrogatoire subi "par le tuteur ou autre administrateur." And then he lays down the rule as Jousse has done at p. 90. The minor may therefore be interrogated "pour y avoir tel égard que de raison." The service upon the attorney *ad litem* is available if the party is absent or absconding (C.C.P.

223), and there is a return by the bailiff to that effect. The order of the Court is that the minor make answer.

Bisaillon for plaintiff.

Bonin for defendant.

SUPERIOR COURT.

MONTREAL, March 9, 1881.

Before TORRANCE, J.

LA BANQUE VILLE MARIE v. LA SOCIÉTÉ DE CONSTRUCTION DU CANADA, & JOLICŒUR et al., Garnishees.

Contestation of declaration of garnishee.

This case was before the Court on a motion by the Bank to be allowed to contest the declaration of the garnishee, J. B. Raymond Dufresne, made in December, 1877, and on the motion of Dufresne that he be discharged from the seizure.

The Court had before it in February a petition by the Bank to be allowed to contest the declaration, and another motion by Dufresne for peremption. The petition of the Bank failed because it showed no reasons why it should be allowed to contest, and was unsupported by affidavit. The demand for peremption failed because the petition of the Bank, served a few days before, was held to be an interruption of the peremption. The present application of the Bank gave no reasons why it should be allowed at this late date to contest, nor any grounds of a contestation. It also appeared that the Bank had lodged another attachment in the hands of the garnishee.

On the whole the Court held that there was now no reason why the application of Dufresne should not be granted, and why the application of the Bank should not be rejected.

Motion by Dufresne granted. Motion by Bank rejected.

Charbonneau for the Bank.

Mercier, Q.C., for Dufresne.

SUPERIOR COURT.

MONTREAL, September 13, 1880.

Before SICOTTE, J.

MOLSONS BANK v. H. LIONAIS ès-qualité, & J. D. E. LIONAIS et al., Oppts.

Interpretation of Will—Powers of Executor.

The case arose upon the interpretation of the will of the late Madame Lionais. See *Molsons Bank* v. *Lionais*, 3 Legal News, p. 82, in which Mr. Justice Jetté gave a similar judgment in a case under the same will.

SICOTTE, J. Une saisie immobilière a été pratiquée sur le défendeur en exécution du jugement rendu contre lui en sa qualité d'exécuteur testamentaire et d'administrateur des biens de madame Lionais, leur mère, pour des billets qu'il avait endossés en cette qualité.

Les opposants, qui ont été institués légataires universels de madame Lionais, leur mère, ont réclamé contre cette saisie.

Les faits de l'instance constatent ce qui suit comme l'exposé et la base des prétentions des parties.

Par son testament, madame Lionais institua les opposants, enfants nés de son mariage avec le défendeur, ses légataires universels.

Ensuite, elle désigna pour exécuter son testament, son époux et lui donna la saisine durant sa vie, sans être tenu de fournir caution, ni de faire inventaire, ni de rendre compte.

Et subséquemment, elle nomme son époux administrateur de ses biens, tant en propriété qu'en usufruit, avec pouvoir de les vendre, aliéner, hypothéquer et autrement en disposer, soit en propriété, soit en usufruit, fruits et revenus, l'autorisant à faire exécuter tous billets et obligations et faire tous autres actes d'administration, sans qu'il fut besoin d'autorisation préalable des cours de justice, ni du consentement, ni de l'intervention de ses héritiers, déclarant qu'elle veut que son exécuteur agisse comme il l'a fait depuis longtemps en vertu de la procuration qu'elle lui a donnée, ratifiant tout ce qu'il a pu faire et tout ce qu'il fera à l'avenir, avant et après son décès, en vertu de cette procuration et de son testament, et voulant que toutes choses faites par son époux, *en ses dites qualités*, eussent leur plein et entier effet et fussent suivies et exécutées selon leur forme et teneur, sans division ni discussion, et, subsidiairement, la testatrice affirme son désir que son exécuteur fasse la disposition et partage de ses biens, comme il le jugera convenable et dans le temps qui lui paraitra opportun, lui donnant toute la latitude possible et laissant entièrement à sa discrétion la manière *de percevoir et d'appliquer les revenus ainsi que les capitaux*, et le soin de pourvoir comme il l'entendra au soutien, à l'éducation et à l'établissement de ses enfants,

