The Legal News.

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THE INSURANCE APPEAL.

We learn that the appeal to the Privy Council in the test case of *Parsons* v. *The Queen Insurance Co.*, 3 Legal News, p. 326, has been argued at considerable length before the Judicial Committee of the Privy Council. The hearing occupied three days ending the 9th instant. Their Lordships reserved judgment, and it is probable that the result will not be known till November next, after the long vacation.

CANCELLATION OF CONTRACTS.

We are indebted to a telegraphic despatch for the following piece of information, as important as it is concise :—

"LONDON, July 20.—In the House of Commons last night an amendment of the Land Bill enabling the Land Court to quash unfair leases concluded since 1870, and forced on tenants by the threat of eviction or undue influence, was carried by 201 to 109."

Indolent people have been receiving with indifference the signs of approaching revolution in England. They have readily allowed themselves to be nursed into a comfortable sense of security, by the almost too transparent fallacies which have been put forward as an apology for the recent propositions to interfere with the rights of property. It is hardly possible to suppose that any one will be so stupid as to believe that "threat of eviction" or "undue influence," a conveniently loose expression, of very recent invention, and forged for the purposes of fraud, can be made to do duty as a reason for annulling a contract. This, however, is really what is meant. In Mr. Gladstone's organ, the *Guardian*, it was called "undue pressure—as, for example, to permit a lease to be quashed, where since 1870, a landlord has presented to his tenant the oppressive alternative of lease or eviction." To high moralists like the writer in the *Guardian* and Mr. Gladstone it is an oppression tantamount to fear to use a threat of legal procedure. The doctrine may be true but, if so, it is a new evangel. The contrary doctrine has been that of civilized man all over the world. It has been the same in heathen Rome and in Christian Europe. Pothier says : "*La violence qui peut donner lieu à la rescision du contrat, doit être une violence injuste, adversus bonos mores. Les voies de droit ne peuvent jamais passer pour une violence de cette espèce,*" etc., Oblig., § 26. This is the doctrine of the Roman Law (ff. Q. met. causa, l. 3, § 1.) and of our code. Social order is in great peril when it becomes necessary to recall to mind such obvious truths.

R.

HOMICIDE.

A curious question in connection with the law of homicide recently came before the High Court at Calcutta. In *Empress* v. *Gonesh Dooley*, Ind. L. R, 5 Cal. 351, two snake-charmers had been tried for murdering a boy. They were exhibiting to a crowd a venomous cobra, whose fangs (as they knew) had not been extracted, and one of them placed it on the head of a boy whom they had selected to assist them in showing off their dexterity in snake charming. The boy took fright, and in trying to push away the snake was bitten by it on the finger, and he died from the wound. The jury had acquitted both prisoners, on the ground that the exhibition of snake-charming was authorized by custom, and that they had not intended to kill the boy. The sessions judge thought that they had caused the boy's death by an act of gross negligence, and he referred the case to the High Court. Mr. Justice McDonell held that the prisoner who put the snake on the boy's head had been guilty of "culpable homicide not amounting to murder," and not of the minor offence of "causing death by negligence," because he knew that the act was likely to cause death (although he had no intention of causing it), and that the other prisoner was punishable for abetting to homicide.—*Solicitor's Journal.*

VENDOR AND PURCHASER AS REGARDS FIRE INSURANCE.

The decision of the Master of the Rolls in *Raynor* v. *Preston*, 14 Ch. Div. 297 ; 43 L. T. Rep. N. S. 18, has been affirmed by the Appeal Court in a considered judgment, Lord Justice James dissenting. The circumstances, as our readers may perhaps remember, were these :

The vendor of a freehold house, at the date of

the contract for sale, was the holder of a policy insuring the house against fire; the house was burnt down in the interval between the date of the contract and the time fixed for completion of the purchase; the vendor received the insurance money from the office; and the question was whether the purchaser was entitled, as against the vendor, to the benefit of the insurance, either by way of abatement of the purchase money or reinstatement of the premises. The Master of the Rolls decided against the purchaser's claim.

