THE LEGAL NEWS.

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Editor.—JAMES KIRBY, D.C.L., LL.D., Advocate.
1709 Notre Dame Street, (Royal Insurance Chambers, opposite the Seminary.)

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Satisfaction, in which we largely share, is universally expressed at the honour of knighthood conferred upon the ex-Chief Justice of the Superior Court of Quebec. It is just five years since we ventured to suggest the fitness of such a distinction (4 Leg. News, 169). Three years later the General Council of the Bar, in a formal resolution, made a similar recommendation (7 Leg. News, 129). Since that time Chief Justice Meredith, to the great regret of the profession, has thought proper to claim the relief from official duties to which his long service upon the bench so fully entitled him (7 Leg. News, 289). Sir William Collis Meredith was born in Ireland, 23rd May, 1812. He studied law in Montreal, and was called to the bar in 1836. Created a Q. C. in 1844. For some years he was head of the firm of Meredith, Bethune & Dunkin, which enjoyed a very large and important practice in the city of Montreal. He declined office on various occasions in the administrations of the time, but in December, 1849, accepted a judgeship of the Superior Court. On the 12th March, 1859, he was appointed to the Court of Queen's Bench, a position which he filled with marked ability. In 1866 he succeeded the late Chief Justice Bowen as Chief Justice of the Superior Court of Lower Canada, and continued in office until about two years ago, when the Government with great regret acquiesced in his desire for retirement. The decisions of the ex-Chief Justice have done much to build up the jurisprudence in force in this Province, and none are cited with greater deference in our courts. Sir William Meredith has received the hearty congratulations of his late colleagues on the well-merited distinction conferred upon him, and we express simply the general feeling when we hope he may long be spared to enjoy the honours so worthily conferred.

Notwithstanding the progress made in the March Appeal Term at Montreal, the May Term commenced with 112 cases set down for argument, an increase of 8 over the March list. The number in May 1885 was only 89. The Court sat eleven days, an extra day being taken to make up for the Queen's Birthday. The business done was as follows :—29 cases argued, 1 dismissed (there being no appearance), and 1 settled. Total, 31, leaving 81 standing over. A bill before the legislature proposes to make some changes in the sittings with the object of facilitating the progress of business.

The Law Journal (London), says :—"Some interest attaches at the moment to the law in regard to persons declaring their intention to resist by force of arms the execution of an Act of Parliament if it should be passed. If the Act of Parliament pass, anyone who commits an overt act in furtherance of such an intention is undoubtedly guilty of high treason, and what he may have done before the passing of the Act is evidence against him so long as an overt act after its passing is proved. Meanwhile, no treason is now committed by acting in such a way as to show that in a certain event treason is intended. The statute 36 Geo. III. c. 7, s. 1, made perpetual twenty years afterwards, provides, so far as applicable to the case, that 'If any person shall devise or intend to levy war against His Majesty within this realm in order by force or constraint to compel him to change his measures or counsels or in order to put any force or constraint upon or to intimidate or overawe both Houses or either House of Parliament, and such devices or intentions shall express by any writing or overt act, he shall be deemed to be a traitor.' Any action which may amount to intimidation of the Queen or Parliament is, of course, treason under this statute, but resistance to the execution of a law must be in regard to an existing not a contemplated law to amount to treason by levying war for the purpose of forcing a change of measures or counsels on the Sovereign or Parliament."

Mr. L. S. Huntington, who died at New York, May 19, at the age of 59, was little known to the profession as an advocate. He was called to the bar, however, in 1853, and in 1863, when his party formed an administration, he became Solicitor General for Lower Canada in the Sandfield Macdonald Cabinet. He represented Shefford in the Commons for a number of years, before and after Confederation, until defeated in 1878. He had considerable aptitude as a public speaker, and his powers in this respect were studiously cultivated, but a rather ponderous and formal manner, often observed in public speakers of the New England States and the section of Canada adjacent, rendered his oratory less effective than that of some men of inferior gifts. His inclinations were for public affairs and literature, rather than for the less flowery paths of the law, and the latest achievement which attracted public notice to the pursuits of his retirement in New York was the production of "Professor Conant," a novel which we have not been able to examine, but which obtained a moderate share of favor from the critics.

GUILT.

