THE

LEGAL NEWS.

VOL. XV. SEPTEMBER 1, 1892. No. 17.

CURRENT TOPICS AND CASES.

The official text of the judgment of the Judicial Committee in *Robinson* v. *C. P. R. Co.*, which will be found in the report in the present issue, shows that their lordships went further than was at first supposed, and rendered a final judgment upon the whole case, excluding all further litigation as to the *quantum* of damages. Their reasons for doing so are stated, and will be considered satisfactory. On the question of prescription, the opinion of the Committee is brief and to the point. So much learning has been expended on this question, that the reader of the judicial opinions is in danger of overlooking how simple the point really is. The judgment of the Judicial Committee has all the greater force in that it was delivered by Lord Watson who, at the outset of the argument on the application for special leave to appeal, seemed to be considerably impressed by the view which led the majority of the Supreme Court to reverse the unanimous judgment of our Court of Queen's Bench.

Mr. Justice Church has survived but a short time his resignation as a member of the Court of Queen's Bench. The learned Judge was not in robust health when, five or six years ago, he was appointed to the vacancy created by the death of Mr. Justice Ramsay, and almost from the outset his efforts to discharge the duties of the position

were impeded by ailments of a more or less serious nature. With better health Mr. Justice Church would have left no faint impress on our provincial jurisprudence. His judgments were usually delivered in a manner which carried conviction to the minds of his hearers, and even where he dissented it will be found, we think, that he was not always wrong.

Mr. Justice Denman and the Recorder of Liverpool, Mr. Hopwood, Q.C., differ somewhat warmly on the question of lenient sentences. The Judge having passed certain strictures at the recent Liverpool assizes on the Recorder for the lightness of his sentences, the latter waited for the opening of his Court, the Liverpool sessions, and in his charge to the Grand Jury asserted his entire independence of the supervision of any other court. As to the matter of the criticism itself, he added that it was impossible to condemn sentences either for being too severe or too light without having the fullest information as to what passed at the trial. Let them take, for example, the offence of housebreaking. That offence might vary between extremes of merely lifting a latch of an unlocked door or effecting entrance with the most elaborate and ingeniously applied tools. No one would deny that the first might be punished with a light sentence, while the latter deserved a heavy one. But in the record of previous convictions all that appeared was 'housebreaking.' Who, then, on such barren information, was justified in authoritatively saying that a sentence of a day was too little, or a sentence of twelve months was too much? Further, in order to be just in criticising, it was necessary to inquire whether the convict had or had not been already before sentence two months or six weeks in prison—a fact which would not appear. It might also be well to have regard to the age of the delinquent; a boy of eighteen might be more leniently dealt with than a man of thirty. 'To put down,' 'To make example of,' were not principles of sentencing which his experience, as long

and varied as that of any judge, taught him to adopt. They failed in the one purpose, and they caused bitter and fearful wreck of individuals in the other. They sometimes lost sight of the fact that human life and human suffering were the subjects of their thoughtless experiments.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, July 23, 1892.

Coram LORDS WATSON, MACNAGHTEN, MORRIS AND HANNEN, SIR RICHARD COUCH AND LORD SHAND.

ROBINSON (plaintiff and appellant) v. CANADIAN PACIFIC RAILWAY COMPANY (defendant and respondent).

Prescription—Art. 1056, *C. C.—Action under—Action for bodily injuries—Art.* 2262, *C. C.*

HELD:—(*Reversing the judgment of the Supreme Court of Canada*, 15 *Leg. News*, 70,) *That the right of action under Art.* 1056, *C.C., which is given to the widow, or other relatives therein mentioned, subsists even when the injured person's right of action has been extinguished before his death by the prescription of one year against actions for bodily injuries under Art.* 2262, *C.C.*

Special leave to appeal having been granted to the plaintiff, Robinson, from the judgment of the Supreme Court of Canada (see 15 Legal News, pp. 70–91), June 22, 1891, reversing a judgment of the Court of Queen's Bench, Montreal, June 19, 1890, the case was heard on the merits.

Bompas, Q.C., and *Chester Jones* for appellant.

H. Abbott, Q.C., and *F. C. Gore* for respondents.

LORD WATSON:—This is an action of damages brought before the Superior Court of the Province of Quebec by the appellant, the widow of Patrick Flynn, on her own behalf and as tutrix of their minor child, upon the allegation that the death of her husband, which occurred on the 13th November, 1883, was the result of bodily injuries sustained by him on the 27th August, 1882, whilst he was in the service of the respondents, through the negligence of their employés.