We have before stated our opinion that, both on principle and on the authorities, the decision of the Master of the Rolls was correct. Our opinion is now confirmed, and having considered the reasons given by Lord Justice James in support of the opposite view, his dissent does not in any degree diminish our confidence that the law on the subject has been correctly laid down by Lords Justices Brett and Cotton, who constituted the majority in the Court of Appeal.

We say, with the sincerest respect for the able and admirable senior Lord Justice, that, being aware of his strength, and that he would adduce and urge in support of his dissent everything that could be adduced and urged, we have been unable to feel the force of his reasoning, and therefore are rather fortified than otherwise in our original opinion. Lord Justice Cotton, in a careful judgment, in which Lord Justice Brett substantially concurred, held that, apart from any question arising out of the 14 Geo. 3, c. 78, a contract of fire insurance was a personal contract of indemnity collateral to the land; that the contract for sale passed all things belonging to the vendors appurtenant to or necessarily connected with the use and enjoyment of the property mentioned in the contract, but not the benefit of a contract of fire insurance, and that (as was conceded) if there had been no insurance, the destruction of the house by fire would have been no answer to the vendor insisting on specific performance without compensation; that the contract of insurance was not a contract of repair—but to pay a sum of money, that by express condition in the policy, if not by the general law, the assignee, by way of purchase of the thing insured, was not entitled to the benefit of the fire policy. Lord Justice Brett pointed out that a fire policy in this respect must be governed by the same considerations as a marine policy, as to which it had been held that the assignee of insured goods, who had never contracted for the benefit of the insurance was not entitled to any benefit, and that the assignor, not retaining any interest, was not himself entitled to any benefit: *Powles* v. *Innes*, 11 M. & W. 10. This was the turning point of the case.

If the contract of insurance were collateral the purchaser was really out of court. On this question Lord Justice James was of a different opinion, holding that a fire policy is in effect a contract that if a fire happen, the insurance company will make good the actual damage sustained by the property. In support of this he said that he was not aware of any case in which, on an insurance by a tenant for life, the value of the life interest had ever in any way been regarded by an insurance office in paying on its policies; and that the provisions of the 14 Geo. 3, c. 78, enabling any person interested to require the office to lay out the money in rebuilding, tended in the same direction to support his opinion.

There were, however, other contentions of the appellant with which the court had to deal. It was said that between the date of the contract and the time for completion, the vendor was merely a trustee for the purchaser, that he only obtained the insurance money from the office on the strength of his legal title. Here, again, Lord Justice James differed from his brethren, holding that a vendor, after the date of the contract for sale, is strictly and properly a trustee, and, therefore, that any benefit which accrued to him enured for the advantage of the beneficial owner. Lords Justices Cotton and Brett pointed out that a vendor, pending the completion of the contract, was a trustee only in a qualified sense, the purchaser's right depending on his acceptance of the title and the payment of the purchase money, and that it was because of the uncertainty as to the fulfilment of these conditions that the office could not defend an action on a fire policy by an unpaid vendor: see *Collingridge* v. *The Royal Exchange Corporation*; 37 L. T. Rep. N. S. 525. From this it would appear that it is only because of the uncertainty above mentioned, and the impossibility of predicating whether the conveyance will ever be completed, that it is no defence for an insurance company to show that the policy holder suing is an unpaid ven-

dor. It would also appear that after the completion of the purchase, when it is proved by the event that the vendor, when he received the money, had no equitable interest in the thing insured, it must follow, as in *Darrell* v. *Tibbits*, 42 L. T. Rep. N. S. 796, that the insurance company is entitled to recover back the insurance money. Though it was not necessary to decide this point, the Court of Appeal, as well as the Master of the Rolls, in *Raynor* v. *Preston*, expressed an opinion that the vendors could not, as against the office, retain the insurance money.

