The Legal News.

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CRITICISM OF JUDGMENTS.

A communication from Messrs. Brooks, Camirand & Hurd appears in this issue in reference to the cases of *McLaren* v. *Drew* and *Fuller* v. *Smith*, noted at vol. 2, p. 388. This letter, we understand, has been submitted to the learned Judge, and with it the correspondence on the subject may properly be closed. A word on the subject of criticism of judicial utterances may now be in order.

We have always thought that great advantages would flow from a fair and temperate criticism, offered openly, of the judgments which are rendered by the Courts. That is certainly infinitely preferable to the secret assaults by which a Judge's reputation may be severely tried, without his having any opportunity of defending himself, or even knowing the quarter from which the attack has proceeded. If a professional journal has any special office at all, apart from supplying information as to current decisions, it must open its columns to all communications which come within the limits of honest criticism. The best way of ensuring fairness, as a general rule, is that the critic shall guarantee his good faith by writing over his name. With such a rule, we have not the slightest fear that the privileges of criticism will ever be abused, or that any Judge can suffer injury by unmerited censure. The learned Judge who rendered the decisions in question on this occasion, we feel assured, would be the last to complain of any criticism of his judicial acts which might be made under such a restriction. There has been too much clandestine depreciation of our Judges in the past: too little frank speaking; and the reputation of the Provincial bench has suffered in consequence.

LAW REFORM.

Conferences are said to be in progress with reference to contemplated changes in the administration of justice, and the result will probably be embodied in a bill on the meeting of the Legislature. We trust that the day of hasty innovation is past. Too many of the changes which have been made have resulted in confusion, simply because they were pressed through before one in twenty of the members of the bar had any opportunity of expressing an opinion on their merits. In this matter the practice in England, where every important change is preceded by long and careful consideration, might be followed with advantage. The bill should be drafted and printed, and distributed among the profession, and then, if serious difficulties are suggested, it should be left over for examination during the recess.

AGENT OF FOREIGN PRINCIPAL.

A difference of opinion has existed between the Superior Court and the Court of Appeal with respect to the question involved in *Doutre & Dansereau*, noted in the present issue. At least two of the Judges of the former Court, in similar cases, had arrived at a different conclusion from that announced in appeal. We confess that we found a difficulty at first in accepting the latter as a satisfactory solution of the question. But when the grounds of the final judgment are examined, it will be seen that the Court of Appeal has not laid down any new or startling doctrine, but the case has been treated very much as a matter of fact. The difficulty was that a person pretending to be agent brought an action in his own name on a contract, and when the contract is looked at, it discloses an obligation to another party: the agent's name nowhere appears, and his claim is left without anything to sustain it. The view of the Court of Appeal appears to coincide with that urged by the appellant in some remarks which we quote from his factum :—

"Le nom de Dansereau n'apparait nulle part. Comment Dansereau peut-il être assujetti aux dispositions de l'Art. 1738 C.C., et être responsable personnellement envers les tiers, lorsqu'il ne contracte pas personnellement? Il ne peut être facteur qu'en autant qu'il contracte personnellement, pour un principal étranger. Ici il n'y a pas de preuve que Doutre ait fait affaire avec Dansereau en aucune qualité. . . . . Il est indubitable que lorsque l'écrit a été signé, l'Intimé n'avait pas en sa possession les livres que l'Appelant achetait, et que, de fait, il n'en a jamais eu possession. C'est l'Appelant qui a payé la douane. La Cour d'Appel, *in re Crane*

v. *Nolan*, (19 L.C.J., p. 309), a jugé : 'That the agents, not having the goods in their possession or under their control, could not be considered *factors* under art. 1738 C.C., but merely brokers.' Cette cause était encore moins favorable que celle-ci : Crane avait signé comme agent au contrat. Dansereau n'a rien signé et son nom n'apparaît nulle part au contrat. La meilleure preuve qu'il n'a jamais eu possession des marchandises, c'est l'écrit même que l'Intimé invoque : l'échéance du premier paiement est fixée à l'arrivage des marchandises.

