The Legal News.

VOL. XIV. APRIL 18, 1891. No. 16.

In *Reg. v. Mead*, 1 Burr. 542, a case in which John Wilkes endeavoured to obtain re-possession of his wife by *habeas corpus*, Lord Mansfield held good a return to the writ that Mrs. Wilkes was living apart under a separation deed, but his lordship added that where a husband has not waived his right by such a deed, he has a right to sieze his wife wherever he finds her. Mr. Justice Coleridge (*In re Cochrane*, 8 Dowl. 630), also held that a husband is entitled to exercise a certain degree of constraint towards a wife till she should be willing to return to her conjugal duties. A partially conflicting decision, by the Queen's Bench, is *Reg. v. Leggatt*, 18 Q. B. 781, where the court refused a *habeas corpus* to a husband for the purpose of restoring to him his wife, who was living with her son. Justices Cave and Jeune, sitting as a Divisional Court, in the *Jackson* case which has been causing so much stir in England, followed the *dictum* of Lord Mansfield in the *Wilkes* case, to the effect that a husband may seize his wife wherever he finds her, and refused to grant a *habeas corpus* to bring up the body of a wife detained by her husband, who had forcibly seized her. This decision has been reversed by the Court of Appeal, and the judgment is the more emphatic because it appeared that the husband had recently obtained a decree for restitution of conjugal rights, and the seizure by the husband was in aid of the decree. As this judgment of the Court of Appeal apparently overrules decisions which have been generally accepted, it is probable that the House of Lords will be called upon to settle the law upon this interesting subject. It is somewhat extraordinary that so important a point should not have been determined by the highest authority up to this date.

In the important case of *Vagliano v. Bank of England*, particulars of which will be found in 12 Leg. News, pp. 38, 39, the decision of Mr. Justice Charles, there commented on, was subsequently affirmed by five out of six members of the court of appeal. The case was then taken to the House of Lords, where the judgments of the courts below have been reversed, six judges against two holding that the loss on the bills of exchange forged by Glyka must be borne by Vagliano Brothers. The final judgment has the concurrence of seven judges in all, while that which has been overruled has received the assent of eight judges. The Lords had the case nine months under consideration.

EXCHEQUER COURT REPORTS.

This is a series of reports recently instituted, independent of the Supreme Court Reports. They are printed by the Queen's Printer, and published, under authority, by the Registrar of the Court, Mr. L. A. Audette, LL.B., Advocate. The Reporter is Mr. Charles Morse, LL.B., barrister-at-law, official reporter to the Exchequer Court. Volume I contains all the leading Exchequer Court cases hitherto unreported, and there is also an appendix containing short notes of all the Exchequer Court cases which have been published from time to time in the Supreme Court Reports. Among the cases of special interest in this volume may be mentioned *The Queen v. The J. C. Ayer Company* in which an important question under the Customs Act was decided; and the famous case of *Paradis v. The Queen*, subsequently taken to the Supreme Court where the judgment was reversed in part, and the award of arbitrators restored. Part 1 of Vol. II has also been issued, containing 17 reports. The work appears to have been executed with great care. The head notes are clearly expressed and the reports are not too long, the opinions of Mr. Justice Burbidge having the merit of being concise and free from unnecessary matter. As many members of the profession are probably in ignorance that this series of reports has been commenced, we have much pleasure in directing attention to these issues.

COUR SUPÉRIEURE.

SAGUENAY, 4 juin 1885.

[En Chambre.]

Coram ROUTHIER, J.

DUCHESNE v. BOIS et al.

Bref de prohibition — Protonotaire — Exception à la forme.

JUGÉ:—*Que si le protonotaire, en l'absence du juge, accorde un bref de prohibition, l'avis requis par l'article* 465, *C. P. C.. doit être donné, et qu'à défaut de tel avis, le bref sera débouté sur exception à la forme;*

Que l'on ne peut légalement faire signifier le bref et la requête libellée séparément et à des jours différents;

Que le bref aurait dû être adressé aux huissiers avec ordre d'assigner en la manière ordinaire.