As to the point taken by Lord Justice James in regard to an insurance by a tenant for life, or other limited owner, being entitled to receive the full amount of the damage by fire, we should dispute that as a general proposition he is so entitled.

Take the case of the death of the tenant for life, or the failure of the limited ownership before the claim on the policy is settled. Could it be contended that damages were to be assessed without regard to the fact that the policy holder's interest was at an end, and that the real amount of mischief he had sustained had been ascertained by the event?

It may well be that, where a limited owner insures, and his interest is a subsisting one, his insurable interest is not limited to the value of his limited interest, on the ground that in order to his full compensation he requires the insurance money for repairing the property injured in order to his enjoyment thereof, in specie. Thus, in *Simpson* v. *The Scottish Union Insurance Company*, 1 H. & M. 618; 8 L. T. Rep. N. S. 112, Sir W. P. Wood said that he agreed "that a tenant from year to year having insured would have a right, under the statute, to say that the premises should be rebuilt for him to occupy, and that his insurable interest is not limited to the value of the tenancy from year to year."

In regard to the application of the statute of Geo. III, Lord Justice Cotton declined to give an opinion whether purchasers pending the completion of a contract are persons "interested" within its meaning, but held that even if they were, the act only gives a right to insist on the money being applied in reinstating, and that insistence was essential to the right. This point was expressly so decided by Sir W. P. Wood in the case last cited.

If we may venture an opinion on the question left open by Lord Justice Cotton we should be inclined to say that, although purchasers pending completion are persons interested in the thing insured, yet the statute can only apply where, in fact, at the date of the fire, there is an interest remaining in the person originally insured, and that the completion of the purchase relating back to the date of the contract conclusively shows that the vendor, at the date of the fire, had no insurable interest whatever, and that he was merely a trustee for a purchaser who, as such, is not entitled to the benefit of the insurance contract.—*Law Times*, (London.)

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, June 28, 1881.

Before TORRANCE, J.

DIOTTE v. THE CITY OF MONTREAL, & THE CITY OF MONTREAL v. LATOUR et al.

Obstruction in street—Negligence—Damages.

PER CURIAM. This is a claim for damages for an alleged obstruction in the street Maisonneuve by which the plaintiff was thrown out of a cart and injured. The City called in Latour & Co., contractors, as *garans*, and these pleaded negligence on the part of the man driving the cart. The accident happened on the 11th October, 1879. Latour & Co. were the contractors for the construction of Ste. Brigitte Church, and had a quantity of material in the street by permission of the City, with a stipulation to have a light there. There is contradictory evidence as to whether there was negligence on the part of Larochelle who drove. One witness who was with him says there was, and the other witness that there was none. But it was undisputed that there was a pile of stone and timber in the street, that the accident was caused thereby, and that there was no light placed there by the contractors, and the evening was dark. It would have been a prudent and proper precaution to inclose the stone and other materials within a fence, and to have had a light there as is the practice in most civilized communities. This was not done. I have no hesitation in holding that the City and contractors should answer in damages. The

demand is for about 76 days from 11 Oct., 1879, to the date of the institution of the action. The Court assesses these damages at $250, for which judgment goes against the City and *en garantie* against Latour & Co.

Lacoste, Globensky & Bisaillon, for the plaintiff.

R. Roy, Q.C., for the city.

Champagne & Nantel, for the defendants *en garantie*.

SUPERIOR COURT.

MONTREAL, June 28, 1881.

Before TORRANCE, J.

FULLER v. FARQUHAR et al., and STEWART, Jr., *mis en cause.*

Insolvent surety—Supplementary list of creditors.