"La Cour Inférieure semble ne pas tenir compte du contrat ; elle procède par des présomptions, ou elle accepte une preuve orale inadmissible en présence d'un contrat écrit. C'est ce contrat seul qui doit régler le litige. Il est parfaitement clair dans toutes ses expressions. C'est Abel Pilon qui accorde un crédit littéraire et musical, et non Dansereau ; et c'est à Pilon et non à Dansereau que l'Appelant doit payer. Le contrat porte à sa face l'empreinte d'une opération étrangère : c'est en *francs* qu'il faut payer et non en *piastres*. Comment l'Intimé peut-il invoquer le contrat comme étant le sien, lorsque le paiement doit s'effectuer entre les mains de Pilon, à Paris, avec des espèces françaises."

RESPECT FOR AUTHORITY.

In the *Times'* report of the proceedings in *Valin* v. *Langlois*, before the Judicial Committee of the Privy Council, it is stated that "their "Lordships, in the end, dismissed the petition, "and took occasion to express a hope that the "Courts of the Province would show no insub-"ordination to the ruling of the Supreme "Court." It is but fair to say that long before this case went to the Supreme Court, the highest Court of the Province had arrived at the same conclusion on the question of the constitutionality of the Election Act, and therefore, the remark of their Lordships could only refer to Judges of first instance in this Province. We imagine, however, that "the Courts of the Province" in the report should read "the Courts of the Provinces," and that their Lordships merely wished to intimate that decisions of the Supreme Court ought to be accepted as binding by all Judges and Courts in the Dominion—an opinion in which we entirely concur.

CORRESPONDENCE.

FULLER V. SMITH.

SHERBROOKE, Dec. 24th, 1879.

To the Editor of THE LEGAL NEWS :

SIR,—It is extremely undesirable that there should be any controversy with regard to the accuracy of reports published in your valuable paper, and, still more so, that counsel should argue their cases *there* instead of in the open courts, the proper arena for the display of forensic ability.

The motive which induced Messrs. Ives, Brown & Merry to rush to the defence of the learned Judge, resident in this district, who is quite capable of protecting himself, in reference to decisions reported in your journal, may not be quite apparent, but the manner in which the self-imposed duty has been performed might be fairly a matter of comment, if your columns were a proper place for such discussion.

There never was any desire to injuriously reflect upon the presiding Judge in the reports made of his decisions upon a most important question of procedure.

We have always recognized his ability, industry and integrity, but this question is so important to the profession that it should be thoroughly ventilated, and if the second decision is a correct one, the law must be changed, if we desire that investors should put their money into mortgages in this Province.

In justice to the learned Judge who rendered the two decisions in questions, it should be stated that in the case of *McLaren* v. *Drew*, and *Drew* opposant, No. 808, the first seizure made in *Camirand* v. *Drew*, No. 111, was set aside very shortly after the second seizure was made, and long before the decision. In that case, No. 808, the defendant asked that the second seizure should be annulled, because on the day of the seizure the land was actually under seizure in No. 111, and the sale had been suspended by an opposition filed by defendant Drew, and that the seizure by the sheriff was, under those circumstances, a nullity. Plaintiff answered : The first writ was not in sheriff's hands at time of second seizure, and sheriff could take no cognizance of it; in addition to which, the first seizure has now, at the time of contestation, been set aside.

In the case of *Fuller* v. *Smith*, & *Fletcher* oppo-

sant, opposant said: The property had been seized under my writ, which, at the time of second seizure, had been stayed by opposition, but still the second seizure was null.

Our opinion has always been that the oppositions in both cases must have been decided according to the position of the respective cases, *when the oppositions were filed;* subsequent action could not affect them.

The legal proposition stated in both oppositions was the same—*i.e.*, a second seizure cannot, under art. 642 of Code of Procedure, be made, although the writ under which the first seizure has been made had passed out of the sheriff's hands.

