The Legal News.

Vol. XII. JANUARY 26, 1889. No. 4.

The decision of the Court of Appeal with reference to the issue of a writ of appeal in the *McShane* case has been widely misrepresented in the press. It has been asserted that the Court allowed or maintained the right of appeal. That is not the effect of the decision. The Court merely says, the writ, which the Clerk refused to issue as a matter of routine, may be issued, in order that both parties may be heard upon the question whether the Court of Review had jurisdiction. The case, we conceive, is now in the position of one where the writ of appeal has been issued in ordinary course, and the other side, contending that no appeal lies, takes steps to have the appeal rejected for want of jurisdiction. This is very different from what is usually expressed by allowing an appeal. Those who followed the learned Chief Justice's careful exposition of the clauses of the Statute bearing upon the question, could hardly fail to notice that while up to a certain point his Honour's statement appeared to indicate that the law vested one judge, or the Superior Court, with jurisdiction over the *mis en cause*, yet, that a grave difficulty in accepting this view was presented by sections 89 and 92. The former says, "the Superior Court sitting in review shall determine"——, and then there are mentioned first the matters more directly involved in the contestation—"(1). Whether the member whose election is complained of has been duly elected; (2). Whether any other person, and who, has been duly elected; or (3) whether the election was void"; and after thus specifying the matters specially raised by the petition, goes on to say that the Court of Review shall determine "*all other matters arising out of the petition.*" The *mis en cause* was made a party to the petition, and, by the order of Mr. Justice Loranger, the proceedings against him were carried on in the name of the petitioner, and therefore the decision of the Court of Review, that this was a matter arising out of the petition, can hardly be considered a strained interpretation of the Statute. But section 92 supports the jurisdiction of the Court of Review still more forcibly. That Court is specially directed to report to the Speaker "the names of any persons against whom, during the examination of the petition, the commission of any corrupt practice has been proved." If the judge in the Superior Court decided that there was proof of a corrupt practice against a person, the Court of Review, in fulfilling the duty imposed on it, might have to look at the same proof in order to decide whether the election was void, and might determine that the corrupt practice was not proved, or that the evidence was illegal or inadmissible; and how, then, could the Court of Review report the name of the person whom the judge had found guilty? The Court of Review would have to declare in one breath that there was no corruption, and then that A B or C had been proved guilty of corruption, which would be an absurdity.

The difficulty now raised was not overlooked, either by the learned judge before whom the case was tried, or by the Court of Review. In our next issue we propose to print the portion of the written opinion of Mr. Justice Loranger (who rendered the judgment of the Court), relating to proceedings against the *mis en cause*. This indicates that the point was the subject of deliberation, as the objection was specially raised by the *mis en cause* that the judge had not the power to deal with the evidence against him, and the point was decided in his favor by Mr. Justice Loranger.

UNITED STATES SUPREME COURT.

November 12, 1888.

In re TERRY.

Contempt—Commitment—Procedure.

Where a contempt has been committed in the presence of the Court, and the offender, immediately after leaves the court-room, going into another room in the same building, the Court still has jurisdiction, at least on the day of the offence, to order his arrest and imprisonment, without first ordering an attachment to bring him before the Court.