The case was tried in April, 1885, before Mr. Justice Doherty and a jury, who found for the appellant, and assessed damages at

$2,000 to herself and $1,000 to her child. The appellant then applied to the Superior Court, sitting in review, to have judgment entered in terms of the verdict; and the respondents moved for a new trial. The Court rejected the appellant's application, and allowed the respondents a new trial upon payment of the costs of the last, and without costs of the motion, upon the ground that the presiding judge had wrongly directed the jury that, in estimating damages, they were entitled to consider the anguish and mental sufferings of the widowed mother and orphan child. That decision was on appeal set aside by the Queen's Bench, who gave effect to the verdict with costs of suit. On appeal from the Queen's Bench the Supreme Court of Canada reversed their decision, restored the judgment of the Superior Court in review, and condemned the appellant in the costs of the appeals to the Queen's Bench and to the Supreme Court of Canada.

On a second trial, in November, 1888, before Mr. Justice Davidson, the jury again found for the appellant, with $4,500 damages to herself and $2,000 to her child; and thereupon the appellant moved the Superior Court in Review for judgment. The respondents moved in the same Court for (1) a new trial, (2) arrest of judgment, and (3) judgment in their favour *non obstante veredicto*. The second and third of these motions were rested upon a plea then put forward for the first time by the respondents, to the effect that more than twelve months having elapsed between the death of Patrick Flynn and the date of the injuries which are said to have occasioned it, all right of action competent to him had been extinguished by prescription; and that by law the right of the appellant to recover damages for such bodily injuries was also extinguished before his death. The Court, as its decree bears, heard parties upon all of these motions, and by a majority of two to one dismissed the respondent's motions, and granted that of the appellant with all costs of suit not previously adjudicated upon. On appeal by the respondents, the Court of Queen's Bench, consisting of five Judges, unanimously affirmed the judgment of the Court below on all points with costs.

The case was then carried by appeal to the Supreme Court of Canada, who, on the 22nd June, 1891, by a majority of four to one, reversed the decisions of the Queen's Bench in appeal and of the Superior Court in review; dismissed the appellant's motion for judgment; also refused and dismissed the motions

made by respondents "for a new trial and in arrest of judg-"ment"; and granted the respondents' motion for judgment *non obstante veredicto*, with costs of action in all three Courts. On the application of the appellant, their lordships humbly advised Her Majesty to grant special leave to appeal against that part of the judgment which sustains the new plea raised by the respondents after the second trial. In making that recommendation, their lordships were influenced by these considerations,—the general importance to the Province of Quebec of the question arising upon the construction of its Civil Code; the great difference of judicial opinion which it evoked; and the fact that the decision of the majority in the Supreme Court appears, from the judgment of Mr. Justice Taschereau, to have been based to some extent upon the authority of English decisions. Their lordships intimated that they would not hear a third appeal upon a motion for new trial involving no question of law, but that, in the event of their sustaining the appeal allowed, they would, if the matter of new trial should prove to be still open to the respondents, remit it for decision to the Court below.

The appellant's claim is founded upon Section 1056 of the Civil Code of Lower Canada, the first paragraph of which enacts that, "In all cases where the person injured by the commission "of an offence or a quasi-offence dies in consequence, without "having obtained indemnity or satisfaction, his consort and his "ascendant and descendant relations have a right, but only "within a year after his death, to recover from the person who "committed the offence or quasi-offence, or his representatives, "all damages occasioned by such death." The appellant brought the action within seven months after her husband's decease, while the prescription thus made applicable to her statutory claim was still current. But Section 2262 (2) of the Code provides that actions "for bodily injuries" are prescribed by one year, "saving the special provisions contained in Article 1056, and "cases regulated by special laws." Seeing that Patrick Flynn lived for nearly 15 months after the date of the injuries which caused his death, their lordships see no reason to doubt that any claim competent to him against the respondents had been cut off by prescription. Whether the appellant has thereby been deprived of the right of action which, in the circumstances of this case, she would undoubtedly have had under Section 1056 if he had died during the currency of the prescriptive period applic-

able to his right, depends upon the construction of the two sections of the Code which have just been referred to.