Filtered through the medium of a New York cable despatch, there appeared in 9 Leg. News, p. 153, the report of an incident in the trial of a man for voting on three different properties in the same electoral division. Mr. Justice Stephen was fully justified in the most peremptory condemnation of the application of the rule *actus non facit reum, nisi mens sit rea*, to the case before the court; but he goes further and questions both the meaning and the authority of the rule. Of course he was only pretexting ignorance when he desired to know its meaning in plain English, and whence it came. Both Mr. Justice Stephen and Mr. Williams must have known perfectly that the maxim is to be found in Broom, where the application of the rule is explained, and where the cases in which it has been examined are collected. Broom takes the rule from Coke's 3 Inst. p. 54. The only wonder is, that having thought and written a great deal about these things, the learned judge should have fancied he had a heresy to extirpate.

Whether any, or what mediæval writer gave the rule as we find it in Coke, is of little importance, for it is founded in natural law; and in all times it has been applied, with unerring precision, as we employ it now. This might be illustrated from several passages of the Old Testament. The whole matter is, however, so familiar from our every day experience that it would be a waste of time to quote particular authorities to establish it.

The only objection to the absolute force of the rule is that a person accused may be ignorant of the law; but it is a necessary fiction that he knows it. Surely this cannot be the difficulty in Sir James Stephen's way to a complete understanding of the rule. It will be found that knowledge, *i. e.*, intention, real or presumed, is essential to constitute guilt, whether the intention be of the substance of the offence, as is sometimes said, and by which is probably meant, expressly included in the definition, or not. The remark may be pressed still further. Intent or guilty knowledge, express or implied, is to be found in the definition of every crime. It is so in murder, as much as in assault with intent to murder.

It is difficult to furnish a skeptic with original authority as to a natural precept, or it is too easy. But turn this maxim as one may, it will be found to be invariably true, that without intent guilt does not exist. So, an infant is incapable of crime, and so also are the insane. It should be noted that it is with regard to those not *compos mentis* that Coke quotes the rule, *actus non facit reum*, &c.

Another instance is where one acts under compulsion,—as when one obeys a king *de facto*. The rule of the Roman law as to inability to prevent, is based on the same principle, *Culpa caret*, &c. *ff.* de reg. jur. 2. 50, *nullum crimen*, &c. *Ib.* 2.109.

Though ignorance of law is not an excuse in criminal matters, ignorance of fact absolves. If, then, Mr. Justice Stephen's farmer had voted by error in one place instead of another, believing, in fact, that the place he voted at was within the electoral division in which he had a right to vote, he would have been entitled to an acquittal; whereas the man who knowing what he is doing, reads his Bible in spite of the prohibition of the law, should be found guilty.

In Austin's lectures on Jurisprudence (Vol. 1, p. 477), guilt or imputability is treated. What is more to the purpose, he quotes from Feuerbach and Rosshirt. The former treats the will as the *cause* of which the fact is the *effect*, and he goes on to say "the reference of the fact as *effect* to the determination of the will *as cause*, settles or fixes the legal character of the latter."

"In consequence of that reference (or by reason of the imputation of the fact) the determination of the will is held or adjudged to be *guilt:* which guilt is the ground of the punishment applied to the party."

It seems Rosshirt adopts the same doctrine.

R.

SUPERIOR COURT.

SWEETSBURG (D. of Bedford), Jan. 2, 1886.

Coram BUCHANAN, J.

GIROUX et al., Petitioners, and THE MAYOR AND COUNCIL OF THE TOWN OF FARNHAM, Respondents.

By-law—When in force—Majority of proprietary voters—40 *Vic. c.* 29.

Held,—1. *That the entry in force of a By-law, under the circumstances of the case submitted, dates from the time of the sanction thereof by the Lieutenant Governor in Council, and the delay to contest the same commences to run from the time of such sanction.*

2. *That the majority of proprietary voters duly qualified, means the majority of those who were present and voted, and not the absolute majority on the list.*

BUCHANAN, J.:—

The proceedings taken in this matter are for the annulling a By-law passed by the respondents for the purpose of levying by or through a loan, a sum of money wherewith to erect an aqueduct or water works in the Town of Farnham. The petition is brought under section 214 and subsequent ones of the Town Corporation General Clauses Act, 40 Vict. ch. 29; for although this town has a special act of incorporation, 40 Vict., ch. 47, yet by section 10 of the last mentioned act, it is declared that whenever any by-law shall be submitted to the approval of the electors it shall be submitted in conformity with and as provided for in the said town corporation general clauses act, so that as far as concerns the present matter, the only statute directly bearing thereon, is the first cited act which furthermore specifically regulates the time and mode of such proceedings as the one now submitted.