Le 19 février 1885, le requérant fit signifier aux défendeurs copie de la requête libellée contenant les griefs contre une conviction le condamnant à l'amende pour vente de boisson sans licence.

Deux jours auparavant, le protonotaire du district de Saguenay, avait apposé sur cette requête, l'ordre suivant: "Vu la requête ci-dessus, et la déposition qui l'accompagne, et l'absence d'un juge de la Cour Supérieure de ce chef-lieu, et vu qu'il est urgent de ce faire, d'après la preuve qui m'a été fournie, j'ordonne qu'un bref de prohibition émane, rapportable le 16 mars 1885. Chs. DuBerger, P. C. S., D. S."

Le 26 février 1885, le procureur du requérant produisit au greffe un precipe requérant un bref de prohibition assignant à comparaître le 16 mars: "Pour alors et là répondre à la requête libellée à être annexée au dit bref et produite avec icelui, requête libellée dont les dits défendeurs en prohibition ont reçu copie."

Conformément au dit precipe, le bref fut émané assignant à comparaître: "Pour répondre à la demande contenue en la requête libellée et produite avec les présentes, et dont vous et chacun de vous (les défendeurs) avez reçu copie."

Ce bref fut signifié aux défendeurs, le 2 mars 1885, seul, et sans que la requête libellée déjà signifiée ou une copie d'icelle, fut annexée au dit bref.

Par exception à la forme, les défendeurs plaidèrent:

Que le bref était adressé aux défendeurs.

Qu'il n'apparaissait pas par la requête libellée et l'affidavit produit, que le protonotaire eût juridiction pour ordonner l'émanation du bref;

Que de fait il n'avait point telle juridiction, et que d'ailleurs l'avis requis par l'article 465, C. P. C., pour permettre d'exécuter l'ordre du protonotaire, n'avait pas été donné.

Réponse générale de la part du requérant.

Les défendeurs citèrent:

Arts. 48, 50, 56 et 1031, C. P. C., 35 Vict., c. 6, Québec; 8 Q. L. R. 342; 15 L. C. J. 83; 17 L. C. R. 78; 5 R. L. 40.

Et le requérant, 4 Q. L. R. 335; 1 Q. L. R. 209

Jugement.—"Considérant, etc.

Que le bref de prohibition émané en cette cause l'a été sur l'ordre du protonotaire de cette Cour en l'absence du juge de ce district sans aucun avis préalable au dit défendeur, P. N. Bois, de la requête demandant le dit bref, et que la juridiction exceptionnelle du protonotaire en pareil cas, est soumise à la formalité d'un avis préalable (C. P. C., art. 465);

Que la requête libellée produite en cette cause a été signifiée au dit défendeur après le dit ordre du protonotaire et avant l'émanation du dit bref;

Que le bref émané subséquemment a été signifié au dit défendeur, sans requête y-jointe, ni déclaration y-contenue;

Que d'après les lois de procédure civile, l'exploit d'ajournement, pour être complet et valable doit se composer d'un bref au nom du Souverain et d'une déclaration des causes de la demande insérée dans le bref ou y annexée; et que la signification d'une déclaration ou requête libellée sans bref et avant l'émanation d'aucun bref, et la signification subséquente d'un bref sans déclaration ni requête, ne constituent pas une assignation régulière et légale; Nous, soussigné, juge de la Cour Supérieure, maintenons l'exception à la forme produite en cette cause, déclarons irrégulière et nulle l'assignation du défendeur P. N. Bois, et renvoyons quant à lui le bref de prohibition et la requête libellée en cette cause, avec dépens, sauf au demandeur à se pourvoir, s'il y a lieu."

FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

CHAPTER XI.

ADJUSTMENT AND SETTLEMENT OF LOSSES.

[Continued from p. 119.]

§ 254. *Reference to be made a condition precedent.*

The terms of the policy, to oust the law courts, must make the reference a condition precedent to the right of the assured to institute a suit at law. As in *Scott* v. *Avery*,[1] the loss had, before suit, to be ascertained by a committee.

