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LEGAL NEWS,

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BY

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*Advocate.*

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VOL. X.

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REPORTED, NOTED, AND DIGESTED

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The pages of our last issue of the old year had hardly been made ready for the press, when the tidings of a grievous loss to the bench, to the profession, and to the community, came with startling abruptness. While the ink was scarcely dry upon the last proof sheets he had revised, upon the last pages his hand had traced, we were told that Mr. Justice Ramsay was no more. We were asked to realize, if it were possible, that the ever busy hand was cold, that the impetuous brain was at rest, that the masterful personality had yielded to a more potent presence.

In order that our readers may fairly appreciate the fortitude and resolution with which the departed Judge sacrificed needful repose, and even life itself, to a conscientious sense of duty, it is right to state that this was not to him an unlooked for termination of his career. As long ago as 1880 he first indicated to the writer that the end of his life labor was probably not very remote. At that time he had suffered severely in health, and meditated retirement at the end of ten years' service in the Queen's Bench,—a term which would expire in 1883. Subsequently his health improved, and with renewed strength, came reluctance to abandon a post which he was so competent to fill. Within the last two years, however, he was forced to realize at times that the end was probably not far off. In the middle of November last, he said to the editor, more seriously than usual, "I will not be with you much longer; there is not much more left of me." These forebodings were suggested by the fact that he had recently been visited by more than one sudden and serious attack of illness, forerunners of the last, which carried him off on the morning of the 22nd of December. Physical weakness, however, only spurred him to greater assiduity and earnestness of effort. There was no diminution of mental vigour—on the contrary, some of his latest

opinions are pre-eminent for acute reasoning and thorough grasp of the subject.

In addition to his official work, Judge Ramsay devoted a considerable portion of the leisure of the last three years to the preparation of a digest of the decisions of the Court of Appeal, in which he took part during the last thirteen years. This work was originally intended to embrace the period from 1873 to 1883, but the meditated retirement not being carried out, three additional years have been included. Last summer, as if conscious that his time was short, he worked diligently at this task, and the whole was just completed in readiness for the press when he was suddenly called away. Rest much needed was sacrificed to this work, and it happened, unfortunately, that while weakened by illness, and wearied by preparation for the appeal term, he was obliged, in consequence of the sickness of Mr. Justice Monk, to assume the criminal term of the Court, in November, at Montreal. He sat here until the middle of the month, but with diminished energy. On the 15th, the appeal term opened, and without a day's rest, he took his place on the bench, which was reduced, by the absence of two of the judges, to four members. There were important cases awaiting decision, and the preparation of opinions broke into the night. For the first time in twenty years we found him distinctly conscious of over-pressure. Nature cried halt, but a sense of the importance of his duties and of the grave inconvenience which would result from even a temporary absence at that time, forced him to toil on, and he sat until the 27th, and again, in Quebec, from Dec. 1 to Dec. 8. On his return to St. Hugues, on the 9th, he added some final notes to the digest, and was doubtless deeply engaged with the *délibérés*, in order to be in readiness for judgments on the 31st December, when the call came. In a letter received from him a few days before his death, no special reference is made to illness, but the pressure upon the Court of Appeal is touched upon, and the division of the Court into two—a measure which he had always regarded with extreme disfavor, is anticipated as the only practicable remedy. He

had long considered this subject with the utmost earnestness, for to be in arrears in anything was hateful to him. He had failed to secure attention to the suggestions which were the fruit of long and serious study, and his last written words to us are: "The state of arrears at Montreal is an illustration of the inconvenience of treating the judicial office as unimportant. A blockade at Quebec will be a second illustration. Most unwillingly I am coming to the conclusion that we must have two appeal courts, one at Quebec, the other at Montreal."