The respondents first meet the *demande* by a *fin de non recevoir*, (the answer in law being covered and disposed of by the amendment) to the effect that it has come too late, a point to be determined by an examination of dates, and of the clauses of the statute in connection with it.

On the 2nd March, 1885, this by-law was passed by the Council; on the 12th March it was submitted for approval or disapproval to a meeting of the electors whereat a poll was demanded, and the election thereunder was fixed and held on the 16th and 17th of March, 1885, and the by-law was published on the 22nd March, and on the 9th September, 1885, the authorization of the Lieutenant-Governor in Council was given to the contracting of the loan.

By section 208 of this statute it is enacted that the by-law of the Council shall come into effect and have the force of law, if not otherwise provided for in the provisions of the By-law, fifteen days after the date of publication, saving always those cases otherwise provided for under the provisions of this Act or of the special act.

As regards this part, the By-law itself says: it shall come into force "après avoir été soumis aux autres autorisations requises par la loi."

It is admitted that the case comes within the purview of section 355: that the interest and sinking fund of the sums borrowed by the Corporation absorbed half the revenues of the town, and that for the loan it required the authorisation aforesaid.

So that the question is, did the by-law come into force fifteen days after the publication on the 22nd March, and, if so, the petitioners are too late, or only when the authorisation was granted on the 9th September, and the petition having been served on the 15th September, it is within the delay—in other words, did the By-law enter into force until the loan was authorised?

The terms of the document itself almost dispose of that question. The use of the word authorisation shows that it contemplated the one in question, but not exactly as given, for when the By-law was passed, the authorization was required from the Legislature, which is altered by a subsequent statute to the Lieutenant Governor in Council. It is evident that this authorization could be the only one contemplated by the makers of the By-law. Everything else to give it effect was contemplated and referred to, so that the authorisation mentioned could only be the one in question.

The purpose of the By-law was to contract a loan, its main aim and object: and it is no argument against it to say that the authorisation only referred to the loan, for that could not be obtained without the By-law, nor the By-law be good without the authorization. By section 222 the right of demanding the annulment of a by-law is limited to three months next after the *entry into force* of such by-law, and its object being the contracting of the loan till it was authorized to contract that loan the Corporation could not make it available. It was until then a dead letter, without vitality or force, much as is a bill before being sanctioned and becoming an act of Parliament. That being established, the conclusion is, that the petitioners were within the delay of three months from the time of the By-law coming into force.

The other question to be investigated is one of more nicety. By the admissions of record the following facts appear:—that the total value of the real estate of the town was $226,-550; that 166 persons voted:—that of these, 123, with a valuation of $109,600, voted "yes," in favor of the By-law, and 43, with a valuation of $66,750, voted "No"—the affirmative voters thus possessing somewhat less than $4,000 of the half of the whole valuation, and being in an absolute majority as to the number of voters, and as to valuation much larger relatively than those voting in the negative, but less absolutely than the half of the whole valuation. The petitioners therefore contend that as the valuation of those who voted yes, was $109,600, they did not form "la majorité "des propriétaires électeurs municipaux en "valeur immobilière," and therefore the By-law was not approved as by law required.

All the facts involved are admitted, and the question to be decided turns mainly upon the interpretation to be given to the words, "a "majority in number and in real value of the "proprietors who are municipal electors," contained in sections 354-5 of the statute; and this interpretation must be made so far as possible from the Act itself and the principles of law governing such cases.