In a Georgia case, in 1874, *Liverpool, London & Globe Ins. Co.* v. *T. H. & W. Creighton*,[2] it was held that the condition, that in case of difference of opinion on the amount of the loss, such difference shall be submitted to the judgment of two disinterested men mutually chosen who, if they disagree, shall name a third whose award shall be binding upon both parties, will not oust the courts of law of jurisdiction, unless made a condition precedent to the right to sue.

In New Hampshire a condition for arbitration as to loss amount, but fixing no mode of securing arbitration is void, as an attempt to oust the ordinary courts of jurisdiction.[3]

Limitation of suit to 12 months is valid, yet if coupled with condition for arbitration agreement may defeat itself, for instance where either party can refuse to go into the arbitration (arbitration clause being loosely worded.)—*Ib.*

Arbitration clause in New York and Illinois, *Johnson* v. *Humboldt Ins. Co.*, *Hay* v. *Star F. Ins. Co.*, (both cases to be seen in 33 Amer. Rep.) "No suit for recovery of any claim by "virtue of this policy shall be sustainable "until after an award shall have been fixing "the amount of such claim." *Semble*, such clause is lawful.

Are the persons here referred to arbitrators? If so, are they the arbitrators of C. P. C. 1341, 2, 3? Is Art. 1334 applicable, that the parties must be heard and evidence taken and reduced to writing, and Art. 1351, that one arbitrator and assignee must agree? *Semble*, no. Reference to valuators may be meant sometimes, where the term arbitrators is used. Arbitrators may be bound to take evidence, or to call for it, while valuers have merely to look at goods.[1]

In *Edwards* v. *Aberayron M. Ship Ins. Society*, Queen's Bench, A.D. 1876, then in Exch. Chamber, there was the following arbitration clause, and clause against bringing actions: Art. 39. The directors shall have full power to determine all disputes between the society and members concerning insurances, or claims upon the society; and the decision of the directors shall be final and conclusive as well upon the society as the members; and no member shall be allowed to bring any action or suit against the society for any claim upon the society except as is provided by these presents, and the directors may, if they think fit, cause any of such claims and the amount to be paid to any member to be referred to the decision of an average adjuster, and his decision shall be final and conclusive on the society and claimant, and no appeal shall be allowed therefrom.

The plaintiff claimed for a ship lost. The society repudiated the claim. The plaintiff sued. Defendant gained in the Queen's Bench; the Court referred him to the procedure of Art. 39, which, it held, did not exclude the jurisdiction of the courts of law, but made it a condition precedent to bringing an action that the loss should have been first decided as per Art. 39. The Exchequer Chamber reversed *that*, (two judges dissenting.) Art. 39 was held invalid, for not only the amount was too large to be determined as per Art. 39, but also the question of whether or not the society was liable at all. This clause 39 was held to erect a tribunal judicial. *Scott* v. *Avery* cannot support such a thing, it was held by the majority.

Amphlett, B., held that according to *Scott* v. *Avery* the agreement to settle all claims between the society and its members was not void as against the policy of the law; the directors might decide "any dispute that might arise respecting insurances," the mere

[1] 5 House of Lords cases.

[2] 5 Bennett.

[3] *Leach* v. *Republic F. Ins. Co.*, p. 97, Alb. L. J. of 1880, Vol. 1.

[1] See *Lloyd* v. *Scottish Provincial Ins. Co.*, A.D. 1870, Montreal.

amount of the claim, certainly; but further even they might go; it was a lawful agreement (he held.)

In *Ulrich* v. *Nat. Ins. Co.* [1] there was a condition that if differences arise after proofs touching loss, at the written request of either party, they shall be referred to impartial arbitrators whose award should bind as to the amount of loss; and that no suit for recovery of any claim should be sustainable in any court until after an award fixing the amount in manner provided. No request being, the defendants succeeded at the first trial. The Queen's Bench made absolute a rule to enter verdict for plaintiff, and the court of appeals maintained that for want of written request.

In Quebec province there is nothing to prevent reference upon the question as to the right of the insured whatever to receive anything. Such question as easily and lawfully may be referred as the one as to quantum of loss.