HARLAN, J.—The grounds upon which the

petitioner claims that the Circuit Court was without jurisdiction to make the order committing him to jail are: (1) That the order was made in his absence; (2) that it was made without his having had any previous notice of the intention of the court to take any steps whatever in relation to the matters referred to in the order; (3) that it was made without giving him any opportunity of being first heard in defence of the charges therein made against him. The second and third of these grounds may be dismissed as immaterial in any inquiry this court is at liberty, upon this original application, to make; for upon the facts recited in the order of September 3, showing a clear case of contempt committed in the face of the Circuit Court, which tended to destroy its authority, and, by violent methods, to embarrass and obstruct its business, the petitioner was not entitled, of absolute right, either to a regular trial of the question of contempt, or to notice by rule of the court's intention to proceed against him, or to opportunity to make formal answer to the charges contained in the order of commitment. It is undoubtedly a general rule in all actions, whether prosecuted by private parties or by the government —that is, in civil and criminal cases—that "a sentence of a court pronounced against a party without hearing him or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal." *Windsor* v. *McVeigh*, 93 U. S. 274, 277. But there is another rule of almost immemorial antiquity, and universally acknowledged, which is equally vital to personal liberty, and to the preservation of organized society, because upon its recognition and enforcement depend the existence and authority of the tribunals established to protect the rights of the citizen, whether of life, liberty or property, and whether assailed by the illegal acts of the government or by the lawlessness or violence of individuals. It has relation to the class of contempts which, being committed in the face of a court, imply a purpose to destroy or impair its authority, to obstruct the transaction of its business, or to insult or to intimidate those charged with the duty of administering the law. Blackstone thus states the rule: "If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned, at the discretion of the judges, without any further proof or examination. But in matters that arise at a distance, and of which the court cannot have so perfect a knowledge, unless by the confession of the party or the testimony of others, if the judges upon affidavit see sufficient ground to suspect that a contempt has been committed, they either make a rule on the suspected party to show cause why an attachment should not issue against him, or in very flagrant instances of contempt, the attachment issues in the first instance, as it also does if no sufficient cause be shown to discharge; and thereupon the court confirms and makes absolute the original rule." 4 Bl. Com. 286. In Bacon's Abridgement, title "Courts," E., it is laid down that "every court of record, as incident to it, may enjoin the people to keep silence, under a pain, and impose reasonable fines, not only on such as shall be convicted before them of any crime on a formal prosecution, but also on all such as shall be guilty of any contempt in the face of the court, as by giving opprobrious language to the judge, or obstinately refusing to do their duty as officers of the court, and immediately order them into custody." "It is utterly impossible," said Abbott, C. J., in *Rex* v. *Davison*, 4 Barn. & Ald. 329, 333, "that the law of the land can be properly administered, if those who are charged with the duty of administering it have not power to prevent instances of indecorum from occurring in their own presence. That power has been vested in the judges, not for their personal protection, but for that of the public. And a judge will depart from his bounden duty if he forbears to use it when occasions arise which call for its exercise." To the same effect are the adjudications by the courts of this country. In *State* v. *Woodfin*, 5 Ired. 199, where a person was fined for a contempt committed in the presence of the court, it was said: "The power to commit or fine for contempt is essential to the existence of every court. Business cannot be conducted unless the court can suppress disturbances, and the only means of doing

that is by immediate punishment. A breach of the peace *in facie curiæ* is a direct disturbance, and a palpable contempt of the authority of the court. It is a case that does not admit of delay, and the court would be without dignity that did not punish it promptly, and without trial. Necessarily there can be no inquiry *de novo* in another court as to the truth of the fact. There is no mode provided for conducting such an inquiry. There is no prosecution, no plea, nor issue upon which there can be a trial." So in *Whittem* v. *State*, 36 Ind. 211: "Where the contempt is committed in the presence of the court, and the court acts upon view, and without trial, and inflicts the punishment, there will be no charge, no plea, no issue and no trial; and the record that shows the punishment will also show the offence, and the fact that the court had found the party guilty of the contempt. On appeal to this court any fact found by the court below would be taken as true, and every intendment would be made in favor of the action of the court." Again, in *Ex parte Wright*, 65 Ind. 508, the court, after observing that a direct contempt is an open insult in the face of the court to the persons of the judges while presiding, or a resistance to its powers in their presence, said: "For a direct contempt, the offender may be punished instantly by arrest and fine or imprisonment, upon no further proof or examination than what is known to the judges by their senses of seeing, hearing," etc. 4 Steph. Com., bk. 6, chap. 15; 1 Tidd, Pr. 479, 480; *Ex parte Hamilton*, 51 Ala. 68; *People* v. *Turner*, 1 Cal. 155. It is true, as counsel suggest, that the power which the court has of instantly punishing, without further proof or examination, contempts committed in its presence, is one that may be abused, and may sometimes be exercised hastily or arbitrarily. But that is not an argument to disprove either its existence or the necessity of its being lodged in the courts. That power cannot be denied them, without inviting or causing such obstruction to the orderly and impartial administration of justice as would endanger the rights and safety of the entire community. What was said in *Ex parte Kearney*, 7 Wheat. 39, 45, may be here repeated: "Wherever power is lodged it may be abused. But this forms no solid objection against its exercise. Confidence must be reposed somewhere; and if there should be an abuse, it will be a public grievance, for which a remedy may be applied by the Legislature, and is not to be devised by courts of justice." It results from what has been said that it was competent for the Circuit Court, immediately upon the commission, in its presence, of the contempt recited in the order of September 3, to proceed upon its own knowledge of the facts, and punish the offender, without further proof, and without issue or trial in any form. It was not bound to hear any explanation of his motives, if it was satisfied —and we must conclusively presume, from the record before us, that it was satisfied, from what occurred under its own eye and within its hearing—that the ends of justice demanded immediate action, and that no explanation could mitigate his offence, or disprove the fact that he had committed such contempt of its authority and dignity as deserved instant punishment. Whether the facts justified such punishment was for that court to determine under its solemn responsibility to do justice, and to maintain its own dignity and authority. *In re Chiles*, 22 Wall. 157, 168. Its conclusion upon such facts, we repeat, is not, under the statutes regulating the jurisdiction of this court, open to inquiry or review in this collateral proceeding. Jurisdiction of the person of the petitioner attached instantly upon the contempt being committed in the presence of the court. That jurisdiction was neither surrendered nor lost by delay on the part of the Circuit Court in exercising its power to proceed, without notice and proof, and upon its own view of what occurred, to immediate punishment. The departure of the petitioner from the court-room to another room, near by, in the same building, was his voluntary act. And his departure, without making some apology for or explanation of his conduct, might justly be held to aggravate his offence, and to make it plain that consistently with the public interests there should be no delay upon the part of the court in exerting its power to punish. If in order to avoid punishment he had ab-