PER CURIAM. This was a rule against Robert Stewart, Jr., for coercive imprisonment. He had been condemned to pay Fuller the sum of $434.94, with interest and costs, as security for one Henry Parker, under a bond in appeal. Stewart answered the rule by pleading that on the 6th July, 1877, he had been put into insolvency under the Insolvent Act of 1875, and had included the claim of Parker among his liabilities under a supplementary statement of date 17th April, 1879. Stewart cited s. 61 of the Insolvent Act, but it does not cover his case. In the first place, he has had no confirmation of discharge from debts; and secondly, the supplementary list of creditors was not furnished in time to allow of his creditor obtaining the same dividend as other creditors. Other matters of form were urged against the imprisonment by Stewart, but it is unnecessary to refer to them. Stewart remains liable to imprisonment as a judicial surety, and the rule should be declared absolute.

Maclaren & Leet, for plaintiff.

R. A. Ramsay, for Stewart.

SUPERIOR COURT.

MONTREAL, June 28, 1881.

Before TORRANCE, J.

GADBOIS v. LAFORCE et al.

Malicious Prosecution—Compensation of damages.

This was an action of damages by which plaintiff seeks compensation for the loss of a valuable horse, and for an alleged malicious criminal prosecution. The defendants had a judgment against Gadbois for $71, and took in execution the horse in question, and subsequently abandoned the execution and lodged a seizure in the hands of the guardian, and under this seizure the horse was sold for the sum of $87. Gadbois alleged that the horse was worth $300 to $400, and that defendants had agreed with him to buy the horse for $150 cash, and to discharge the judgment; that they had broken this agreement, and wrongfully deprived him of the horse by deceit and treachery and abuse of the process of the court. As to the criminal prosecution, it arose out of the charge of conspiracy made by defendants, that Gadbois had by an opposition obstructed their proceedings. The defendants answered the charge as to the sale of the horse, that they had only used the ordinary process of the court, in order to obtain payment of the judgment, and they denied the alleged agreement to purchase the horse on the terms stated by plaintiff. As to the criminal prosecution there was, they said, reasonable and probable cause for it, and at any rate Gadbois in June, 1876, had instigated a criminal prosecution against them, and they had thereby suffered damages more than compensating any damages which Gadbois could pretend to claim from them.

PER CURIAM. The record is a bulky one, the action having begun in March, 1877, and 37 witnesses have been examined, during a period extending over near four years. I would say here what I have said before, that it is to be regretted that the enquête should have occupied so long a time as nearly four years. Coming to the facts, I see no legal proof of the agreement to discharge the judgment by private sale of the horse. The matter involved more than $50 and could not be proved by verbal testimony. At any rate, the evidence is quite contradictory, for the evidence for the defence is directly opposed to that for the demand. Then, as to the accusation that the defendants abused the process of the Court, it is not proved. They used the remedies provided by law, and Gadbois could have avoided their operation by simply paying the debt. As to the malicious criminal prosecution charged against the defendants, the evidence on this head is quite unsatisfactory, as there is no documentary evidence of the prosecution. There is not produced any copy of the complaint and warrant

upon which the prosecution began. Admitting, however, that Gadbois had a grievance here, there is evidence of his having criminally prosecuted the defendants for conspiracy. This is admitted and justified by his answer to the plea, and there is a judgment of record showing that the indictment on his prosecution was quashed, and there the matter seems to have ended. The prosecution by the plaintiff may well be set against the prosecution instigated by the defendants. In both, the attorneys of the parties were included. I would further say, that there appears to have been abuse of the process of the Court by Gadbois, who put in an opposition *à fin d'annuler* in June, 1876, which was dismissed in October, and another opposition *d'annuler* in November, which was also dismissed in November, 1876. These judgments were *chose jugée* as to the private bargain for the sale of the horse. The Court has no hesitation in saying that this action should be dismissed.

Durand, for the plaintiff.

T. Bertrand, for the defendant.

COURT OF REVIEW.

MONTREAL, May 31, 1881.

SICOTTE, RAINVILLE, BUCHANAN, JJ.

[From S.C., Montreal.

BRUNET et al. v. LACOSTE et al.