Covenant to refer cannot be pleaded in bar, says Angell, § 354.

Of course this is now to be accepted only with qualification *ut supra.*

§ 255. *Award of arbitrators may be pleaded in bar.*

If after a loss a reference have been followed by an award, such award may be pleaded in bar of an action, and, after a submission, "reference depending" may be pleaded in bar. It ought to be so all the world over.

A insures, mortgages afterwards, and transfers the policy to B who is approved by the insurers. Fire happens. After this can A refer to arbitration the question of amount of loss by the fire, without B's assent or concurrence? *Semble* no.[2]

Some policies oblige before suit to tender arbitration. This is a good clause in Louisiana and Lower Canada, but may be waived by defendant. *Millandon case,* 8 La. Rep. Yet the clause was held invalid in Maine.[3]

The clause ought to hold good everywhere.

In France it has been held by the Court of cassation (13 Feb., 1838), "des associés peuvent après la dissolution de la société valablement convenir que la rectification des erreurs dans les comptes de la liquidation aura lieu par la voie amiable seulement, et qu'elle ne pourra être demandée judiciairement." J. du Pal. of 1838, 1 part., p. 292.

Where a carriage was burnt all except three wheels, that was held to be a total loss, in a case in California. [1]

In *Roper* v. *Leudon,* [2] it was held that an agreement to refer, if only collateral to the agreement to pay, will not oust the jurisdiction of the ordinary courts until there has been a reference. This case is not like *Scott* v. *Avery,* in which the agreement was to pay only such a sum as arbitrators should award. The condition in *Roper* v. *Leudon* was: In case of any difference touching loss or otherwise in respect of any insurance, such difference shall be submitted to the determination of two persons as arbitrators, one chosen by the company, etc., and the award of any two of the three arbitrators shall be binding on all parties.

The plea alleged that there had been differences and disputes; that the company had never declined to refer the disputes to the determination of arbitrators, of which the plaintiff was notified, and the plaintiff's loss had never been determined by arbitrators. That plea was demurred to, and the demurrer was maintained. Lord Campbell, Ch. J., said that under the Common Law Procedure Act, sect. 11, the defendant might have taken out a summons to refer the question of amount, but he had not done this, and so his plea was bad.

Usually the clauses are too general. If parties, in Lower Canada, agree to refer, name arbitrators, and stipulate that no action shall be brought for more than the amount found, and there be derogation from the common law, the agreement will be valid. Here the defendants do not deny the plaintiff's right to recover anything as the defendants did in *Goldstone* v. *Osborne,* where the insured was admitted to sue. In Lower Canada and Louisiana, a condition of the policy may

[1] 4 Ontario App. Rep., A.D. 1879.

[2] *Brown* v. *Roger W. Ins. Co.,* 5 Rhode Island R.

[3] *Stephenson* v. *Piscataqua F. & M. Ins. Co.,* 54 Maine R.

[1] Albany Law Journal, A.D. 1880, p. 256.

[2] 1 Ellis & Ellis, A.D. 1859.

oblige the insured to tender an arbitration before suing. [1]

An award once made ought not to be set aside easily. [2]

Is an umpire bound to adopt the view of one or other of two disagreeing appraisers or arbitrators? In France it has been held that he is.

In *Braunstein* v. *Accidental Death Ins. Co.*, [3] there was the following condition in the policy:—

"In case of difference of opinion as to the amount of compensation, the question shall be referred to the arbitration of a person to be named by the secretary of the Master of the Rolls, and all expenses and costs shall be subject to the decision of such arbitrator, and the award of such arbitrator shall be taken as a final settlement of the question and may be made a Rule of Court." Under this condition it was held that reference to arbitration was a condition precedent to plaintiff's right to bring an action, (the defendants pleaded offers and readiness to arbitrate.)