The Code became law in the year 1866, and Section 1056 superseded the provisions of Cap. 78 of the Consolidated Statutes of the then Province of Canada (1859), which, though not identical in expression, were the same in substance with the enactments of the English Statute, 9 & 10 Vict., cap. 93, commonly known as Lord Campbell's Act. In both Statutes a right of action is given, in general terms, to the representative of the deceased, for behoof of his widow and other relations entitled, in all cases where an act or default is such as would, if death had not ensued, have entitled the party injured to maintain an action. Their provisions leave indefinite some things which in the Code are defined. They leave to implication the conditions upon which the right is not to survive, and, by that omission, favour the suggestion that what was intended to pass to the representative was such right of action as the deceased had at the time of his decease. In England the statutory period of limitation applicable to such claims by injured persons is six years. The observations of English judges cited at the bar, and noticed by Mr. Justice Taschereau, did not refer to, and can hardly have contemplated a case in which that period had elapsed before the death of the injured person. The authorities from which they were taken merely establish that, under the English Act, the representative can have no right of action, *first*, where the act or default complained of raised no liability to the deceased, at common law, or by reason of his having contracted to bear the risk of it, and, *secondly*, where the deceased has been compensated or has settled and discharged his claim. These authorities can have no bearing upon the point raised for decision in this appeal, unless it can be shown that the provisions of the Code are in substance identical with those of the Statute to which they have reference.

In the course of the argument, counsel for the parties brought somewhat fully under their lordships' notice the law of reparation applicable to cases like the present, as it existed prior to the enactment of the Code; and they discussed the question whether and, if so, how far Cap. 78 of the Statute of 1859 altered or superseded the rules of the old French law. These may be interesting topics, but they are foreign to the present case, if the provisions of Section 1056 apply to it, and are in themselves intelligible and free from ambiguity. The language used by Lord

Herschell in *Bank of England* v. *Vagliano Brothers* (I. Ap. Ca., N. S., p. 145), with reference to the "Bills of Exchange Act, 1882" (45 & 46 Vict., c. 61), has equal application to the Code of Lower Canada. "The purpose of such a statute surely was that "on any point specifically dealt with by it, the law should be "ascertained by interpreting the language used instead of, as "before, by roaming over a vast number of authorities." Their lordships do not doubt that, as the noble and learned Lord in the same case indicates, resort must be had to the pre-existing law in all instances where the Code contains provisions of doubtful import, or uses language which had previously acquired a technical meaning. But an appeal to earlier law and decisions for the purpose of interpreting a statutory Code can only be justified upon some such special ground.

In so far as they bear upon the present question, the terms of Section 1056 appear to their lordships to differ substantially from the provisions of Lord Campbell's Act and of the Provincial Statute of 1859. The Code ignores the representative of the injured person, and gives a direct right of action to his widow and relations, a change calculated to suggest that these parties are to have an independent, and not a representative right. A difference of much greater importance is to be found in the fact that the Code distinctly specifies certain conditions affecting the right of action competent to the deceased, which are also to operate as a bar against any suit at the instance of his widow and his ascendant or descendant relations after his death. These conditions are not expressed in either of the Statutes referred to; and, according to a well-known canon of construction, it must be taken that they were inserted in the Code for the purpose of making it clear that no conditions affecting the personal claim of the deceased, other than those specified, are to stand in the way of the statutory right conferred upon his widow and relatives. The first paragraph of Section 1056, read in its ordinary and natural sense, enacts that the widow and relations shall have a right to recover all damages occasioned by the death from the person liable for the offence or quasi-offence from which it resulted, provided they can show (1) that death was due to that cause, and (2) that the deceased did not, during his lifetime, obtain either indemnity or satisfaction for his injuries.

Assuming, as the jury have found, that the death of Patrick Flynn in November 1883 was due to bodily injuries sustained in August 1882, for which the respondents were answerable, then

all the conditions requisite in order to give the appellant a right of action have been fulfilled to the letter. The prescription established by section 2262 (2) had cut off the deceased's right of action in August 1883; but the Code does not make it a condition of the right of action given to the appellant by Section 1056 that her husband's claim shall not have prescribed. That prescription is not, within the meaning of the Code, equivalent to indemnity or satisfaction is made perfectly clear by a reference to Section 1138, which enumerates the various ways in which an obligation may be extinguished. The argument of respondents, if given effect to, would practically add to the language of Section 1056 words which are not to be found there, such as "and without his claim having been otherwise extinguished," or, in other words, involves the insertion of a new condition which the Legislature has excluded.