Sale—Resolution—Non-payment of interest.

The inscription was from a judgment of the Superior Court, Montreal, March 31, 1881, Torrance, J. His honor, in rendering the judgment *a quo*, made the following observations:—

"This was an action by Alexis Brunet, *fils*, and Marie Emelie Brazier, his wife, and Alfred Brunet, curator to the substitution created under their marriage contract, against the executors of the late Charles Wilson and against Alexander Molson, vendee of Wilson. It appeared that Brunet *fils* on the 11th March, 1866, gave to Wilson, now deceased, the promise of sale of an immoveable situated on Bonaventure street, so soon as the Corporation of the City of Montreal should have expropriated it for the widening of Saint Bonaventure street, which expropriation there was reason to believe would take place shortly. Meanwhile Wilson was to enter into possession. The consideration of the sale was £1100, of which £200 was received by the father of Brunet *fils*, and the balance of £900 was to be held by Wilson so long as the corporation should not have made the expropriation, paying interest meanwhile to Madame Brunet née Brazier. The complaint of Brunet and wife was firstly that the interest was not paid, namely, $256.41. They further represented that on the 11th March, 1866, the expropriation by the city had been agreed to by the municipality, and notice given thereof in the newspapers, but the expropriation could not be definitely settled if the majority of the interested subject to assessment for the expropriation should oppose themselves to it, and Wilson by his acts caused an opposition to such expropriation so that it was prevented, and by the terms of the promise of sale, the payment of the price was to take place shortly, and so likewise the expropriation as set forth in the deed, and the plaintiffs said that they had a right to claim the purchase money and also the rescission of the promise. They also complained of the deterioration of the property by Wilson and the now defendants, to the amount of $1000, and they concluded accordingly.

The executors pleaded that the promise of sale was followed by tradition, and thereby Wilson became proprietor, and as to the purchase money, £900, it was only payable on the expropriation, which had not taken place; that it was untrue that Wilson had prevented it; that Wilson might have taken proceedings to protect his rights in the widening of the street, but he did nothing to oppose the legal expropriation; that further, the property was shortly to be expropriated; that said Wilson had done all that he was bound to do; that he had sold to the defendant Molson, who had undertaken to pay the interest due, $256.41, but had neglected to do so, and the defendants consented that judgment should go against them for $256.41. Apart from the documentary evidence, the evidence of record was very short. The city clerk under examination proved the passing of a resolution in 1866 by the city council, for the widening of St. Bonaventure street, provided the whole cost be borne by the land belonging to parties interested in or benefited by the improvement. By the law then in force, the majority of persons interested must concur in the proposed improvement, and it then failed for want of a majority. It

was only in September, 1879, that the city council finally adopted a report recommending the widening of the street on different terms, namely: That one-third of the cost should be borne by the corporation and two thirds by the parties interested. The name of Mr. Wilson does not appear in these proceedings. On the whole, I have no difficulty in holding that the plea of the defendants should be maintained. Wilson entered into possession under a promise of sale, and no reason is given why the sale should be rescinded. Wilson became proprietor by his possession so far as the plaintiffs were concerned, and he interposed no obstaclè to the expropriation."

The plaintiffs inscribed in Review, assigning the following reasons for the reversal of the judgment:—

"1. Because the defendant having failed to pay the interest for more than two instalments, the said plaintiffs were entitled to an *action résolutoire* (Troplong, Vente, vol. 1, Nos. 596, 646; Gilbert sur Sirey, Art. 1654, notes 26, 28; Aubry & Rau, vol. 4, p. 398; Laurent, vol. 24, No. 336 et seq.)

"2. Because the judgment should have rescinded the said sale for want of payment of interest, instead of purely and simply granting a personal condemnation against the defendants.

"3. Because said personal condemnation merely entitles the plaintiffs to a *décret* or sale by sheriff of said property, instead of being reinstated in the possession of the same by a *jugement résolutoire* upon refunding to the estate Wilson the £200 paid cash on account of the purchase money.