We are,
Your obedt. servts.,
BROOKS, CAMIRAND & HURD.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, December 17, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

LA COMPAGNIE D'ASSURANCE DES CULTIVATEURS, etc., (defts. below), Appellants; and GRAMMON (plff. below), Respondent.

Insurance—Premium paid by note—Failure of insured to pay note at maturity does not annul the policy, where note was accepted as cash, and receipt acknowledged by the policy.

The respondent obtained an insurance from the appellants' company for $430, and the premium was paid by a promissory note for $4.30, payable three months after date. The policy was delivered to the insured, and by the terms of the policy the sum of $4.30 was acknowledged to have been received. A fire occurred, and the company refused to settle the loss, because the promissory note had not been paid at maturity. The court below held that the company, having by the policy acknowledged payment of the premium, could not be permitted now to plead non-payment in defence to the action. The judgment (St. Hyacinthe, Sicotte, J., 8th July, 1878,) was in these terms:—

"La cour, etc.....

"Considérant qu'il est prouvé par le contrat et police d'assurance, octroyé en la forme ordinaire et permise, le 22 Décembre, 1875, que la défenderesse, en considération de la somme de $4.30, qu'elle reconnut avoir reçue, assura le demandeur contre les pertes et dommages par le feu, jusqu'à concurrence du montant de $430, sur une maison indiquée plus au long dans l'application, évaluée à $300, et son contenu, évalué à $130, pour trois ans;

"Considérant qu'il est prouvé que le demandeur a souffert des pertes et dommages par le feu qui a brûlé et détruit, le 14 mai, 1876, la maison susdite et son contenu, pour et de la somme de $400;

"Considérant que le demandeur s'est conformé à tout ce qui était requis de lui, pour informer la défenderesse de cette perte, et obtenir d'elle l'indemnité qu'elle lui devait;

"Considérant que le contrat d'assurance est réglé d'une manière finale et absolue par l'affirmation faite dans la police, par la dite compagnie d'assurance, et qu'elle ne peut être admise à prouver que cette affirmation est fausse, et détruire cet acte par preuve verbale;

"Considérant que la prime peut être payée par toute valeur acceptée par l'assureur;

"Considérant que la preuve constate que le demandeur a agi de bonne foi, et que la défenderesse a connu les faits de l'agent employé par elle pour effectuer l'assurance avant l'octroi de la police;

"Considérant que le demandeur a prouvé sa demande, et que la défenderesse est mal fondée dans ses défenses, condamne la défenderesse à payer au demandeur la somme de $400, avec intérêt du 28 Octobre, 1876, jour de l'assignation, et les dépens distraits aux avocats du demandeur."

The appellants urged that the taking of a note did not operate novation; that the intention of the parties was that the insurance should be valid until the note matured; but that if the note was not then paid the contract was cancelled. The cases of *Jones* v. *Lemesurier*, 2 Rev. de Leg., 317, and *Noad & Lampson*, 11 L. C. R. 29, were referred to.

Sir A. A. DORION, C.J., said the court was of opinion to confirm the judgment. The note was received as money, and the fact that it was not paid at maturity could not annul the contract in the absence of any stipulation to that effect. The insurers chose to give the insured credit, and they could not now escape liability.

Judgment confirmed.

Loranger, Loranger, Pelletier & Beaudin for Appellants.

Hon. F. X. A. Trudel for Respondent.

LEFEBVRE es qual. (opposant below), Appellant, and TURGEON (deft. below), Respondent.

Execution—Effect of Attachment in Insolvency, which is set aside on contestation.

The appeal was from a judgment of the Superior Court, Montreal, 17 June, 1878, (Torrance, J.), dismissing an opposition *afin d'annuler* filed by the appellant, Honoré Lefebvre, in his quality of tutor. The respondent had caused an execution to be issued against the immoveables of Lefebvre personally, and he opposed the seizure as tutor to P. A. Lefebvre, a minor, issue of his marriage with Louise L'Esperance, deceased. The grounds of the opposition were that the immoveable seized as belonging to opposant personally formed part of the community which had existed between him and his deceased wife; and further, that when the seizure was made, a writ of attachment under the Insolvent Act of 1875 had issued against him, and he was no longer in possession of the immoveable.