On another page we give a brief notice of his career. Judge Ramsay's life affords ample materials for an interesting memoir, and we should be glad to see some literary friend undertake the task. It is difficult, in a few lines, to give an adequate idea of a life so abounding in diligent and earnest effort. He was not one

"Who to his destined stage, has carried on  
"The tedious load, and laid his burthen down,"

but a bright, magnetic presence which illumined the field of his labor, and chased dullness and apathy away. In him the profession has lost an upright and astute expounder of the law, the country has lost a loyal and fearless defender of the principles of good government, his friends have lost more than they are able to measure.

We earnestly hope that the following suggestion of the *Gazette* will be acted upon:—  
"We venture to suggest to the Government for the vacancy in the Court of Queen's Bench, caused by the death of Judge Ramsay, the name of Strachan Bethune, Q.C. Upon the grounds of service at the Bar and eminent legal ability and experience, his claims are not equalled by any of his *confrères*. Men there are who adorn their profession, who have claims for preferment, who are thoroughly qualified for the distinction, but none so well as Mr. Bethune, the senior practising barrister of Montreal. That his appointment would be hailed with pleasure and satisfaction by the profession, we know from the fact that, several years ago, the Bar petitioned the Government to elevate Mr.

Bethune to a judgeship, and the time that has since elapsed has but served to increase his fitness and the public sense of his worthiness of the position. It was in 1843, nearly forty-four years ago, that Mr. Bethune was admitted to practice; the late Judge Ramsay was a student in his office; for twenty-three years he has been a Queen's Counsel, and although now somewhat advanced in the prime of life he is as vigorous and as capable of sustained hard work as many a younger man. It would be a becoming act on the part of the Government to, without delay, confer upon the senior of the Bar the dignity of a judgeship."

#### THE LATE MR. JUSTICE RAMSAY.

A glorious morning in the dog-days. A plain and unpretending house standing in the midst of some charming scenery. An ample lawn glowing under the intense brilliancy of the summer sunlight. A clump of pines, fine old trees, casting an inviting shade upon the grass near the dwelling. Borders of carefully tended plants gratifying the eye with their varied blooms. Park land, forest trees, and pine groves in the distance. A sturdy, resolute-looking person, in a spotless linen coat, is coming down the steps. Clear and fresh of complexion, his comely countenance at this moment is cheerful, even gay. "Charley," harnessed to a vehicle of very modest appearance, is brought to the door. The man in the white coat, who is talking with extreme animation to a visitor, takes his seat beside the latter in the buggy, and "Charley" is exhorted to faithful activity in making a tour through the surrounding country.

This is Thomas Kennedy Ramsay, a Justice of the Court of Queen's Bench, one of the most remarkable personalities of the time, one of the most versatile and brilliant men who have played a part in the history of our young nationality. This is his home, the manor house of St. Hugues. Time, the Long Vacation. And the domain which he is about to show to his visitor is his seignior, a residence of which he is passionately fond,—"foolishly fond" is his own expression, but "wisely fond" will say those who know that

the brief moments given to the delights of the farm and garden are his sole recreation from exhausting toil. As the poet has said :

"Here wisdom's placid eye delighted sees  
"His frequent intervals of lonely ease."

No hours so sweet as those which he passed here, no scene to him so dear.

By way of preface to a brief notice of his career, we have introduced him in a vacation hour; because at this moment, when we mourn a recent loss, it is the most soothing to dwell upon, and it is the side of his character least known to the many thousands to whom his official dignity made him more or less a familiar figure. It is more pleasant to picture him in the barn fragrant with hay, describing a projected improvement, than leaning back, wearied and irritated by an interminable argument in the Court of Appeal.