It appears to their lordships that, when Sections 1056 and 2262 (2) are read together, it becomes apparent that the deceased's claim in respect of his bodily injuries, and the claim of his widow and relations in respect of his death, were to run separate courses of prescription; and that their claim, which cannot emerge until his death occurs, was not to be either directly or indirectly affected by the provisions of 2262 (2). The saving clause in that subsection is only intelligible upon the footing that it was meant to treat the death as the foundation of their right of action; to apply to that right the rule of prescription introduced by Section 1056, and to exempt it altogether from the operation of the prescriptive rule which limited the deceased's claim.

It may be noticed that the provisions of the second paragraph in Section 1056, are inconsistent with the view that, in order to give a claim to his widow and relations, the deceased must have had a good cause of action at the time of his death. These provisions plainly assume that, on the death of a person dying from wounds received in a duel, his widow and relations would have a good action for all damages thereby occasioned against his antagonist, although he himself could have no right of action, their sole object being to extend liability to others who took part in the duel, whether as seconds or witnesses.

The respondents argued that, in the event of judgment being against them upon the question of the widow's title to sue, the case ought to be sent back to the Supreme Court of Canada, in order that they may be heard upon their motion for a new trial.

Having now the record before them, their lordships are of opinion that the course thus suggested is no longer open. The judgment appealed from bears, *inter alia*, "That the motions by "the appellants (*i.e.*, the present respondents) for a new trial "and in arrest of judgment should be and the same were respec- "tively refused and dismissed." As it stands, that is an express adjudication upon the very point which the respondents desire to have reheard; and the Supreme Court of Canada can have no jurisdiction to review it. In order to meet that difficulty, the respondents suggested that the decerniture was inserted *per incuriam*, and that the Supreme Court might strike it out, upon a motion to correct their judgment; and they relied upon the circumstance that the point is not discussed in the opinion of Mr. Justice Taschereau. Without clear grounds for doing so, their lordships are not inclined to protract litigation, already excessive. Considering that all the judges, seven in number, who heard the motion in the Courts of Quebec Province were of opinion that the evidence warranted a verdict against the respondents, that one of them only thought the verdict ought to be disturbed, and that upon the single ground that the damages awarded were too large, their lordships see no reason to suppose that the judgment of the Supreme Court of Canada was incorrectly framed or that any injustice will be done by their finally disposing of the case at this stage.

Their lordships will therefore humbly advise Her Majesty to discharge the judgment appealed from, to restore the judgment of the Superior Court in review, dated the 31st January, 1889, and the judgment of the Queen's Bench in Appeal, dated the 19th June, 1890, and to order the respondents to pay to the appellant her costs of the appeal to the Supreme Court in the second trial. The respondents must also pay to the appellant her costs of this appeal.

Judgment reversed.

Hatton & McLennan, for appellant.
Abbotts, Campbell & Meredith, for respondent.

QUEEN'S BENCH DIVISION.

LONDON, May 28, 1892.

THE QUEEN v. RUSSETT—2 Q. B. Div. (1892) 312.

Criminal Law—Larceny—Possession Obtained by Fraud—Larceny by a Trick.

The prisoner agreed at a fair to sell a horse to the prosecutor for £23, of which £8 was to be paid to the prisoner at once, and the remainder upon delivery of the horse. The prosecutor handed £8 to the prisoner, who signed a receipt for the money; by the receipt it was stated that the balance was to be paid upon delivery. The prisoner never delivered the horse to the prosecutor, but caused it to be removed from the fair under circumstances from which the jury inferred that he had never intended to deliver it. Held, *that the prisoner was rightly convicted of larceny by a trick.*

Case stated by the deputy chairman of the Gloucestershire Quarter Sessions.