If reference be to three arbitrators, and nothing be said as to what number may make an award, two may make one, though the third arbitrator dissent. [4]

An award of arbitrators as to amount of loss on property insured will not be set aside easily, for instance, on alleged error in principle of valuation, or errors of fact, or of law. [5]

The following is an illustration of arbitration as a condition precedent. A contracts towards B to build him a mill for £5,000; no extras to be allowed except warranted by B's written order beforehand, and then to be paid for only according to the measure and sum allowed by C D the architect, out of Court, after hearing both parties and any evidence they choose to offer, and no suit to be brought for any alleged value of extras not so fixed. A sues for £500 of extras, and shows order in writing of B, but has not the architect's sentence fixing amount of value, or measure of it. Is not a plea in bar competent to B? Yes, in New York, [1] and *semble*, in Lower Canada also. And in insurance cases might not a clause be made to do the same thing as to damages after fire? Yes, as held in *Scott* v. *Avery*. [2]

In Pennsylvania, an arbitration clause will not work, unless where the arbitrator is made simply appraiser, not judge of the law and the facts. The clause "no action shall be maintainable unless the amount of the loss be first ascertained by arbitration," was held one ousting the courts of law of general jurisdiction, and of no force. [3]

§ 256. *Appraisement Clause.*

"Damage to buildings, not totally destroyed, shall be appraised by disinterested men, mutually agreed upon by the assured and the office or its agents; and where merchandise, or other personal property, is partially damaged, the insured shall forthwith cause it to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to their kind; and shall cause a list or inventory of the whole to be made, naming the quantity and cost of each kind. The damage shall then be ascertained by the examination and appraisal of said damage on each article by disinterested appraisers, mutually agreed upon, whose detailed report in writing, shall form a part of the proofs required to be furnished by the claimant, one-half of the appraisers' fees to be paid by the insurers. A copy of the written portion of the policy to be given in the affidavit of the claimant in all cases."

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[1] Of *Scott* v. *Avery*, it was remarked in *Horton* v. *Sayer*, 5 Jur. N. S, : "there are *dicta* in this case which it is impossible to reconcile with each other. A mere negative clause will not prevent the ordinary courts' jurisdiction; but an agreement for arbitration and to pay *not* damages, but such a sum as an arbitrator shall order, is good." But see *Lee* v. *Page*, 7 Jur. N. S.

[2] *Oldfield* v. *Price*, 6 C. B. Rep.

[3] 1 Best & Smith, Q. B.

[4] Stuart's Rep.

[5] *Oldfield* v. *Price*, 6 C. B. Reports (J. Scott.)

[1] See 16 Alb. Law J., 465.

[2] 5 H. L. cases. It is not a dispute that is made the subject of arbitration in either of the above cases. But to say, "in case of any dispute concerning the work, or value of anything the same shall be settled by arbitration is *nil* in New York, and only entitles the party willing to arbitrate to a suit and damages. Or to say, any question in relation to the work or value shall be adjusted by the architect is *nil* in New York.

[3] 16 Alb. L. J., p. 465. *Semble*, a clause for arbitration as to limit or amount of loss (loss being admitted) will be held good in Pennsylvania.

§ 257. *Delay for payment of loss.*

"Payment of losses shall be made in sixty days after the loss shall have been ascertained and proved."

And in the body of the policy this company only binds itself to pay within sixty days after notice and proof of loss. Even without such precision of expression, the delay would probably run only from proof perfected and oath. The plaintiff suing before will be non suited.[1] *Cum solvendi tempus obligationi additur, nisi eo præterito peti non potest.* Dig. Book 50; De Reg. Juris. 186.

Generally the sixty days do not run from the date of the fire.

§ 258. *Partial loss.*

"XV.—That in the event of the total loss of the sum insured by this policy, the insured shall, upon settlement of the claim, deliver up the policy to the association or their agent to be cancelled. And, in the event of a partial loss, the insured shall, after payment of the sum agreed upon, deliver to the association or their agent, and leave with them or him, his, her, or their policy for seven clear days, for the purpose of having a memorandum of the payment of such partial loss endorsed thereon; which endorsement shall evidence the partial satisfaction of the sum insured, and shall reduce the policy by the amount so paid, from the date or dates of such loss or losses until the next term of renewal."