Judge Ramsay was born in Ayr, Scotland, on the 2nd September, 1826. His father, David Ramsay, died before the late Justice came of age. His mother, sister of the late General Kennedy, a veteran who distinguished himself on the field of Waterloo—died about eight years ago, at the age of 87. The family came to Canada in 1847, and acquired the seigniory of St. Hugues, which formed part of the fief of the De Ramesays under the French *régime*. There were three sons. One died some years ago. The second entered the order of priesthood in the Roman Catholic Church. Thomas Kennedy, the Judge, was the youngest. He studied law in the office of Messrs. Meredith, Bethune & Dunkin, and was admitted to the bar in 1852. He edited for a time a work called the *Law Reporter*, and afterwards aided in establishing the *L. C. Jurist*. From the beginning of his professional life he was a frequent contributor to the daily press. He was associated with the late Mr. Morin and Mr. L. W. Marchand in *La Patrie*, and at a later period he had editorial charge of the *Evening Telegraph*. In 1859 he was appointed secretary of the Commission for the codification of the civil law, but in 1862, before the commission had nearly completed its labors, he was removed by the new government, on the ground that he had taken part in a political meeting. In 1865 he published an Index to Reported Cases, the best work of

its class which has appeared in the province. Soon afterwards he was appointed Crown prosecutor at Montreal, an office which he filled with the utmost assiduity. During this time he represented the Crown in the prosecution of the Fenian raiders, at Sweet'sburg, in 1866, and he was concerned in the famous affair of Lamirande's extradition. In 1870 he was appointed an assistant Justice of the Superior Court, but three years later he was elevated to the office of puisné Justice of the Court of Queen's Bench, a position which he retained until his death.

Such are a few of the bare dates in his history. A great deal of his work lives in the pages of the reports, for he was a firm believer in the doctrine that a judge of an appellate court has done but a part of his duty until, as far as time permits, he has put in writing his views upon the legal questions decided. These opinions and judgments were fearlessly presented to criticism, and time will test their value. In diligence of research he was unsurpassed. Several of the judgments prepared under the constant pressure of ever-increasing work involved more than a week's close application. His uprightness and impartiality were beyond question. His closest intimate never formed the faintest hope that the Judge would be influenced by the desire to gratify a friend.

He was a mighty worker; his opinions were not lightly formed. He sifted the case thoroughly, and sometimes it happened that an opinion was written and re-written thrice before it reached its ultimate form.

In controversy he was of the heroic type. He hit hard, with the force and directness of the knight of chivalry. There was nothing underhand in his attack or defence.

In conversation he was bright and sparkling. He had a keen appreciation of character, and in a word or two would hit off the prominent traits of a person with striking effect. He had many warm friends, and as far as our knowledge goes he never quarrelled with a friend or wounded the feelings of a friend, nor was he exacting in his friendships. He could not brook stupidity, and was rather unmerciful in his castigation of it. To stupidity in would-be law-makers he had

special aversion. On the other hand, intellectual merit attracted him, and he was quick to recognize it, even among those to whom upon other grounds he had a dislike. He was a great reader. He usually carried a packet of new books out with him to the country. The walls of his hall and of his rooms were lined with well-selected books, and his knowledge of their contents was very thorough.

We shall merely add for the present a few extracts from an article written for the *Gazette* by a non professional friend, which does justice to some traits of the judge's character:—

"He had resided for a time in France and was as familiar with French as with English. This, and the impetuous industry which was his chief characteristic, soon made him proficient in Roman law. He especially loved the Roman law. It contained what he delighted in—principle argued to conclusions—and this love of abstract principle carried out in daily life in the strictest detail—in politics, in morals, in society, on the Bench—marked his whole career. Logically to its conclusion would he follow every principle. Straight on his way would he go, swerving neither to the right nor to the left; nor did he fear the face of man or the threats of men. There was no power nor influence known to men which could turn him from the plain path of his duty or cause him to hesitate in doing what his conscience dictated to him as right.....