"4. Because under the terms of the marriage contract neither Alexis Brunet personally nor his wife had any right to sell the said lot of land before the expropriation of the whole or portion of the said lot was determined on and had in fact taken place, and that his sale to Hon. Chs. Wilson was premature and unauthorized under the said marriage contract and the terms of the substitution therein stipulated; and that for this reason the other plaintiff Alfred Brunet as tutor to the said substitution was at all events entitled to the said rescision and *jugement résolutoire*."

The Court reformed the judgment, as follows:—

"Attendu que les demandeurs réclament la résolution de l'acte de promesse de vente par A. Brunet à l'hon. Charles Wilson reçu le 14 mars 1866, et de l'acte entre les mêmes parties en date du même jour intitulé, convention, et de l'acte de vente consenti par le dit hon. Chs. Wilson, au défendeur Alex. Molson de la propriété mentionnée au dit acte de promesse de vente et reçu le 12 avril 1872, à raison du fait que les défendeurs n'ont pas payé la balance du capital et une somme de $252 d'intérêts échus;

"Considérant que les dits demandeurs n'ont pas droit d'exiger maintenant le capital, mais que le défaut de paiement des intérêts donne au vendeur ou ses représentants le droit de demander la résolution de la vente;

"Considérant qu'il y a erreur dans le dit jugement du 31 mars dernier, le réforme et révise, et procédant à rendre celui qui aurait du rendre la cour de première instance;

"Déclare la dite vente résiliée et résolue, et annule le dit acte de promesse de vente, et le dit acte intitulé convention, et le dit acte du 12 avril 1872, en autant qu'il se rapporte à la dite propriété décrite au dit acte de promesse de vente comme suit, etc., et condamne les défendeurs ès qualité d'exécuteurs testamentaires et administrateurs de la succession de feu l'hon. C. Wilson à livrer et abandonner le dit immeuble aux demandeurs, si mieux n'aiment les dits défendeurs sous 15 jours de la signification du présent jugement payer aux demandeurs la dite somme de $252 avec intérêt, etc., et les dépens de l'action telle qu'intentée en cour supérieure," etc.

R. & L. Laflamme, and *Girouard & Wurtele*, for plaintiffs.

Lacoste, *Globensky & Bisaillon*, for the Executors.

Barnard, *Monk & Beauchamp*, for A. Molson.

RECENT SUPREME COURT DECISIONS.

Agreement—Additional parol term—Conditions—Carriers—Wilful Negligence.—The plaintiffs (respondents) sued the defendants (appellants) for breach of contract to carry a quantity of petroleum in covered cars from London to Halifax, alleging that they negligently carried the same upon open platform cars, whereby the barrels in which the oil was, were exposed to the sun and weather and were destroyed. At the trial a verbal contract between the plaintiffs and the defendants' agent at London was proved,

whereby the defendant agreed to carry the oil of the plaintiffs in covered cars with quick despatch. The oil was forwarded in open cars, and delayed at different places on the journey, in consequence of which a large quantity was lost. On the delivery of the oil the plaintiffs signed a receipt note, which said nothing about covered cars, and which stated that the goods were subject to conditions endorsed thereon, amongst which was this: "that the defendants would not be liable for leakage or delays, and that oil was carried at owner's risk."

Held, per Ritchie, C.J., and Fournier & Henry, JJ., that the loss did not result from any risks by the contract imposed on the owners, but loss arose from the wrongful act of the defendants in placing the goods on open cars, which act was inconsistent with the contract they had entered into and in contravention of their duty as carriers.