We see, then, that town loans, differing in that respect from other acts which are consummated by the Council as representing and acting for the inhabitants, must be approved by a certain class of the community, that is, a certain class or portion of the electors peculiarly qualified. By admissions it is declared (see 40 V. c.47,s.3 sub.-sect. 4) that these electors should be male freeholders and householders of the full age of 21 years then residing in the said town of Farnham, and in actual possession of immovable property in the said town as proprietors of the real value of $50 each or more. And, say the petitioners, unless the by-law is approved by the absolute majority in number of such electors, which it has, with the further absolute majority in value, it is invalid, although the numerical majority is in favor of it. This proposition must be discussed, 1st in connection with the other clauses of the statute relating to the passing of this by-law; and 2nd, with the principles of law governing matters submitted for popular approval. In the first place, the by-law must be submitted to a meeting of all the municipal proprietor electors, convened by public notice. § 195 informs us as to the effect of such a notice, that it shall be applicable to and binding upon proprietors or rate payers domiciled out of the municipality in the same manner as upon residents, so that, with this notice, all the qualified electors are either present or *en demeure* to be so. The meeting being held, a poll may be demanded; that is optional, but suppose it is not demanded. It was said that the approval or otherwise could only be signified by a poll; that point is not in issue now, but at present I do not look at the law in that light. The meeting is called for the *approval* in those words,

§ 356, not "or disapproval," all present at the meeting being such electors, approve—they may not be an absolute majority of the electors on the roll, but at the meeting they are unanimous, and no poll is demanded. Is not the inference therefrom to be drawn that the by-law was approved? It is to be remarked that it is not as it were a meeting where something was to be initiated. Nothing positive, in a certain sense, has to be done to signify approval, except the attendance at the meeting, for the motion for approval submitted to the meeting can be silently acquiesced in. The meeting is for the purpose of ratifying the acts of their agents, the council, but if they don't ratify or approve, then something has to be done to give them an opportunity of showing their disapproval—the poll has to be demanded. I am for the present taking this view as a support of the main point of my argument as to the character of the act signifying the approval of the electors.

The poll, however, was demanded and upon that, by § 361, the Mayor is obliged to count the yeas and nays, and lay before the council the result of the voting, together with a statement showing the value of the taxable *real estate of each* of the voters according to the valuation roll. For what purpose can that statement be required if not for the purpose of showing the relative valuation of the voters, in order that it may be ascertained as regards the electors who voted, who had the majority as well in number as in value? Then a certificate must be given whether the majority in number and taxable real value, approve or disapprove. What majority? the absolute majority on the roll, say the petitioners, but the term majority must be taken with the previous portion of the clause, where the statement is required as to the real estate of "each of the voters." Evidently the majority refers to the majority of the voters who voted. An attentive and long consideration of these clauses, taking them all together, has satisfied me that the object of the law was to obtain the approval or disapproval of the majority of the qualified electors who signified it or voted. The electors were required to say yes or no, in this differing from the proceedings at the meeting. Those who did not attend were *en demeure* to do so. I can't say whether all the qualified electors voted—perhaps not—as there is about $50,000 worth of property not represented; but supposing that there were absentees who did not vote, would not the principle embodied in the maxim of law apply, "Qui non prohibet quod prohibere potest assentire videtur,"—not prohibiting while having the power to do so, they must be considered as assenting.

Then again, and this is an important point, how is the majority of the $226,550 of the valuation roll to be obtained? We see that one qualification of the voter is being a male. How then about women property-owners? about minors? about interdicted persons? all those not fully vested with civil rights? They are proprietors but are not electors, so that it shows that the law did not intend that proprietors, *qua* proprietors, only should be consulted. A law must be made to work. If the absolute majority contended for was required it would be impossible to make a by-law available; it would be liable to obstruction at the hands of one or more large proprietors; and it might happen in a small town like Farnham that a few proprietors could prevent the will of the numerical majority and relative majority in value, as here, from being carried out. This is against all the principles of our democratic institutions; the numerical is the only majority by which the sense of the people can be taken, and that is the foundation of our system of political government which, of course, has nothing to do with this case, except as an illustration of the rule applying to majorities.

All the writers to which I have been referred, and those which I have examined, agree that there is a well established principle as to the effect of the act of the majority. I will cite the exposition by Kent in his Commentaries, vol. 2, p. 367, as embodying the doctrine held, (Angell & Ames, Corporations, p. 482; 1 Dillon, No. 261-277, 283). There is a distinction taken between a corporate act done by a select and definite body, as by a board of directors, and one to be performed by the constituent members. In the latter case, a majority of those who *appear* may act, but in the former, a majority of the definite body *must* be present, and then a majority of the quorum may decide. This is the general rule on the subject,

and if any Corporation has a different modification of the expression of the binding will of the Corporation, it arises from the special provisions of the act of incorporation, and Angell & Ames on Corporations, at page 482, says "a majority of those present may act, "whether a majority of the whole body or "not."