"In a life of ceaseless activity such as his he necessarily came in contact with very many men, but even those who opposed him always esteemed him. No mean thing, no unfair thing, no untruthful thing was ever charged against him. Politics was never to him a trade, for a large portion of his private means was spent in advocating the principles he believed to be true. His strongest political opponents had nothing to lay to his charge. Fair, honest and open in all he did and said, no bitter or unkind feelings were harbored against him. He met his political antagonists in all the relations of private life without embarrassment or rancor. Never was word uttered against the purity of his private life or the integrity of his public

career. *Sans peur et sans reproche* he performed his duties—he fulfilled his life. He dropped down dead in harness—laboring to perform his duty—toiling at his *factums*, at his judgments, to the last. May God send us all as unsullied a life and as faithful a death!

"What shall we say of his career upon the bench? Is it not known of all men in this province, French and English, Catholic and Protestant, Rouge and Bleu? Can any one say that they ever feared for anything before his tribunal but for the justice of their own cause? Did it ever enter into the heart of anyone here to think that Judge Ramsay could be moved by any motive but the unswerving love of the right? The whole character of the man rendered it impossible. His keen penetration, his accurate knowledge, his conscientious, painstaking care, were the admiration of the Bar, and if, during the last few months, his failing health may have manifested itself in some impatience with those who tried to trifle away the time of an overwrought man, who now is there who does not mourn for the loss of the unsullied and upright magistrate who was the pride of their profession?

"To those who enjoyed the intimacy of his friendship how can he ever be replaced? In vain does the tear blot the paper—that quick intelligence, that courteous presence, that noble heart can never return. Gentle as a woman, sensitive as a girl, was this man in his heart of hearts as known to the inner circle of his intimate friends. Honor to him was an instinct; he had not to think about it. That which was honorable welled up naturally in his mind. Injustice to him was intolerable and repugnant. In the privacy of his retreat at St. Hugues he spent his time in studying his *factums* and in reading, with occasional supervision of the farm, which was the one recreation of his life. There occasionally he would invite some congenial friend and spend days and half the nights in keen discussion of questions of history, law or literature, for which his well stocked library afforded ready reference. Mourn for him we may not, for his life's battle has been nobly fought. Mourn for ourselves with selfish sorrow we ever must."

## COUR SUPÉRIEURE.

FRASERVILLE, 17 décembre, 1886.

Coram CIMON, J.

HEBERT V. ROSSIGNOL, esqualité.

*Droit d'habitation conventionnel de la femme.*

JUGÉ :—*Que, si un contrat de mariage stipule qu'avenant le décès du mari, il serait loisible à la femme et à ses enfants de demeurer dans le logement et les dépendances du mari gratuitement pendant sa viduité sans qu'on puisse les déranger en aucune façon, et que, pendant le mariage, le mari vend la seule maison dont il était le propriétaire, et où il logeait à son mariage, et décède ensuite sans laisser aucune maison, ni aucun logement,—la femme a droit d'obtenir des héritiers du mari un logement, ou une somme d'argent par chacun an représentant la valeur annuelle d'un logement de mêmes conditions que celui en vue dans le contrat de mariage.*

CIMON, J. La demanderesse, dame Henriette Hébert, veuve de William Adhémar Heath, allègue que son contrat de mariage du 15 mai 1876, contient la clause suivante : "Avenant le décès du dit Wm. A. Heath, il serait loisible à la demanderesse et à ses enfants de demeurer dans le logement et les dépendances du dit Wm. A. Heath gratuitement pendant sa viduité, et sans qu'il soit permis de les déranger en aucune façon quelconque, soit pour les changer de place ou pour autrement les gêner dans la jouissance des dites dépendances." Puis la demanderesse allègue que le dit Wm. A. Heath logeait, lors de leur mariage, dans une maison dont il était le propriétaire, avec jardin, hangards et autres dépendances dans le village de l'Isle-Verte, valant avec l'ameublement \$120 par année, et que, pendant le mariage, le dit Heath a vendu cet immeuble et qu'il est décédé en mars dernier, ne possédant à titre de propriétaire aucun logement ; et la demanderesse demande que les héritiers du dit Wm. A. Heath, qui sont les enfants mineurs dont le défendeur est le tuteur, et qui refusent de lui fournir un logement, soient condamnés à lui payer \$125 représentant la valeur d'une année expirant en

mars prochain, de jouissance et occupation d'un logement garni dans les conditions ci-dessus.