The prisoner was tried and convicted upon an indictment charging him with having feloniously stolen, on March 26, 1892, the sum of £8 in money of the moneys of James Brotherton. It appeared from the facts proved in evidence that on the day in question the prosecutor attended Whitcomb fair, where he met the prisoner, who offered to sell him a horse for £24; he subsequently agreed to purchase the horse for £23, £8 of which was to be paid down, and the remaining £15 was to be handed over to the prisoner either as soon as the prosecutor was able to obtain the loan of it from some friend in the fair (which he expected to be able to do), or at the prosecutor's house at Little Hampton, where the prisoner was told to take the horse if the balance of £15 could not be obtained in the fair. The prosecutor, his son, the prisoner and one or two of his companions, then went into a public house, where an agreement in the following words was written out by one of the prisoner's companions, and signed by prisoner and prosecutor: "26th March, G. Russett sell to Mr. James and Brother (sic) brown horse for the sum of £23 0s. 0d. Mr. James and Brother pay the sum of £8, leaving balance due £15 0s. 0d. to be paid on delivery." The signatures were written over an ordinary penny stamp. The prosecutor thereupon paid the prisoner £8. The prosecutor said in the course of his evidence: "I never expected to see the £8 back, but to have the horse." The prisoner never gave the prosecutor an opportunity of attempting to borrow the £15, nor did he ever take or send

the horse to the prosecutor's house; but he caused it to be removed from the fair under circumstances from which the jury inferred that he had never intended to deliver it.

It was objected on behalf of the prisoner that there was no evidence to go to the jury, on the ground that the prosecutor parted absolutely with the £8, not only with the possession, but with the property in it, and consequently that the taking by the prisoner was not larceny, but obtaining money by false pretences, if it was a crime at all. The objection was overruled. In summing up, the deputy chairman directed the jury that if they were satisfied from the facts that the prisoner had never intended to deliver the horse, but had gone through the form of a bargain as a device by which to obtain the prosecutor's money, and that the prosecutor never would have parted with his £8 had he known what was in the prisoner's mind, they should find the prisoner guilty of larceny.

The question for the court was whether the deputy chairman was right in leaving the case to the jury.

Lord Coleridge, C.J. I am of opinion that this conviction must be supported. The principle which underlies the distinction between larceny and false pretences has been laid down over and over again, and it is useless for us to cite cases where the facts are not precisely similar when the principle is always the same. When the question is approached it will be found that all the cases, with the possible exception of *Rex* v. *Harvey*, 1 Leach, 467, as to which there may be some slight doubt, are not only consistent with, but are illustrations of the principle, which is shortly this: If the possession of the money or goods said to have been stolen has been parted with, but the owner did not intend to part with the property in them, so that part of the transaction is incomplete, and the parting with the possession has been obtained by fraud, that is larceny. This seems to me not only good law, but good sense, and this principle underlies all the cases. If however authority is wanted, it is to be found in two cases which we could not overrule without the very strongest reason for so doing. The first is *Reg.* v. *McKale*, L. R., 1 C. C. 125, where Kelly, L. C. B., said: "The distinction between fraud and larceny is well established. In order to reduce the taking under such circumstances as in the present case from larceny to fraud the transaction must be complete. If the transaction is not complete, if the owner has not parted with the pro-

perty in the thing, and the accused has taken it with a frandulent intent, that amounts to larceny." The distinction, in which I entirely concur, is there expressed in felicitous language by a very high authority. The other case is that of *Reg.* v. *Buckmaster*, 20 Q. B. Div. 182, which seems to me directly in point. That decision was grounded on *Rex* v. *Oliver*, 2 Russ. Crimes, 170, and *Rex* v. *Robson*, Russ. & Ry. 413, where the same principle was applied and the same conclusion arrived at.

POLLOCK, B. I agree in the conclusion at which the court has arrived, and would add nothing to the judgment of my lord but that I wish it to be understood that this case is decided on a ground which does not interfere with the rule of law which has been so long acted on; that where the prosecutor has intentionally parted with the property in his money or goods, as well as with their possession, there can be no larceny. My mind has therefore been directed to the facts of the case, in order to see whether the prosecutor parted with his money in the sense that he intended to part with the property in it. In my opinion he certainly did not. This was not a case of payment made on an honest contract for the sale of goods, which eventually may, for some cause, not be delivered, or a contract for sale of a chattel such as in *Rex* v. *Harvey*, 1 Leach, 467. From the first the prisoner had the studied intention of defrauding the prosecutor; he put forward the horse and the contract, and the prosecutor, believing in his *bona fides*, paid him £8, intending to complete the purchase and settle up that night. The prisoner never intended to part with the horse, and there was no contract between the parties. The money paid by the prosecutor was no more than a payment on account.