sconded or fled from the building immediately after his conflict with the marshal, the court in its discretion, and as the circumstances rendered proper, could have ordered process for his arrest, and give him an opportunity, before sending him to jail, to answer the charge of having committed a contempt. But in such a case the failure to order his arrest, and to give him such opportunity for defence, would not affect its power to inflict instant punishment. Jurisdiction to inflict such punishment having attached while he was in the presence of the court, it would not have been defeated or lost by his flight and voluntary absence. Upon this point the decision in *Middlebrook* v. *State*, 43 Conn. 268, is instructive. That was a case of contempt committed by a gross assault upon another in open court. The offender immediately left the court-house and the State. The court made reasonable efforts to procure his personal attendance, and those failing, a judgment was entered in his absence, sentencing him to pay a fine and to be imprisoned for contempt of court. One of the questions presented for determination was whether there was jurisdiction of the person of the absent offender. The court said: "The offence was intentionally committed in the presence of the court. When the first blow was struck, that instant the contempt was complete, and jurisdiction attached. It did not depend upon the arrest of the offender, nor upon his being in actual custody, nor even upon his remaining in the presence of the court. When the offence was committed, he was in the presence, and constructively at least, in the power of the court. He may by flight escape merited punishment; but that cannot otherwise affect the right or the power of the court. Before the court could exert its power, the offender, taking advantage of the confusion, absented himself and went beyond the reach of the court; but nevertheless the jurisdiction remained, and it was competent for the court to take such action as might be deemed advisable, leaving the action to be enforced, and the sentence carried into execution, whenever there might be an opportunity to do so. If it was necessary that the judgment should be preceded by a trial, and the facts found upon a judicial hearing, as with ordinary criminal cases, it would be otherwise. But in this proceeding nothing of the kind was required. The judicial eye witnessed the act, and the judicial mind comprehended all the circumstances of aggravation, provocation or mitigation, and the fact being thus judicially established, it only remained for the judicial arm to inflict proper punishment." It is true that the present case differs from the one just cited in that the offender did not attempt by flight to escape punishment for his offence; but that circumstance could not affect the power of the Circuit Court, without trial or further proof, to inflict instant punishment upon the petitioner for the contempt committed in its presence. It was within the discretion of that court, whose dignity he had insulted, and whose authority he had openly defied, to determine whether it should, upon its own view of what occurred, proceed at once to punish him, or postpone action until he was arrested upon process, brought back into its presence, and permitted to make defence. Any abuse of that discretion would be at most an irregularity or error, not affecting the jurisdiction of the Circuit Court. We have seen that it is a settled doctrine in the jurisprudence both of England and this country, never supposed to be in conflict with the liberty of the citizen, that for direct contempts committed in the face of the court, at least one of superior jurisdiction, the offender may in its discretion be instantly apprehended and immediately imprisoned, without trial or issue, and without other proof of its actual knowledge of what occurred; and that according to an unbroken chain of authorities, reaching back to the earliest times, such power, although arbitrary in its nature and liable to abuse, is absolutely essential to the protection of the courts in the discharge of their functions. Without it, judicial tribunals would be at the mercy of the disorderly and violent, who respect neither the laws enacted for the vindication of public and private rights, nor the officers charged with the duty of administering them. To say in case of a contempt such as recited in the order below that the offender was accused, tried, adjudged to be guilty and imprisoned, without previous