Le défendeur a produit une *défense au fond en droit*, où il dit qu'il appert à l'action que cette clause du contrat de mariage en est une d'institution contractuelle et à cause de mort, et que le dit Wm. A. Heath n'a laissé à son décès aucune maison où la demanderesse puisse prendre cette habitation, et que la vente faite par le mari, durant le mariage, de sa maison, a éteint ce droit d'habitation ; et le défendeur conclut au renvoi de l'action comme non fondée en droit.

C'est cette *défense au fond en droit* qui est soumise à la décision de cette Cour.

Remarquons de suite que cette clause n'est pas de la nature d'une disposition à cause de mort. "*Avenant le décès*", c'est-à-dire que c'est à l'avènement de cette condition que la dette de l'habitation deviendra échue ; mais la dette existe dès la date du mariage. C.C. art. 1085 : "La condition accomplie a un effet rétroactif au jour auquel l'obligation a été contractée." C'est une obligation entrevifs que le mari a contractée au mariage ; et il en est dès lors devenu le débiteur au cas de décès, ses biens se sont de suite trouvés chargés de cette dette, et, à sa mort, ses héritiers sont devenus obligés de l'acquitter. Pour pouvoir, à son décès, payer cette dette, le mari était tenu de conserver ce logement et ne pouvait volontairement l'aliéner, au préjudice de la créance de sa femme. C.C., art. 1084, 1087. Expliquons nous davantage.

Dans l'ancien droit français, il y avait l'*habitation légale*, et l'*habitation conventionnelle* de même que nous avons le douaire légal ou coutumier, et le douaire conventionnel ou préfix. Pothier, habitation, No. 1 : "Quelques coutumes accordent aux veuves, outre le douaire, un droit d'habitation." No. 7 : "On peut définir ce droit, le droit que la loi municipale accorde à une veuve, outre le douaire, d'habiter pendant sa vie, ou du moins pendant sa viduité, dans une des maisons de la succession de son mari."

Notre code civil n'a pas conservé à la femme ce droit d'habitation légale, excepté pendant les délais qu'elle a après la mort de son mari pour faire inventaire. C.C., art.

1352.—Dans l'ancien droit français, toutes les coutumes n'accordaient pas ce droit d'habitation légale; mais toutes reconnaissaient le droit de convenir dans le contrat de mariage que la femme aurait une habitation aux dépens de la succession de son mari. Ainsi, au No. 31, Pothier dit : " On peut, soit " DANS LES COUTUMES QUI ACCORDENT AUX VEUVES " UN DROIT D'HABITATION, SOIT DANS CELLES QUI " NE LE LEUR ACCORDENT PAS, convenir par le " contrat de mariage que la femme aura son " habitation dans quelqu'une des terres ou " des maisons de son mari, au cas qu'elle " survive. Cette convention se fait de diffé- " rentes manières."

Or nul doute, sous notre code civil, par l'art. 1257, C.C., qui dit : " Il est permis de " faire dans les contrats de mariage toutes " sortes de conventions, même celles qui se- " raient nulles dans tout autre acte entrevifs, " &c., &c.," une telle convention peut aussi se faire de différentes manières.