Applying the rule to the present case, we have an act to be done by a certain class of the inhabitants, but of indefinite number, most certainly. The act of the majority of those *present* binds the whole. But if it had been the act of a definite number, as of the members of the Council, then an absolute majority is required, unless modified by law, and that we find is done here; for it will appear by §123 of this same statute, that as to the Council (a definite number) every disputed question shall be decided by a majority of the votes *present;* which latter word takes the case out of the general rule laid down: that where there is a definite number the absolute majority is required. So that by the act itself we find that the law as I contend it is, has been followed. If an absolute majority is meant, it must be so stated. There was a good deal of discussion as to the meaning of the words, majority and plurality—the latter is one of little usage amongst us, being more common in the States. Some dictionaries treat them as synonymous, but however that may be, we have not far to seek for the meaning of the word majority, as legal jargon. It is of very common use by our legislators, although not always used; for it will be observed at §78 of this act, the word majority is not used, but "the largest number of votes," and again, at §80 "the greatest number of votes." So that the term is not sacramental.

By sub-section 19 of art. 17 of the C. C., it is enacted that when an act is to be performed by more than two persons, it may be validly done by the *majority* of them, and by sub-section 24 of section 6, of chap. 5 of the Cons. Stat. of Canada, words making any association or number of persons, a corporation or body politic, shall vest *in any majority* of the members the power to bind the others, &c. Then again, observe the use of the word majority in the Dominion Election Act of 1874, and in the Quebec Election Act of 1875, where it says, at section 204: "The candidate who, on the final summing up of the votes, shall be found to have a *majority* of votes, shall be then declared elected;" and it never was pretended that in these cases a majority meant the absolute majority of the electors. So that we see by these citations that the majority meant by the Legislature, unless otherwise ordered according to the well-known rule of law cited, is the numerical majority.

The learned counsel for the petitioners cited the special acts of incorporation of St. Johns, Sorel, and other towns, to show that a modification had been made as to the effect of the votes and to change the rule as to the absolute majority, as he contended for, required by the Statute. As I am of opinion that the rule is the other way, these statutes do not affect my argument.

Holding, as the Court does, that the majority contemplated by the law was the majority of the qualified electors in number and value, who were present and voted, and that such majority approved of the By-law in question, the petition must be dismissed with costs.

Petition dismissed.

E. Racicot for petitioners.

T. Amyrauld for respondents.

SUPERIOR COURT.

QUEBEC, June 9, 1885.

Before CASAULT, J.

ELÉONORE BERNARD et vir v. EDOUARD BERNIER et al.

Action for alimentary allowance—Averments.

In an action for alimentary allowance, by the mother against her children, issue of her marriage with her husband, the declaration did not allege "that her husband, the father "of the defendants, was unable to support "himself and his wife:"

HELD, *that a mother, though poor and unable to support herself, has no right to claim an alimentary allowance from her children, so long as she does not show that her husband is unable to support them both.*

The following is the judgment of the Court:—

"La Cour, ayant entendu les parties par leurs avocats en droit, sur le mérite de la dé-

fense en droit produite à l'encontre de la présente action;

"Considérant que les aliments ne sont dûs à la mère, par les enfants, pendant la vie du mari, qu'à défaut par celui-ci de les lui fournir;

"Considérant que la demanderesse n'allègue pas que son mari est incapable de lui fournir des aliments, et qu'il ne résulte pas de ce qu'elle est pauvre, qu'elle est dans le besoin, et qu'elle ne peut pas pourvoir à sa subsistence et à son entretien;

"Maintient la défense en droit, et renvoie l'action de la demanderesse avec dépens."

Demurrer maintained.

F. X. Drouin, for the plaintiff.

L. F. Pinault, for the defendants.

J. Frémont, counsel for defendants.

(J. O'F.)

APPEAL REGISTER—MONTREAL.

May 26.