notice of the accusation against him and without an opportunity to be heard, is nothing more than an argument or protest against investing any court, however exalted, or however extensive its general jurisdiction, with the power of proceeding summarily, without further proof or trial, for direct contempts committed in its presence. Nor in our judgment is it an accurate characterization of the present case to say that the petitioner's offence was committed "at a time preceding and separate from the commencement of his prosecution." His misbehavior in the presence of the court, his voluntary departure from the court-room without apology for the indignity he put upon the court, his going a few steps, and under the circumstances detailed by him, into the marshal's room in the same building where the court was held, and the making of the order of the commitment, took place substantially on the same occasion, and constituted, in legal effect, one continuous, complete transaction, occurring on the same day, and at the same session of the court. The jurisdiction therefore of the Circuit Court to enter an order for the offender's arrest and imprisonment was as full and complete as when he was in the court-room in the immediate presence of the judges.

APPEAL REGISTER—MONTREAL.

Monday, January 21.

Edison Electro-Plate Co. & The Royal Electric Co.—Motion for leave to appeal from an interlocutory judgment granted.

Irwin & Lessard.—Hearing concluded. C. A. V.

McLean & Kennedy.—Heard. C. A. V.

Joseph & Ascher.—Heard. C. A. V.

Shaw & Perrault.—Heard. C. A. V.

Tuesday, January 22.

Stearns et al. & Ross.—Heard. C. A. V.

Lyons & Laskey.—Heard. C. A. V.

Evans & Lemieux.—Heard. C. A. V.

Wednesday, January 23.

Archambault & Poitras. — Judgment reversed, each party paying his own costs in appeal.

Lynch & Poitras.—Judgment reversed.

Eastern Townships Bank & Bishop.—Two appeals. Judgment confirmed in each case.

Prowse & Nicholson.—Reversed with costs in both courts.

Trudel & Cie. d'Imprimerie.—Petition for leave to appeal from interlocutory judgment. C. A. V.

Pignolet & Brosseau.—Motion for dismissal of appeal. Granted for costs only.

Trudel & Viau.—Heard. C. A. V.

Martin & Labelle.—Heard. C. A. V.

Gilbert et al. & Gilman.—Case to stand until appellants' factum be completed.

City of Montreal & Rector & Churchwardens of Christ Church Cathedral.—Part heard.

Thursday, January 24.

City of Montreal & Rector etc.—Hearing concluded. C. A. V.

Cie. de chemin de Fer de Jonction de Beauharnois & Bergevin.—Heard. C. A. V.

Cie. de chemin de Fer de Jonction de Beauharnois & Hainault.—Heard. C. A. V.

Bell Telephone Co. & Skinner.—Nos. 137 & 161. Heard. C. A. V.

Leblanc & Beauparlant.—Part heard.

Friday, January 25.

Gilman & Gilbert et al. — Respondents' motion to discharge *délibéré* rejected. Appellant's motion for *acte* of *retraxit* rejected.—Judgment reversed, and judgment for appellant for $2,000, the Court taking no notice of the *retraxit*. Church, J., *diss.*

Cie. de C. F. de Jonction de Beauharnois & Bergevin.—Judgment confirmed.

Cie. de C. F. de Jonction de Beauharnois & Hainault.—Judgment confirmed.

Ontario Bank & Chaplin.—Judgment confirmed.

Thibaudeau & Benning. — Judgment reversed.

The National Assurance Co. & Harris.—Judgment confirmed, Cross and Doherty, JJ., dissenting.