Pothier, donnant les caractères distinctifs du droit d'habitation légale, de celui qui est conventionnel, dit au No. 19 :—

Le droit d'habitation—(c'est-à-dire celui " qui résulte seul de la loi, le légal) est un " droit que la coutume n'accorde à la veuve " qu'au temps du décès de son mari. De " même qu'elle ne lui donne ce droit qu'au- " tant qu'il se trouvera quelque maison dans " la succession de son mari, de même elle ne " lui donne ce droit sur une des dites mai- " sons qu'en l'état auquel elles se trouvent. " En cela, ce droit que la loi seule accorde à " la veuve, est différent de celui qu'elle au- " rait stipulé par le contrat de mariage. LE " MARI AYANT DÈS CE TEMPS CONTRACTÉ L'OBLI- " GATION envers sa femme de lui donner après sa " mort l'habitation d'une maison, A CONTRACTÉ " DÈS CE TEMPS ENVERS ELLE l'obligation de " conserver la maison en tel état que la femme " puisse jouir de l'obligation qu'il lui a promise : " l'héritier du mari succède à cette obligation, " &c., &c."

No. 37. " Lorsque la maison déterminée " par la convention d'habitation a péri par la " faute du mari et le défaut d'entretien, la " femme est fondée à demander contre l'hé- " ritier du mari une indemnité de la perte " de son droit d'habitation qui en résulte ; " car le mari, EN CONTRACTANT par la conven-

" tion portée au contrat de mariage, L'OBLIGA- " TION DE DONNER A LA FEMME l'habitation de " cette maison, A CONTRACTÉ envers elle L'OBLI- " GATION SECONDAIRE DE CONSERVER et entretenir " tellement la maison, qu'il peut remplir à " cet égard son obligation, suivant le prin- " cipe établi en notre *Traité des obligations* " No. 142. En cela le droit d'habitation qui " est formé et qui naît de la convention, est " différent de celui que la loi défère."

No. 38 : " Le droit d'habitation conven- " tionnelle dans les deux espèces ci-dessus, " diffère encore de celui que la loi défère. " Celui-ci n'empêche pas le mari de disposer " librement de ses maisons, la loi ne défe- " rant le droit d'habitation qu'au temps de " la mort du mari, et sur les maisons qui se " trouvent dans sa succession. Au contraire, " dans les deux espèces ci-dessus, la maison " ayant été, par le contrat de mariage, déter- " minée et affectée à l'habitation de la fem- " me, le mari n'a pu par son fait, PAR UNE " ALIENATION VOLONTAIRE, préjudicier au droit " d'habitation de la femme dans la dite maison ; " et la femme peut en conséquence réclamer son " droit contre les tiers détenteurs de la dite maison, " à moins que l'héritier du mari ne lui donne un " équivalent."

L'art. 1063, du C.C., dit : " L'obligation de " donner comporte celle de livrer la chose et " de la conserver jusqu'à la livraison."

Ainsi, si la maison, dans laquelle le con- trat de mariage stipule un droit d'habitation pour la femme, est la maison où logeait le mari à son mariage, on voit qu'il n'avait pas le droit de la vendre, au détriment de l'habitation qu'il s'est obligé de fournir à sa femme, en cas de survie de celle-ci.

Le défendeur ne pourrait dire qu'aucune maison n'a été spécialement déterminée dans le contrat de mariage, car, même dans ce cas, sa position ne changerait pas, ainsi que Pothier le dit au No. 42 :

" Une cinquième espèce est, lorsqu'il est " dit que la future épouse, en cas de survie, " aura, outre son douaire, une habitation, " sans ajouter dans un des châteaux ou maisons " du futur.

" Cette espèce diffère des précédentes, en ce " que l'habitation stipulée par la femme n'é- " tant pas, dans cette espèce, limitée aux " châteaux ou maisons du mari ; s'il ne se

"trouvait dans les biens du mari aucune maison qu'on put donner à la veuve pour son habitation, l'héritier du mari serait tenu de lui payer par chacun an une somme à laquelle on arbitrerait que pourrait monter le loyer d'une maison ou d'un appartement convenable, suivant l'état de la veuve, dans la ville où était le domicile de son mari lors de sa mort."

La cour est donc d'avis de rejeter la défense au fond en droit, et elle l'est avec dépens.