Per Strong, Fournier, Henry & Gwynne, JJ., affirming the judgment of the Court of Common Pleas, Ontario, that the verbal evidence was admissible to prove a contract to carry in covered cars, which contract the agent at London was authorized to enter into, and which must be incorporated with the writing, so as to make the whole contract one for carriage in covered cars, and therefore defendants were liable.—*Grand Trunk Ry. Co.* v. *Fitzgerald et al.*

Shipping note—Fraudulent receipt of agent for goods not received—Liability of Company.—One W. C., who was defendants' agent at Chatham, and also a partner in the firm of B. & Co., in fraud of the defendants, caused printed receipts or shipping notes in the common form used by the defendants' company, to be signed by his name as defendants' agent, in favor of B. & Co., for about 1200 barrels of flour, no flour at that time having been shipped, and no flour ever having been delivered to the company to answer the said receipts. The receipts or shipping notes acknowledged that the company had received from B. & Co. the barrels of flour addressed to the plaintiffs, and were attached to six drafts drawn by B. & Co. at sixty days, and accepted by the plaintiffs. W. C. received the proceeds of the drafts, and afterwards absconded. In an action to recover the amount of the drafts,

Held, that the act of W. C. in issuing a false and fraudulent receipt to B. & Co., of which firm he was a member, for goods never delivered to the company to be forwarded, was not an act done within the scope of his authority as defendants' agent, and therefore the defendants were not liable (Fournier & Henry, JJ., dissenting).—*Erbb et al.* v. *Great Western Ry. Co.*

RECENT DECISIONS AT QUEBEC.

Subrogation — Tiers détenteur — Surety.—Jugé, 1. Que, mis en regard, la caution doit être préféré au tiers détenteur, et que la subrogation qu'obtient ce dernier, en payant le créancier, ne lui donne pas de recours contre la caution.

2. Que ce privilége appartient aussi bien à la caution solidaire qu'à la caution simple.—*Bilodeau* v. *Giroux* (C.C.), 7 Q. L. R. 73.

Report of Distribution — Registration.—The hypothec granted by a purchaser and registered before the registration of his title to the immoveable hypothecated, will rank after the vendor's privilege, although the latter was registered after the 30 days.—*Chrétien* v. *Poitras* (S.C.), 7 Q. L. R. 81.

Registration—Contract of Marriage.—Jugé, 1. Que l'enregistrement du contrat de mariage requis par l'Acte de Faillite de 1875, pour permettre à la femme d'un commerçant un recours contre les biens de son mari pour les avantages que lui faisait son contrat, n'était que pour le cas de mise en faillite du mari et de distribution de ses biens en vertu de l'acte même, et que, pour tout autre recours, ses droits étaient régis par le Code Civil.

2. Que l'Acte de Faillite de 1869 d'abord, puis celui de 1875, n'ont conservé les dispositions sous ce rapport de l'Acte de 1864 que pour les contrats qui auraient dû être enregistrés pendant qu'il était en force, et non pour ceux faits depuis

3. Que le rappel de l'Acte de Faillite de 1875 laisse à la femme, qui n'a pas enregistré son contrat dans les délais voulus par cette loi, tous les recours que lui permet le Code Civil.—*Joseph et al.* v. *Fortin et al.* (Cour Supérieure), 7 Q. L. R. 87.

Tierce Opposition—Interest of opposant.—Jugé, que toute partie dont la créance est apparente au dossier peut demander que le fol adjudicataire soit condamné à payer la différence entre sa folle adjudication et l'adjudication définitive, et que le jugement ainsi obtenu, n'attribuant à

la partie qui l'a poursuivi son obtention d'aucune portion du montant qu'il comporte, ne peut être revoqué par tierce opposition du débiteur de cette créance qui est le donateur du fol adjudicataire, et qui l'a garanti contre son existence.—*Ross* v. *Corrigan* (Court of Review), 7 Q. L. R. 91.

Contract—Engineer's certificate.—A covenant in a contract for the construction of railway works, between the chief contractor and a sub-contractor, that the qualities and quantities of the work done by the sub-contractor, and the amount of the payments to be made by the chief contractor to the sub-contractor, should be ascertained and determined by an engineer to be named by the chief contractor, is a valid and reasonable covenant.