HAWKINS, J. I am entirely of the same opinion. In my judgment the money was merely handed to the prisoner by way of deposit, to remain in his hands until completion of the transaction by delivery of the horse. He never intended, or could have intended, that the prisoner should take the money and hold it, whether he delivered the horse or not. The idea is absurd; his intention was that it should be held temporarily by the prisoner until the contract was completed, while the prisoner knew well that the contract never would be completed by delivery. The latter therefore intended to keep and steal the money. Altogether, apart from the cases and from the principle which has been so

frequently enunciated, I should not have a shadow of doubt that the conviction was right.

A. L. SMITH, J. The question is whether the prisoner has been guilty of the offence of larceny by a trick, or that of obtaining money by false pretences. It has been contended on his behalf that he could only have been convicted on an indictment charging the latter offence, but I cannot agree with that contention. The difference between the two offences is this: If possession only of money or goods is given, and the property is not intended to pass, that may be larceny by a trick, the reason being that there is a taking of the chattel by the thief against the will of the owner; but if possession is given, and it is intended by the owner that the property shall also pass, that is not larceny by a trick, but may be false pretences, because in that case there is no taking, but a handing over of the chattel by the owner. This case therefore comes to be one of fact, and we have to see whether there is evidence that at the time the £8 was handed over the prosecutor intended to pass to the prisoner the property in that sum, as well as to give possession. I need only refer to the contract, which provides for payment of the balance on delivery of the horse, to show how impossible it is to read into it an agreement to pay the £8 to the prisoner, whether he gave delivery of the horse or not. It was clearly only a deposit by way of part payment of the price of the horse, and there was ample evidence that the prosecutor never intended to part with the property in the money when he gave it into the prisoner's possession.

WILLS, J. I am of the same opinion. As far as the prisoner is concerned it is out of the question that he intended to enter into a binding contract; the transaction was a mere sham on his part. The case is not one to which the doctrine of false pretences will apply, and I agree with the other members of the court that the conviction must be affirmed.

Conviction affirmed.

THE LATE MR. JUSTICE CHURCH.

Mr. Justice Church, who retired from the Court of Queen's Bench last year, died at Montreal, Aug. 30, from the effects of an illness which attacked him while staying at Lorne Park, near Toronto.

Mr. Church was the descendant of a New England family, which severed at the time of the revolutionary war, one part taking the loyalist and the other the popular side. Jonathan Mills Church, after serving in the Royal army, in which he also lost a brother, was taken prisoner in 1777, but contrived to escape, and made his way to Canada where he settled in the vicinity of Brockville. When the war of 1812 broke out he once more undertook military service against his old foes; after the peace he settled down to a quiet life, dying at a remarkable old age in 1846. One of his sons, Dr. Peter Howard Church, took up his residence at Aylmer, Que., where his second son, Levi Ruggles, was born on the 24th of May, 1836. The late judge first intended to follow his father's profession, and after passing through Victoria university, Cobourg, graduated in medecine at Albany and also at McGill, where he took primary, final and thesis prizes. He then studied law under the late Henry Stuart, Q.C., and later with the late Edward Carter, Q.C., and was called to the L. C. Bar in 1859. He went first into business at Aylmer, as a member of the firm of Fleming, Church & Kenny, and was for some time prosecuting attorney of the district of Ottawa. He was named a Q.C. in 1874. He was elected to the Legislature for Ottawa county in 1867, retiring in 1871. Being offered a seat in the provincial Cabinet as Attorney General in 1874 he accepted, and was returned for Pontiac by acclamation, re-elected in 1875, and again in 1878. In January, 1876, he was transferred to the treasurership, which office he filled till the dismissal of the DeBoucherville Cabinet by Lieutenant-Governor Letellier in March, 1878. On the defeat of the Joly ministry, when Mr. Chapleau was called to the premiership, Mr. Church was again offered a portfolio, but declined the honor, preferring to devote his time to his profession. He practised for some time in Montreal as head of the firm of Church, Chapleau, Hall & Atwater. In 1887 he was called to a seat in the Court of Queen's Bench, which, about a year ago, he was compelled to resign owing to continued ill-health. A prolonged rest did something to restore his strength, but his health was never thoroughly re-established, and he was more or less an invalid for the past two years. Mr. Church was an able business man and took an active interest in public affairs. He was for some time a director of the Ottawa Agricultural Insurance Company, of the Bank of Ottawa, and of the Pontiac and Pacific Junction railway, which road he was largely instrumental in having built. While Pro-

vincial Treasurer he visited England to negotiate one of Quebec's numerous loans. Though practising law he was elected a governor of the College of Physicians and Surgeons of Quebec. He held a high position at the Bar, and among other important cases was engaged in the noted Ontario Streams Act appeals. As a public man he won an honorable reputation for ability and good purpose. On the Bench he was a careful, painstaking and clear minded judge.