Vinceletti & Merizzi.—Motion for leave to appeal from interlocutory judgment. C. A. V.

Milette & Gibson.—Submitted on factums. C. A. V.

Wattie & Major.—Motion to dismiss appeal. C. A. V.

McShane & Brisson.—Motion that writ of appeal do issue. C. A. V.

Gilman & Gilbert et al.—Two appeals, 21 & 41. Motion for leave to appeal to Privy Council.—Continued.

Saturday, January 26.

Wattie & Major.—Appeal dismissed.

Ross et vir & Ross et vir.—Motion for leave to appeal from interlocutory judgment. C. A. V.

Ex parte Charles McIntosh.—Petition for *habeas corpus*. Take nothing by petition.

Stefani & Monbleau.—Motion for leave to appeal to Privy Council. C. A. V.

Gilman & Gilbert et al.—Motion for leave to appeal to Privy Council granted in No. 21. Rejected in No. 41.

Gilbert et al. & Gilman.—No. 33. Submitted on factums. Judgment confirmed, Church, J., dissenting.

Causes Perimées.

Mallette & Cité de Montréal.—Appeal dismissed.

Cuthbert & Evans.—Do.

Montreal L. & M. Co. & Leclair.—Do.

Guarantee Co. & Protestant Board.—Do.

Marsden & Mullarky.—Do.

Allan & Thompson.—Do.

Baldwin & Corporation of Township of Barnston.—Heard. C. A. V.

The Court adjourned to Wednesday, January 30.

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*COURT OF QUEEN'S BENCH—MONTREAL.**

Jury trial—Time for fixing facts for jury—Art. 352, C. C. P.—Acquiescence—Libel—Error in name of defendant—Amendment by final judgment.

Held, (affirming the judgment of the Court of Review, M. L. R., 3 S. C. 23) 1. The rule contained in Art. 352, C. C. P., which says that no trial is fixed until the facts to be inquired into by the jury have been assigned, is one to be strictly followed; and where a motion by plaintiff to reform the assignment of facts was granted after the day for the trial was fixed, this was an irregularity which the defendants were entitled to urge, unless it appeared that they had suffered no injustice by the error. But in the present case, the defendants had waived their right to object by acquiescing in proceeding to trial, and by consenting that a bystander should serve on the jury when it appeared that sufficient jurors were not present to form a jury.

2. Where the publisher of a libel was summoned by a wrong name, and he appeared in that name, and, without disclosing his correct name, pleaded not guilty, such plea put in issue only the fact of publication and the innuendoes, and the verdict rendered against him by the jury could not be set aside on the ground that it was founded upon evidence of what was done by another person.

3. The judges of the Superior Court sitting in Review, were right in granting, at the final judgment, the plaintiff's motion to insert the correct name.

4. It was not misdirection for the judge to charge the jury, that by law they should find the article to have been published falsely and maliciously, inasmuch as the defendants did not plead and prove the truth of it.—*Mail Printing and Publishing Co. & Canada Shipping Co.*, Dorion, Ch. J., Tessier, Baby, Church, JJ., March 26, 1887.

* To appear in Montreal Law Reports, 4 Q. B.

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*SUPERIOR COURT—MONTREAL.**

Insurance, Fire—Term of policy—Whole of last day included—Condition requiring statement of loss to be furnished—Waiver.

Held, 1. Where the insurance runs from one day named in the policy to another day named therein, "*both inclusive*," the contract does not expire until midnight on the last day. This rule could only be rebutted by evidence of a clearly established and invariable custom to the contrary, which, in the present case, was not shown to exist.

2. A condition of the policy, requiring notice of loss to be given, and a particular statement thereof to be delivered by the insured within fifteen days after the fire, may be waived and dispensed with by a distinct denial of liability, and refusal to pay, on the part of the company.—"*Herald*" *Co.* v. *Northern Assurance Co.*, Johnson, J., Dec. 15, 1888.

* To appear in Montreal Law Reports, 4 S.C.

Procedure—Service of action in the province of Ontario—Law applicable—Proof of law.

Held, Where service is authorized to be made in Ontario, a personal service, in accordance with the law of that province as proved in the cause, is valid.—*Pinsonault* v. *Conmee et al.*, Loranger, J., Dec. 29, 1888.

EXCHEQUER COURT OF CANADA.