Loss by fire of house insured ends the policy. If it be rebuilt new insurance is required. P. 441, 2 Alauzet.

As to partial losses, do they annihilate the policy *pro tanto?* See *subject insured.*

Pouget says no, and that the insurer may have to pay $15,000 or $20,000 in a year, though the policy be only for $5,000. May it not depend upon bad wording?

Sinistre—Partial loss. French policies stipulate generally the *faculté* on paying partial loss to rescind the insurance contract for the rest of its agreed or originally fixed term. Fremery, p. 349.

Partial loss. A mill worth £1,000 is insured to the extent of £400. A fire injures it in the first month to the extent of £300, and this is paid. Query? if repairs be made and again, during the term first fixed by the policy, the mill be burned, must not the company pay £100?

Generally the insurer agrees to pay to the extent of the sum insured. If a partial loss happen and he pay, and afterwards there be a total loss, the insurer is not obliged to pay so as to make excess beyond the original sum insured; but the partial loss paid shall be considered, and the insurer has only to pay the balance. So, in the *Curry* case[1] it was held that a total loss happening, what was previously paid under the same policy on a partial loss has to be deducted.

In a case in Sirey, A.D. 1858,[2] the court held the following to be a good condition: that after a loss, for no matter what amount, the company may rescind the policy by a notification, and even all other policies in the name of the assured. In case of such rescission, the premiums on the other policies will be refunded in proportion to the time unexpired; but as to the one concerned in the loss, no premium shall be returnable.

Accident by fire: *Leeds* v. *Chatham*, 1 Simm. 146. Tenant having covenanted to repair he must do so and cannot ask landlord to apply any insurance moneys to rebuilding or repairs, and tenant must pay his rent. He might have provided for suspension of rent. Why didn't he? *Lofft* v. *Dennis*, 1 Ell. & Ell. follows the above.

Faute of B, a neighbor, house of A is burnt. A is well insured and the insurance company has paid him. He cannot sue B; and B would go free, under the French law, but for insurance company's stipulation on policy that it should on paying stand subrogated in all A's rights. By virtue of this stipulation the insurance company can sue B. Nos. 174, 175, XI. Toullier.

Defendant is sued for damage to plaintiff's house, by carelessness setting it on fire. He cannot claim reduction of damages on the ground that plaintiff had recovered from the insurers. If he could he could do wrong and pay nothing. *Bartlett* v. *Holmes*, 13 C. B., 630.

[1] 7 U C. C. Pleas Rep.

[1] 10 Pick., 535.

[2] C. cases, p. 439, 1st part. 1134 C. N. cited as warrant for judgment.

*COURT OF QUEEN'S BENCH—MONTREAL.**

City of Montreal — Proprietors par indivis— Joint and several liability for taxes.

Held:—Affirming the judgment of TELLIER, J., M. L. R., 4 S. C. 32, That the obligation to pay the taxes imposed by the Corporation of the City of Montreal on real property is indivisible, *solutione*, and that the city is entitled to recover the entire amount of such taxes from any one of the co-proprietors *par indivis* whose name is entered on the assessment roll as one of the owners.—*Cassidy & Cité de Montréal*, Tessier, Church, Bossé, Doherty, JJ., May 23, 1889.

Insolvency—Insolvent Act of 1864—*Proof of claim.*

Held:—Reversing the judgment of PAGNUELO, J., M. L. R., 5 S. C. 426, (DORION, C. J., and CROSS, J., *diss.*), That the claim filed by the respondent on the insolvent estate of John Stephen, was not legally established by the evidence, which was as follows:—(1) that the claim was mentioned by the insolvent in his *bilan*, but under a different name; (2) affidavit of claimant filed with his claim, and copy of transfer to him from Francis Stephen; (3) evidence that claimant consigned goods to Francis Stephen, who handed them over to John Stephen, the insolvent. (The judgment of the Court below being reversed solely on the insufficiency of the proof of claim, the question of prescription was not passed upon by the majority of the Court.)—*Hagar & Seath*, Dorion, C. J., Cross, Baby, Bossé and Doherty, JJ., Sept. 24, 1890.