et selon qu'il le jugera à propos à et entre tous ses enfants ou aucun d'eux, soit par testament, *donation entrevifs* ou autrement, déclarant que son époux ne doit être aucunement lié dans ses actions et dispositions, *par les termes dans lesquels est conçu l'article 3 du testament*, lequel ne peut et ne pourra, en aucun cas, être interprété comme conférant un droit absolu d'hérédité en faveur d'aucun de ses enfants, mais uniquement un droit éventuel sujet à la volonté de son époux ès-qualité ; en sorte, dit la testatrice, que les dits héritiers ne pourront, en tout état de chose, prétendre qu'à ce que son mari décidera de leur accorder, si toutefois il jugeait à propos de le faire dans la proportion qu'il jugera convenable et à l'époque qu'il croira la meilleure, sans que les héritiers ni aucun d'eux ne puisse jamais réclamer contre les actes, opérations et dispositions de son époux, qu'elle laisse entièrement libre sous tous les rapports.

La testatrice déclare que sa volonté est que ses biens soient et restent insaisissables et ne puissent être saisis et vendus que pour les dettes de sa succession, c'est-à-dire celles auxquelles elle a souscrit ou qu'elle souscrira, auxquelles elle a été ou sera partie.

Les enfants de madame Lionais se fondent sur cette dernière clause du testament pour opposer la saisie immobilière. Ils prétendent que la dette réclamée contre le défendeur esqualité n'est pas une dette de leur mère et de la succession de leur mère, partant que les immeubles saisis, qui sont des biens de cette succession et leur appartenant en propriété, mais dont le défendeur n'a que l'administration, ne peuvent être saisis et vendus pour une dette contractée par ce dernier, quoiqu'elle ait pu être contractée pour le profit et avantage d'un des enfants.

Il est prouvé que les billets dont le paiement est réclamé, ont été endossés par leur père en sa qualité d'exécuteur et d'administrateur, pour les fins du commerce et des affaires de Charles Lionais, un des héritiers, et dans son intérêt.

Toute la question à résoudre dépend de l'interprétation à donner au testament, quant aux pouvoirs conférés au père, et quant aux droits et aux avantages accordés au père et aux enfants.

Le père est-il légataire avec le droit de propriétaire ? Les termes du testament sont aussi amples qu'ils sont expresses et spécifiques. Il pourra vendre, aliéner comme il le voudra, employer les revenus et les capitaux suivant sa discrétion, il n'est aucunement lié par les termes de l'article 3 qui avait déclaré les enfants légataires universels, mais que cet article ne pourrait être interprété en aucun cas comme conférant un droit absolu d'hérédité, mais uniquement un droit éventuel, sujet à la volonté de son époux ès-qualité. Il pourra disposer de tout comme de choses à lui, et a, durant sa vie, maitrise absolue sur tout, sans être tenu de rendre compte. Ce qu'il aura dépensé, aliéné, il n'est pas tenu de le rendre.

Le testament confère donc au père tout ce qui constitue le droit d'un propriétaire sur la chose désignée et d'une manière absolue.

Dans l'espèce, l'intention du testateur est évidente par tout le contenu du testament, comme elle est formellement exprimée.

Comme l'exprime Kent : " In the construction " of devises, the intention of the legislator is " admitted to be the pole star by which the " courts must steer."

Blackstone donne l'enseignement suivant : " In construing a will the court must first " look to the particular clause in question, at " the same time taking into view the whole " instrument, endeavoring to give meaning and " effect to every clause of it."

Cujas avait dit déjà : " Pour connaître la " volonté du testateur, il faut commencer par " connaître l'esprit général du testament : ce " qui ne peut se faire que par la combinaison " des différentes clauses et la comparaison qu'on " peut en faire en les rapprochant."

La dernière clause qu'invoque les opposants, si elle est interprétée littéralement, annulerait le contenu et toute la teneur du testament. Elle serait alors en contradiction directe du pouvoir de vendre, d'aliéner, de disposer, d'hypothéquer, dans le but de fournir l'éducation, le soutien de la famille et d'aider les enfants dans leur établissement.

L'ensemble de l'instrument place tout sous le contrôle absolu du père, il permet à ce dernier d'agir comme la testatrice aurait pu le faire. Le maintien de la famille, l'établissement des enfants, voilà la fin exclusive cherchée par le testament. L'épouse, la mère, met tout son bien entre les mains de l'époux, du père, pour faire selon qu'il le voudra tout ce qu'elle aurait pu faire ; déclarant que les volontés, les actes de

son époux seront absolus à l'encontre de ses héritiers, comme sa volonté et son fait personnel.