McGreevy & Russell (Quebec Case).—According to notices given to parties interested, judgment is rendered upon respondent's motion for re-transmission of the record, which is granted for costs only.

Dudley & Darling.—Judgment reversed, Cross, J., *diss.*

Ralston & Stansfeld.—Judgment confirmed, Monk, J., *diss.*

Montreal City Passenger Railway Co. & Irwin.—Judgment confirmed.

Papineau & Corporation N. D. de Bonsecours.—Re-hearing ordered upon the question whether a roll made by a valuator not qualified is valid.

Caty & Perrault.—Judgment confirmed with costs of first class.

Greene Sons & Co. & Bazin.—Judgment reformed; appellants condemned to pay $30, and costs of an action of that class, and respondent condemned to pay costs in appeal.

Vennor & Life Association of Scotland.—Judgment reversed, with costs of first class.

Harbor Commissioners & Hus & Dominion Steamship Co.—Judgment on the appeal of the Harbor Commissioners against Hus reversed with costs, and appeal of Harbor Commissioners against Steamship Company rejected with costs (Tessier, J., *diss.*)

Whitehead & Kieffer & White.—Hearing on merits concluded. C. A. V.

Kieffer et al. & Whitehead.—Hearing resumed and concluded. C. A. V.

May 27.

Breekon & Kane.—Motion for leave to appeal from interlocutory judgment rejected, Ramsay, J., *diss.*

Trust & Loan Co. & Panneton.—Judgment reversed, each party paying his own costs in all courts.

Courville & Leduc.—Judgment confirmed.

Guest & Douglas.—Judgment confirmed.

Normandeau & McDonell.—Judgment confirmed except as to a slight modification.

Central Vermont Railroad & Lareau.—Judgment reversed.

Exchange Bank of Canada & Canadian Bank of Commerce.—Judgment reversed.

Duranceau & Larue.—Judgment confirmed.

Morin & Roy.—Judgment reversed; Judgment in favor of Morin for $50, with costs of C. C. action appealable, and costs in appeal.

Vennor & Life Association of Scotland.—Motion for leave to appeal to P. C. granted.

Crowley & Dorion; Courtemanche & Fournier; Exchange Bank & Hart; Charland & Bigaouette—Appeal *perimé.*

Heyneman & Harris.—Heard on merits. C. A. V.

Boyce & Phœnix Mutual Ins. Co.—Heard on merits. C. A. V.

May 28.

Pattison & Banque du Peuple.—Heard on merits. C. A. V.

Fairbanks & Barlow, & O'Halloran.—Heard on merits, C. A. V.

Canada Investment Co. & Hudon.—Appeal struck, the parties having declared that the case has been settled.

Sincennes-McNaughton Line & Manhattan Fire Ins. Co.—Heard on merits. C. A. V.

Joyce & McCall.—Heard on merits. C. A. V.

The Court adjourned to June 30.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, May 22.

Judicial Abandonments.

John P. Atkinson, Ascot, saw-mill owner, May 14.
Hyacinthe Guillette, Bedford, May 19.
Charles A. Simard, St. Hyacinthe, May 19.

Curators Appointed.

Re N. Fugère, Three Rivers.—Kent & Turcotte, Montreal, curator, May 13.

Re Pettigrew & Paradis, L'Isle Verte and St. Arsène.—H. A. Bedard, Quebec, curator, May 18.

Re Philippe Pouliot.—C. F. Bouchard, Fraserville, curator, May 15.

Dividend Sheets.

Re Sophronie Boulais.—Div. payable May 29, at office of J. Barnabé, curator, Montreal.

Re Pelletier & Tardif.—Second and last div. payable June 3, at office of H. A. Bedard, curator, Quebec.

Separation from Bed and Board.

Dame Marie Boulanger vs. Jean Lamontagne, farmer, St. Magloire.

Dame Eliza Ann Picher vs. François Xavier Picher, merchant, township of Ditton.

Quebec Official Gazette, May 29.

Judicial Abandonments.

Archibald Cousineau, trader, Salaberry de Valleyfield, May 19.

Félix Fortin, boot and shoe manufacturer, Quebec, May 22.

Joseph S. Gauvreau, bookseller, Quebec, May 25.
Goldberg & Levitt, traders, Belœil, May 22.
J. G. Guimond, Montreal, May 22.
George Long, Dundee, May 20.
L. J. St. Cyr, Three Rivers, May 14.