TOWN AND COUNTRY LAWYERS.

Two considerations are to be advanced in favor of the country lawyer's lot. First, we believe that on the whole his average of happiness is greater than that of his city brother, even if such bliss would be impossible without some measure of ignorance. If he has never learned to be discontented with his simple environment, there is no reason why he should not have, together with good bodily health, a normal felicity of spirits. Rarely is he such a slave in his profession as the active city practitioner. It would, of course, be a great mistake to suppose that so-called labor-saving appliances really accomplish that end. They do not decrease human labour—they simply increase the volume of work possible to be done. A city lawyer, with the assistance of carefully graded clerical force, stenographer, typewriter, phonograph, and all the other modern appliances, will nevertheless work personally more hours and worry more hours than a country lawyer of equal age and equal local standing. Moreover, the city man will probably break down or die the earlier of the two, and it is very doubtful whether, relatively to his manner of living, he will accumulate as large a competency for his declining years. Secondly—and this claim may seem heretical to some of our readers—the country practitioner is apt to be a better lawyer than his city rival. We use the word in its strictest sense. The country lawyer has had more leisure to read law, not for immediate service, but for absolute knowledge. When he has been examining some question in the preparation of a brief, he has had opportunities to turn aside into this and that attractive by-path of investigation, just from curiosity to discover whither it leads. Out of interest in the subject he has read up the law collaterally as well as directly connected with his cases. Research of this kind is seldom indulged in by a man in the ceaseless rush of a city parctice. The city man, on his part, acquires a species of lightning instinct, so that he can tell at a glance whether a reported case affects the case at bar one way or the other. But as a rule, the pursuit of a line of study that he does not require for definite use is out of the question. It follows that while the city lawyer generally knows how to quickly find the law, a country lawyer of ability and fairly studious habits, who has arrived at middle life, commonly knows the law. On more than one occasion we have been charmed in talking "shop" with a practitioner of bucolic dress and manner, whose nouns and verbs often disagreed, and whose speech betrayed the provincial accent of the neighborhood, to discover what a wide and well-systematized knowledge he had of jurisprudence. We have had the privilege

* To appear in Montreal Law Reports, 6 Q. B.

of meeting several country lawyers who, we fancied, could have continued to practice their profession with success, though they were denied access to the books for the rest of their lives.—*New York Law Journal.*

GENERAL NOTES.

A CONDITIONAL PARDON.—Our American cousins are an ingenious people and prone to give a trial to all sorts of legal legislative experiments. Systematic attempts have been made and held up for our imitation to give effect to the remedial element in judicial punishments to a greater extent than ever entered the minds of English law-makers. We commend to the consideration of Sir Wilfrid Lawson and Cardinal Manning the course taken by the Circuit Court of Ohio in the case of *Scott-Huff* v. *B. F. Dyer*, warden of the Ohio Penitentiary, decided last September. The plaintiff was sentenced in January, 1880, to a term of five years' imprisonment for assault with intent to rob. He was confined until October, 1883, when the governor granted him a pardon on the condition "that he shall abstain from the use of intoxicating liquor as a beverage." The plaintiff was set at liberty, and observed the condition to the end of January, 1885. But in 1890 he indulged in alcohol, and was incarcerated for breach of the condition. He was released, however, on a *habeas corpus*, on the ground that no time having been limited in the condition, a construction must be adopted favorable to liberty, and the condition could only be read as extending over the period of the original sentence. The judges, however, seem to have entertained no doubt that a condition of this kind would have been valid.—*London Law Journal.*