Par notre droit le droit du testateur est absolu. De fait, il garde la direction de ses biens après sa mort. Et la remarque suivante de Leibnitz est aussi grande de pensée philosophique que juste d'application judiciaire.

" Testamenta vero meo, nullius essent mo-
" menti nisi anima esset immortalis, sed quia
" adhuc vivunt ideo manent domini rerum."
(nova methodus discendæ docendæque jurisprudentiæ.)

Ainsi les morts vivent effectivement, ils demeurent toujours maîtres de leurs biens. Cette testatrice voulait constituer la famille par la direction qu'elle accorde au père.

Cette philosophie de Leibnitz est un fonds de la jurisprudence de l'Angleterre. Elle est davantage empreinte de la forme légale et les juges s'efforcent de la faire prévaloir.

Comme l'enseigne lord Cotenham : " It is the
" duty to put that construction to the words
" which seems best to carry the intention into
" effect. The court will not assume that the
" testator was ignorant of the consequence and
" effect of the disposition which he has himself
" made."

Les opposants ne peuvent pas plus annuler les opérations d'actes de leur père, que les actes de leur mère.

Ce n'est pas un simple état de possession que le testament confère et donne au mari ; mais, au contraire, le pouvoir de vendre et de disposer d'une manière absolue, sans contrôle des cours et des héritiers légaux.

Dans les cas ordinaires le légataire a un commencement de propriété, indépendamment de la volonté de l'exécuteur testamentaire. Rien de tel dans l'espèce. C'est la volonté de ce dernier qui fera le legs de ce qui restera. Ce qui démontre que le père est légataire avec droit de propriétaire, pouvant faire profiter ses enfants de la chose léguée s'il le veut et de la manière qu'il le voudra.

Dans des cas analogues, on décide en Angleterre dans le sens que je viens d'indiquer.

A testator by his will gave realty and personalty to his widow for the term of her natural life, to be disposed of as she may think proper for her own use ; and " in the event of her " decease should there be anything remaining " of the said property, he gave said part " to certain persons :

Held, that the widow took a life interest with an absolute power of disposition exerciseable by her during her lifetime. (Fisher's Annual, 1879.)

A husband gave all his real and personal estate to his wife, " with full power to dispose of the same as she may think proper for benefit of my family, having full confidence that she will do so" :

Held, that she took absolutely. (Same, 1878.)

Les opposants ne peuvent intervenir entre la volonté de leur mère, dont ils invoquent les ordonnances et dernières volontés, comme bâse de leurs droits et de leur titre. " Dicat testator " et erit lex voluntas ejus."

Cette volonté a statué entièrement autrement qu'ils le prétendent. La cour doit maintenir cette volonté contre celle des enfants.

Opposition déboutée.

Barnard, Monk et Beauchamp pour les demandeurs.

J. O. Joseph pour les opposants.

GENERAL NOTES.

A magazine article on James Russell Lowell states that he was a lawyer in his youth, but " without a practice, somewhat exquisite in matters of dress, and given to penning odes instead of briefs."

THE STATUTE OF FRAUDS.—In the year 1676, in England, there was enacted Stat. 29 Car. 2, c. 3, entitled : " An Act for the Prevention of Frauds and Perjuries," and it is familiarly known as the Statute of Frauds. Its preamble declares its object to be the " prevention of many fraudulent practices, which are commonly endeavored to be upheld by perjury." Mr. Smith observes : " It is said to have been the joint production of Sir Matthew Hale, Lord Keeper Guilford, and Sir Leoline Jenkins, an eminent civilian. The great Lord Nottingham used to say of it '*that every line was worth a subsidy ;*' and it might now be said, with truth, that every line has *cost* a subsidy, for it is universally admitted that no enactment of any legislature ever became the subject of so much litigation. Every line, and almost every word of it, has been the subject of anxious discussion, resulting from the circumstance that the matters which its provisions regulate are those which are of every day occurrence in the course of our transactions with one another." Mr. J. P. Bishop adds : " This statute, while its policy has been doubted by some, has, on the whole, been received with so much favor that its provisions have not only been continued in England ; but, with occasional modifications, they have been adopted by legislation in probably every one of our own States."