He was married on the 3rd September, 1859, to Miss Jane Erskine, daughter of Wm. Bell, barrister, and niece of Gen. Sir George Bell, K.C.B, who, with one son and three daughters, two of them married, survive him.

INSOLVENT NOTICES.

Quebec Official Gazette, Sept. 3 & 10.

Judicial Abandonments.

BOUCHARD, Ovide, Quebec, Sept. 6.

GAUTHIER, Jean, St. Jérôme, Chicoutimi, Aug. 31.

GIRARDIN, Dame Eliza, Nicolet, Aug. 30.

MARTEL, Honoré, Chicoutimi, Sept. 7.

ROY, Marie Elzire, veuve Eugène Blumhart, St. Raymond, doing business under the name of Guimont & Co., Sept. 7.

VILLENEUVE, Thos., St. Fulgence, Aug. 31.

Curators Appointed.

BERNIER, late A. H., Isle Verte.—H. A. Bedard, Quebec, provisional guardian, Sept. 1.

CARPENTER, Charles E., Abercorn.—E. L. Harvey, Abercorn, curator, Sept. 1.

DIXON, Jas. H.—L. G. G. Beliveau, Montreal, curator, Sept. 5.

LAFLEUR, FRÉDÉRIC, boot and shoe dealer, Montreal.—C. Desmarteau, Montreal, curator, Sept. 5.

MERCIER, J. A.—C. Desmarteau, Montreal, curator, Aug. 19.

ROBILLARD & Co. (Virginie Lanaud).—C. Desmarteau, Montreal, curator, Aug. 23.

SANSFAÇON, A. A., shoemaker, Quebec.—Geo. Darveau, Quebec, curator, Sept. 2.

Dividends.

BILODEAU & fils, J., Ste. Marie.—First dividend, payable Sept. 27, H. A. Bedard, Quebec, curator.

BRIGGS, Wm. H., Stanbridge East.—First and final dividend, payable Sept. 25, H. Beatty, Stanbridge East, curator.

DROLET, Delphis, Quebec.—First dividend, payable Sept. 27, H. A. Bedard, Quebec, curator.

FONTANELLE, Etienne.—First and final dividend, payable Sept. 16, Bilodeau & Renaud, Montreal, joint curator.

MOUSSEAU & Co., H.—First and final dividend, payable Sept. 24, Bilodeau & Renaud, Montreal, joint curator.

PARENT & Co., D., coal dealers, Montreal.—First and final dividend, payable Sept. 14, C. Desmarteau, Montreal, curator.

PARKER, S. H., Montreal.—First and final dividend, payable Sept. 13, C. Desmarteau, Montreal, curator.

PORTELANCE & Co., Victor.—Dividend on hypothecary claims, payable Sept. 20, G. H. Burroughs, Quebec, curator.

QUINTAL, Isaïe A.—Dividend, payable Sept. 20, C. Desmarteau, Montreal, curator.

GENERAL NOTES.

EVIDENCE IN JAPANESE COURTS OF JUSTICE.—A Japanese journal, describing the manner in which witnesses are sworn and evidence taken in native Courts of justice, says that with the Japanese anything to which a man affixes his seal is considered more sacred than what he may say. Hence, each witness is required to make a declaration to the effect that with a mind free from bias in favour of or against either of the litigating parties, and with perfect fairness, he will give evidence, and, after this has been read out by the recorder of the Court and handed to the witness in the form of a document, the latter is expected to affix his seal to it. The same plan is adopted with the statement of facts which, in the course of the examination he undergoes, a witness makes in Court. The purport of his evidence is written out by the recorder, and before the Court he is required to make what corrections are necessary to render the written statement a trustworthy record of his evidence, and to guarantee its correctness by affixing his seal. Though this process occupies a good deal of time, it precludes the possibility of the evidence given being incorrectly reported, which, in trials where the decision of the Court depends largely on oral evidence, is a matter of much moment.