THE OYSTER AND THE SHELLS.—They are supposed to do some things better in France than in England, but so far as the delays and expenses of legal process are concerned the two countries stand in much the same position. A gentleman who lived at Neuilly travelled for years daily between that suburban locality and the Madeline by tramway. He was a great favorite with the drivers and conductors, to whom he gave *pourboires* frequently, in addition to presents at the New Year. Three years ago he died, bequeathing to the drivers and conductors of his favorite tramway line the sum of £1,600, which meant £40 to each employee, there being forty men thus engaged. The deceased's family, however, attacked the will, and the case went before the law courts. For three years counsel and solicitors have debated and argued, but at last the proceedings have come to an end, the court holding that the legacy was valid and duly executed. On the 5th instant, the forty tramway men concerned received a circular informing them of this fact, and asking them to call at the office to receive their share of the money. When they did so they were told that instead of the original £40 each one was entitled to only 6s. 9d., all the rest of the money having gone in costs! As they took this miserable remnant of their deceased benefactor's munificence some of them remarked that it was well the suit had ended now, or else, instead of getting even 6s. 9d. they might have been called upon to contribute something out of their own pockets to enable the lawyers to plead and counter-plead.—*Irish Law Times.*

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, April 11.

Judicial Abandonments.

Joseph Jesophe Beaudet, trader, Ste. Philomène de St. Jean Deschaillons, March 28.

George Bradford, farmer and trader, township of Chatham, April 7.

Desaulniers, frères & Co., Montreal, April 2.

Dalvanie Gingras, Ste. Angèle, March 31.

William Verner Gordon, grocer, Montreal, March 31.

Jos. Octave Labbé, boot and shoe manufacturer, Quebec, March 26.

Ferdinand Richard, tanner, Quebec, April 4.

Curators appointed.

Re Adolphe Dépati.—C. Desmarteau, Montreal, curator, April 7.

Re William V. Gordon, grocer.—A. F. Riddell, Montreal, curator, April 7.

Re Stephen S. Kimball, safe manufacturer.—T. Gauthier, Montreal, curator, April 6.

Re G. A. Laroche & Co., St. Romuald.—H. A. Bedard, Quebec, curator, April 4.

Re Fabien Marleau, St. Télesphore.—L. G. G. Beliveau, Montreal, curator, April 3.

Re J. & D. McBurney, Montreal.—A. W. Stevenson, Montreal, curator, April 9.

Re Moïse Monette.—C. Desmarteau, Montreal, curator, April 8.

Re Joseph Noël, junk-dealer, Quebec.—N. Matte, Quebec, curator, April 2.

Re F. X. Roy.—Bilodeau & Renaud, Montreal, joint curator, April 7.

Re The Standard Publishing Co.—J. J. Murphy, Montreal, liquidator, March 28.

Dividends.

Re T. Bell & Co.—First and final dividend, payable April 18, G. H. Trigge, Montreal, curator.

Re Benoit, Bastien & Co.—Dividend, payable April 30, G. Paré, Montreal, assignee.

Re Canada Dye-stuff & Chemical Co., Montreal.—Second and final dividend, payable April 28, W. A. Caldwell, Montreal, curator.

Re George Darveau, Quebec.—Second and final dividend, payable April 20, D. Arcand, Quebec, curator.

Re John Delisle.—First and final dividend, payable April 28, C. Desmarteau, Montreal, curator.

Re P. A. Donais.—Second dividend, payable April 29, C. Desmarteau, Montreal, curator.

Re C. G. Glass, Montreal.—Second and final dividend, payable April 28, W. A. Caldwell, Montreal, curator.

Re Godbout & Bergeron, merchant tailors, Quebec.—First dividend, payable April 27, H. A. Bedard, Quebec, curator.

Re J. S. Loyer (Rose de Lima Roberge).—First dividend, payable April 28, C. Desmarteau, Montreal, curator.

Re William Neil, Montreal.—First and final dividend, payable April 28, H. Ward, Montreal, curator.

Re John S. Riddell, furniture-dealer, formerly of Lachute.—First and final dividend, payable April 28, H. Ward, Montreal, curator.

Re A. Tardif & Co., traders, Quebec.—First and final dividend, payable April 20, H. A. Bedard, Quebec, curator.

Separation as to property.

Maude Maddeline O'Neill vs. Robert T. McArthur, trader, township of Chatham, March 20.

Eliza Lane Quinn vs. Alexander Irvine Morison trader, Montreal, April 6.