Défense au fond en droit rejetée.

Chaloult & LeBel, avocats de la demanderesse.

L. V. Dumais, avocat du défendeur.

#### COURT of QUEEN'S BENCH— MONTREAL.\*

*Illegal arrest and imprisonment — Probable cause—Complaint dismissed for defect of jurisdiction.*

HELD:—1. Where the respondent converted to his own use, certain straw bought by him with money furnished to him by the appellant, and intended for the appellant's benefit, that there was probable cause for his arrest.

2. Where a person lays an information before a justice of the Peace, that a crime has been committed, for which such justice has general jurisdiction, and the justice grants a warrant upon which the accused is arrested, but he is afterwards discharged upon the ground that the justice had no authority in that special case, the complainant, if he had probable cause, is not liable in damages for illegal arrest and imprisonment.—*Copeland*, Appellant, and *Leclerc*, Respondent, Jan. 25, 1886, *Tessier and Cross, JJ., diss.*

*Quebec Pharmacy Act, 48 Vict. (Q.), ch. 36, s. 8—Construction of—Partnership contrary to law.*

HELD (Reversing the judgment in Review, M.L.R., 1 S.C. 485):—That the appellant, who had, during more than five years before the coming into force of the Act 48 Vict. (Q.) ch. 36, practised as chemist and druggist in partnership with his brother, and in his brother's

\* To appear in Montreal Law Reports, 2 Q.B.

name, was entitled, under sect. 8 of the Act, to be registered as a licentiate of pharmacy. The section in question must be construed as applying to those who have illegally practised as chemists and druggists, and it was immaterial whether the appellant had practised in his own name or in a partnership contrary to law, the illegality in either case being covered by the Act.—*Brunet & L'Association Pharmaceutique*, P.Q., Jan. 27, 1886.

#### SUPERIOR COURT—MONTREAL.\*

*Capias—Emprisonnement illégal—Délit—Prescription de l'action résultant d'un délit.*

JUGÉ:—1. Que le fait reproché à un défendeur arrêté sur *capias*, constitue un délit.

2. Que l'action par laquelle le demandeur réclame du défendeur des dommages-intérêts pour arrestation illégale et emprisonnement en vertu d'un *capias*, se prescrit par deux ans.

3. Que cette prescription n'est pas interrompue seulement par l'émanation de l'action, mais par la signification effective de l'action avant l'expiration des deux ans qui suivent la date du jugement rejetant le *capias*.—*Mansfield v. Dodd*, Jetté, J., 18 oct. 1886.

*Running stream—Tannery—Actionable nuisance—Damages—Injunction.*

HELD:—1. That where the proprietor of a tannery, for the purposes of his industry, makes such use of a private water-course as to render the water unfit for domestic purposes and dangerous to health, and to deprive proprietors of land bordering on said stream, of the use and enjoyment of the same, damages will be granted against him.

2. Under the above circumstances, the Court will grant an injunction against such use of stream.—*Weir v. Claude*, Johnson, J., Oct. 30, 1886.

*Responsabilité des huissiers—C. proc. arts. 22 et 36—Avis d'action—Effet des lois décrétant quels biens peuvent être saisis et ceux qui ne peuvent l'être—C. proc. art. 556—Subrogation.*

JUGÉ:—1o. Que l'huissier porteur d'un

\* To appear in Montreal Law Reports, 2 S. C.

bref de saisie-gagerie qui signifie d'abord une copie du bref au locataire et qui ne va ensuite saisir que plusieurs jours après, est responsable en dommages au demandeur pour les effets que le locataire a, dans l'intervalle de la signification à la saisie, enlevés de sur les lieux loués et ainsi soustraits au privilège du demandeur;

20. Que les arts. 22 et 36 du code procédure civile ne s'appliquent pas à cette action on dommages;

30. Que le privilège du locateur ne porte pas sur les effets qui doivent être, en vertu de l'art. 556, laissés au débiteur à son choix;

40. Que cet art. 556, tel qu'amendé, s'applique aussi bien aux saisies qui ont lieu pour le recouvrement d'une dette antérieure à cet article qu'à pour les dettes postérieures;

50. Que le jugement condamnant, dans ce cas, l'huissier à des dommages, le subrogera pour autant dans la créance du demandeur contre le locataire.—*Michon et al.*, v. *Venne, Cimon, J.*, confirmé en révision, 12 juin 1886.