2. The contractor could not have the advantage of the said covenant, as regards works done by the sub-contractor, not alleged by either of the parties to have been done under the contract, although alleged and proved to have been done in connection with and whilst the works contracted for were in progress.—*Savard* v. *McGreevy* (Ct. of Review) 7 Q.L.R. 97.

Location ticket—Trespass.—The "location ticket," or instrument in the nature of a sale from the crown, of the plaintiff being virtually a sale conveying ownership, he had a right to recover the value of timber cut by others upon the land, notwithstanding that according to the conditions the plaintiff had no right to the timber himself. Even if the location ticket were a mere license of occupation and did not convey ownership, the plaintiff being allowed by law to "maintain suits in law or equity against any wrong-doer or trespasser as effectually as he could do under a patent from the Crown," would still have a right to recover the value of the timber, notwithstanding the said condition.—*Dinan* v. *Breakey* (Ct. of Review), 7 Q. L. R. 120.

Executors—Solidarity.—Les exécuteurs testamentaires conjoints, qui ont pris indivisément possession des biens de la succession, non seulement doivent un seul et même compte, mais sont solidairement tenus au paiement de son reliquat.—*Hoffman* v. *Pfeiffer*, (C.S.), 7 Q. L. R. 125.

RECENT ENGLISH DECISIONS.

Maritime law—Obligation of ship to adhere to charter party—Deviation.—The primary obligation of a ship under charter is to proceed if possible, to the place named in the charter-party; but it is not necessary, in order to free the ship from this obligation, and to substitute an alternative destination, that she should be prevented by a permanent physical obstruction, if the obstruction is such as to cause a delay so unreasonable as to make the prosecution of the voyage impossible from a mercantile point of view. By a charter-party it was provided that a ship of the respondents should carry a cargo of timber from the Baltic to the Surrey Commercial Docks, "or so near thereto as she may safely get and lie always afloat," and should deliver the same to the appellants on payment of freight, "the cargo to be received at port of discharge as fast as steamer can deliver." When she arrived in the Thames the Surrey Commercial Docks were so crowded that she was not able to be received in them, and it appeared from the evidence that she would not have been admitted for many weeks. She accordingly took up her position in the river, and ultimately discharged her cargo into lighters. In an action brought by the owners against the charterers for demurrage, *held*, (affirming the judgment of the court below), that the delay was so great as to make it unreasonable for the ship to wait for admisssion into the docks, so that the alternative in the charter-party came into operation, and the voyage was at an end when the ship was moored in the river ready to discharge her cargo, the charterers' liability began from that date. Cases referred to: Brown v. Johnson, 10 M. & W. 331; Ogden v. Graham, 1 B. & S. 773; Samuel v. Royal Exch. Ins. Co., 8 B. & C. 119; Shield v. Wilkins, L. R., 5 Ex. 304; Schilizei v. Derry, 4 E. & B. 873; Metcalfe v. Britannia Iron W. Co., L. R., 1 Q. B. D. 613; Parker v. Winslow, 7 E. & B. 942; Bastifell v. Lloyd, 1 H. & C. 388; Hillstrom v. Gibson, 8 Ct. Sess. Cas., 3d ser. 463; Cappen v. Wallace, L. R., 5 Q. B. D. 163; Moss v. Smith, 9 C. B. 94; Geipel v. Smith, L. R., 7 Q. B. 404; Jackson v. Union Mar. Ins. Co., L. R., 8 C. P. 572; S. C., 10 C. P. 125; Hadley v. Clark, 8 T. R. 259; Burmester v. Hodgson, 2 Camp. 483; Randall v. Lynch, id. 352. House of Lords, Jan. 13, 1881. *Dahl & Co.* v. *Nelson & Co.* Opinions by Lords Blackburn and Watson. (44 L. T. Rep. [N. S.] 381.)