Curators Appointed.

Re Philomène Sauvé.—A. A. Taillon, Sorel, curator, May 22.

Dividend Sheets.

Re Isidore Trudeau.—First and final div. payable June 10, C. Desmarteau, Montreal, curator.

Minutes of Notary transferred.

Minutes, &c., of late N. G. Bourbonnière, N. P., Montreal, transferred to C. E. Lévy, N. P., of same place.

Separation as to property.

Dame Alphonsine Gadbois v. Charles Marsan *dit* Lapierre, trader, St. Hyacinthe, June 25, 1885.

Dame Marie Rachel Héroux v. Joseph Guillaume Guimond, Montreal, May 25.

GENERAL NOTES.

TRIAL BEFORE A JUDGE. — Mr. Justice Cave found himself in a comical predicament last week. His lordship had tried a case in which the evidence had mostly been taken abroad on commission, and in finding the facts, he had to make his choice between three or four depositions on one side to one state of facts, and an equal number on the other side to a state of facts precisely opposite. Having neither intrinsic nor extrinsic evidence to guide him to the truth, the learned judge very naturally found himself unable to come to a conclusion. In other words, the jury part of him, as his lordship humorously expressed it, was unable to agree, and had therefore to be discharged without giving a verdict. This incident of trial by jury has hitherto been supposed to be absent from trial by judge—perhaps because it is not every judge who, when he finds a difficulty in making up his mind, has also the courage to confess it.—*Law Times* (London).

BEES *v.* SHEEP.—A novel suit has just been terminated in the Richland (Wis.) Circuit Court by the dismissal of the complaint at the hands of his Honor, Judge William Clementson. The plaintiff, J. H. Powers, of Ithaca, that State, is the owner of a large sheep-ranch in Richland county, adjoining the land of the defendant, Freeborn, a prominent bee-keeper. The suit was for $1,000 damages, the complainant alleging that many of his sheep had died, and that the "poor, weak and feeble condition of the remainder of the flock" was due entirely to the swarms of defendant's bees, which invaded his (plaintiff's) land and drove his sheep from their pasturage. An array of eminent counsel was assembled on either side, and Wisconsin and Illinois bee-keepers, representing from 18,000 to 20,000 colonies of bees, were present in court to watch the progress of the suit. This case was summarily dismissed by his Honor, on the grounds of lack of precedent for the proceedings, and damages of so remote a nature they could not be entertained.—*Chicago Legal News.*

THERE is something of the shrewd humor of the Oriental cadi in the decision of a Russian stipendiary magistrate, a report of which has just reached us from Odessa. It appears that a new cemetery is about to be opened near that city, and that two Greek merchants, each anxious to secure the most comfortable or most distinguished resting-place, were allowed by some official blunder, to buy the same allotment. When the mistake was discovered, neither would yield his claim, and the matter was referred to the district judge. Greek had met Greek, and the tug of war threatened to be severe, when the magistrate, with an astuteness worthy of Solomon, arranged the matter in the simplest way possible by applying the rule "First come, first served," and suggesting that whichever died first should have the right to the coveted resting-place. The parties went away reconciled and happy. It is not stated whether they had to find sureties to guarantee that neither would take an unfair advantage of the other by committing suicide.—*Wash. Law Rep.*

At the opening of the Court of Review on the 31st March, the Hon. Mr. Justice Johnson, the senior justice present, made the following observations with reference to the lamented death of the Hon. Mr. Justice Mousseau:—"Before proceeding to business we feel it right to express, as far as we can, our sorrow at the very recent, and somewhat sudden death of our colleague Mr. Justice Mousseau. We desire, in common, no doubt, with the whole profession, to show every mark of respect to his memory that is in our power; and for that purpose we will adjourn all the courts during the forenoon of Friday, the day of the funeral. As to the present occasion, it is a day set apart by long practice to render judgments, which could only be postponed at the greatest inconvenience, and possible loss of parties in the cases. But Death, always awful as a change, and sad as a parting, speaks to the living in no way more plainly than as a call to duty while they are yet here: and we think we best do our duty to the public and show our respect for the valued colleague who has gone before us, by proceeding with the immediate business of the day."