OTTAWA, Dec. 13, 1888.

Before BURBIDGE, J.

REGINA v. POULIOT et al.

Information—Statutory Defence—Demurrer—Illegality of Contract—Dominion Elections Act, 1874—*Crown Rights—Interpretation of Statutes.*

This was an action at the suit of the Crown to recover $352.20 from the defendants, due upon a contract for the carriage of passengers between certain stations on the Intercolonial Railway, which is owned and operated by the Government of Canada. The defendants by their pleas admitted the contract, and its performance by the Crown, but sought to avoid their liability by alleging, (1) That the passengers were carried on *bons*, and that the action should have been brought upon such *bons*, and not upon the agreement set out in the information; (2) That the contract was for the carriage of voters to attend the nomination proceedings at an election then pending, with intent to corruptly influence such voters at such election, and was illegal and void under the provisions of secs. 100 and 122 of the Dominion Elections Act, 1874. A demurrer to these pleas was filed on behalf of the Crown.

Held:—(1). That the defendants having admitted the breach of contract, their liability was not in any way affected by the fact that the passengers were carried on *bons* signed by one, and not by all of the defendants; and that the cause of action was properly averred in the information.

(2). That the Crown is not bound by section 100 of the Dominion Elections Act, 1874 (37 Vict., C. 9), which avoids every executory contract, promise, or undertaking in any way referring to, arising out of, or depending upon any election under the Act, even for the payment of lawful expenses, or the doing of some lawful act; or by section 122 thereof which enacts that *all persons* who have any bills, charges, or claims upon any candidate for or in respect of any election, shall send in such bills, charges, or claims within one month after the day of the declaration of the election to the agent of the candidate, otherwise such persons shall be barred of their right to recover such claims.

(3). That the language of the 46th clause of the 7th section of the Interpretation Act (Rev. Stats. Can. Ch. 1) which enacts: "that "no provision or enactment in any Act shall "affect in any manner or way whatsoever, "the rights of Her Majesty, Her heirs or "successors, unless it is expressly stated "therein that Her Majesty shall be bound "thereby;" is not to be construed by reading into the Act the exception to the common law rule, that the Crown is not bound by a Statute, unless expressly mentioned, which exception is laid down by Lord Coke in the *Magdalen College case* (11 Rep. 74-b), viz: "that the King is "impliedly bound by Statutes passed for the "general good; the relief of the poor; the "general advancement of learning, religion "and justice; or to prevent fraud, injury or "wrong."

Quære: Does the clause in the Interpretation Act (Revd. Stats. Can. Ch. 1, clause 46, S. 7) preclude the Crown from being bound by a Statute in which it is included by necessary implication only?

Demurrer allowed.

O'Connor & Hogg for Crown.

Gormully & Sinclair for Defendants.

EXCHEQUER COURT OF CANADA.

OTTAWA, June 30, 1888.

Before BURBIDGE, J.

BOURGET v. THE QUEEN.

Compensation and damages — Dedication of Highway—Similarity of the law of England and of the Province of Quebec respecting the doctrine of Dedication or Destination.

This was a claim for $681 for 2,724 square feet of land in the village of Lauzon, County of Levis, P.Q., expropriated by the Crown for the purposes of the St. Charles Branch of the Intercolonial Railway, and for $1,350 for damages to other lands of the claimant caused by the construction thereof.

Some time not later than the year 1877, the claimant being possessed of property in the village mentioned, divided it into 41 lots. Through these lots a street was laid out known by the name of Couillard Street, and which connected St. Joseph Street with Port Joliette, a small cove or harbor on the River St. Lawrence. The plan of this division of the claimants' lands was duly recorded in the Registry Office for the County of Levis.

In the construction of the Railway, the Crown diverted Couillard Street, purchasing for that purpose one of the 41 lots in the aforesaid division of the claimant's lands. The village Corporation had never taken any steps to declare Couillard Street a public way. It was, however, used as such, was open at both ends and formed a means of communication between St. Joseph's Street and Port Joliette, and work had been done and repairs made thereon under the direction of the village Inspector of streets. The village council had also at one time passed a resolution for the construction of a sidewalk on the street, but nothing was done thereunder.