*Procedure—Opposition to judgment by default.*

**HELD:**—That under 46 Vict. (Q.), ch. 26, s. 4, amending C. C. P. 484, an opposition to a judgment by default must be supported by affidavit setting forth that the opposant has a good defence to the action, and that he has been prevented from filing his defence by surprise, fraud or other just and sufficient causes.—*Ross v. Dawson et al.*, Jetté, J., Sept. 20, 1886.

*Procedure—Opposition to judgment by default—*  
C. C. P. 486—46 Vict. (Q.) ch. 23, s. 4.

**HELD:**—1. That the opposant, against whom a judgment by default had been obtained after being regularly foreclosed from pleading, not having objected within the ordinary delay to the filing of a contestation in law of his opposition to judgment, but on the contrary, having appeared and been heard on said contestation, could not object afterwards (and more especially when the case was before the Court of Review), that the contestation had been filed too late. C. C. P. 140.

2. An opposition to judgment by default must be supported by affidavit that the de-

fendant has a good defence to the action,—which defence shall be set out in the opposition,—and that he has been prevented from filing his defence by surprise, fraud or other just and sufficient causes.

3. Where the defendant has been regularly foreclosed from pleading, and does not complain of such foreclosure, he is not entitled to file an opposition to the judgment (which is equivalent to a plea to the action), without being relieved from such foreclosure.—*Letourneux v. St. Jean*, In Review, Johnson, Papineau, Gill, J.J., Nov. 30, 1886.

*UNPROFESSIONAL CONDUCT.*

To the Editor of THE LEGAL NEWS:

SIR,—Frequent reference has recently been made in the city papers to matters reflecting upon the conduct of members of our Bar. The presiding Judge of the Circuit Court for the last term, must have been utterly disgusted at the numerous instances of unprofessional practice disclosed to him. If this state of affairs be allowed to proceed unmo-  
lested, it is difficult to say where it will end. It is about time that our Council showed a little "backbone" and woke up to the fact that the dignity and reputation of our Bar are at stake, and that they proceeded to inquire into and put down with a strong hand this unfortunate but growing evil.

NEMESIS.

Dec. 27, 1886.

*INSOLVENT NOTICES, ETC.*

*Quebec Official Gazette, Dec. 18.*

*Judicial Abandonments.*

Louis Fréchette, trader, Ste. Madeleine, Dec. 6.  
Louis Proulx, carriage-maker, St. Robert, Dec. 13.  
John N. Smith, trader, township of Winslow, Dec. 6.

*Curators appointed.*

*Re F. X. Brazeau & Cie.*—Kent & Turcotte, Montreal, curator, Dec. 16.  
*Re Telesphore Coderre*, druggist, Montreal.—Seath & Daveluy, Montreal, curator, Dec. 7.  
*Re Henriette Dubeau*, milliner, Montreal.—Seath & Daveluy, Montreal, curator, Dec. 10.  
*Re Thomas Lavoie*, Fraserville.—L. N. Paquet, Fraserville, curator, Dec. 14.  
*Re N. O. Lebrun*, Sorel.—Kent & Turcotte, Montreal, curator, Dec. 3.  
*Re Nathaniel Michaud*, trader, St. Eloi.—H. A. Bedard, Quebec, curator, Dec. 14.  
*Re Edouard Morin*, druggist, Montreal.—David Seath, curator, Dec. 7.