Upon the hearing of the claim, the claimant contended that Couillard Street at the time of the expropriation was not a highway or public road within the meaning of "*The Government Railways Act*" (44 Vic., C. 25), but was her private property, and that she was entitled to compensation for its expropriation.

The Crown's contention was that at the date of the expropriation, Couillard Street was a highway or public road within the meaning of "The Government Railways Act" (44 Vict. C. 25), and that the Crown had satisfied the provisions of Sec. 5, s.-s. 8, and Sec. 49 thereof, by substituting a convenient road in lieu of the portion of street so diverted, and that the claimant was therefore not entitled to compensation.

Held:—(1). That the question was one of dedication rather than of prescription, that the evidence showed that the claimant had dedicated the street to the public, and that it was not necessary for the Crown to prove user by the public for any particular time.

(2). That the law of the Province of Quebec relating to the doctrine of dedication or destination is the same as the law of England.

Semble:—That 18 Vict. C. 100, S. 41, s.-s. 9, Can. is a temporary provision having reference to roads in existence on July 1st, 1855, which had been left open and used as such by the public without contestation during a period of ten years or upwards. (See *Myrand* v. *Legaré*, 6 Q.L.R. 120, and *Guy* v. *City of Montreal*, 25 L.C.J. 132.)

Claim dismissed with costs.

F. X. Drouin, Q.C., *C. P. Angers* } for Crown.
I. N. Belleau, Q.C., for Claimant.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Jan. 19.

Judicial Abandonments.

Rose Ann O'Cain, St. John's, Jan. 10.

Chas. Z. Langevin, dry goods, St. Sauveur de Québec, Jan. 16.

Curators appointed.

Re Beaver Oil Co., Montreal.—Geo. Irving, Montreal, curator, Jan. 16.

Re Michel Bourdon.—C. Desmarteau, Montreal, curator, Jan. 16.

Re Brault & Cadieux.—Gauthier & Parent, Montreal, joint curator, Jan. 16.

Re Louis Napoléon Carle, restaurant keeper, Montreal.—Louis Carle, Ste. Ursule, district of Three Rivers, curator, Dec. 26.

Re Hormidas Cousineau, Ile Bizard.—Kent and Turcotte, Montreal, joint curator, Jan. 16.

Re Damiens & Frère, Fraserville.—H. A. Bedard, Quebec, curator, Jan. 17.

Re Desmarteau & fils.—C. Desmarteau, Montreal, curator, Jan. 16.

Re Dorval & Samson, Levis.—S. C. Fatt, Montreal, curator, Jan. 15.

Re Pierre Dubé, St. Sauveur de Québec.—C. Desmarteau, Montreal, curator, Jan. 16.

Re M. H. Fauteux, Montreal.—Kent & Turcotte, Montreal, joint curator, Jan. 16.

Re Hector Leblanc.—C. Desmarteau, Montreal, curator, Jan. 15.

Re Moïse Leblanc.—C. Desmarteau, Montreal, curator, Jan. 16.

Re L. M. Perrault, Montreal.—Kent & Turcotte, Montreal, joint curator, Jan. 16.

Re Ls. Richard.—L. Lavoie, Montmagny, curator, Jan. 3.

Re Arthur Robinson, Montreal.—Kent & Turcotte, Montreal, joint curator, Jan. 16.

Re George Woolley.—J. N. Fulton, Montreal, curator, Jan. 16.

Dividends.

Re Guillaume *alias* William Gariépy.—Final dividend of full balance of claims, payable Feb. 4, H. A. A. Brault and O. Dufresne, jr., Montreal, joint, curator.

Re L. M. Trottier, jeweller, St. Johns.—First and final dividend, payable Feb. 5, J. O'Cain, St. Johns, curator.

Re P. A. Leduc.—First and final dividend, payable Feb. 10, Kent & Turcotte, Montreal, joint curator.

Separation as to Property.

Almira Libby vs. William F. Manson, farmer, township of Potton, Nov. 30.

Harriet Amelia Manning vs. James Allen Gordon, contractor, Sherbrooke, Jan. 15.

Marguerite Massé vs. Joseph Henry Prairie, advocate, parish of St. Athanase, Jan. 17.

Harriet Permelia McCarty vs. Charles Minkler Murray, hotel-keeper, Montreal, Jan. 12.