The respondent contested the opposition on the ground that the appellant *es qualité* had no interest in alleging the insolvency of Honoré Lefebvre, on whom the immoveable in question had been seized. The respondent further alleged that Louise Lesperance was living, and the community existing, at the time of the seizure. That under art. 546 C.C.P., the death of the wife after execution had commenced could not affect the proceedings.

It was admitted that the community between Lefebvre and his wife was not dissolved until after the seizure. It was also admitted that at the time of the seizure a writ of attachment had issued against Honoré Lefebvre, but this writ was being contested, and it was subsequently quashed by the Court of Appeal.

The judgment of the Court below dismissed the opposition on these grounds :—

"Considering that the seizure under the Insolvent Act was invalid and null, and the seizure by the plaintiff was valid;

"Considering, moreover, that the opposant *es qualité*, is without interest, so far as appears, to oppose the seizure by plaintiff, doth maintain the contestation by said plaintiff to said opposition, and dismiss the said opposition with costs *distraits*," etc.

The appellant urged that a person subjected to the operation of the Insolvent Act is *de facto* divested of his estate until the attachment is set aside; and therefore that he, appellant, had not possession of the immoveable from the date of issue of the attachment until the writ was quashed.

The respondent submitted :—" L'opposant *ès-qualité*, représentant un tiers, savoir son enfant, n'a aucun intérêt à empêcher la vente du dit immeuble; la faillite du défendeur ne suspend pas de plein droit les procédés sur l'exécution; au contraire, en supposant même que le dit Honoré Lefebvre eût été réellement mis en faillite, le bref d'exécution aurait dû avoir son cours, et n'aurait pu être suspendu ou discontinué que sur un ordre de la Cour Supérieure à la requête du Syndic du défendeur. D'un autre côté, le décès de l'un des membres de la communauté sur le chef de laquelle l'immeuble en question avait été saisi, ayant eu lieu après l'exécution de la dite saisie, il n'y a aucun doute que son décès n'affecte en aucune manière les procédés commencés, et qu'en supposant que l'enfant mineur représenté par l'opposant *ès-qualité* aurait accepté et la succession de sa mère et la communauté, il n'aurait pas pour cela le droit de demander la suspension de l'exécution."

The judgment was unanimously affirmed.

Doutre & Doutre for Appellant.

Geoffrion, Rinfret, Archambault & Dorion for Respondent.

THE SCHOOL COMMISSIONERS OF THE MUNICIPALITY OF THE TOWNSHIP OF ROXTON (defts. below), Appellants, and BOSTON et al. (plffs. below), Respondents.

Position of Dissentients—Proof of Status.

There were two cases of a similar character. The appeal in each case was from a judgment rendered by the Superior Court at Sweetsburg, setting aside the sale of lots of land in the township of Roxton, belonging to respondents, which had been sold by the Corporation of the Township of Roxton for school taxes alleged to be due by respondents on the lots, and also setting aside the adjudication, in one case to Lafontaine, and in the other to Bates, and declaring respondents to be proprietors of the lots. The respondents claimed that they had paid all taxes lawfully imposed on the lots; that the late John Boston, who was proprietor of the lots, was of a religious faith different

from the majority of the inhabitants, and in November, 1858, he had notified the School Commissioners of the fact; and that since his death, his children, the present respondents, had paid their school taxes on the property in question to the Dissentient School Trustees, with the knowledge of the appellants. The plea denied that the late John Boston had lawfully been a dissentient. The court below held that the respondents had made out their case, and the action was maintained.

Cross, J., held the judgment to be well founded, except in declaring respondents to be the proprietors of the land. Objection had been taken to the evidence of respondents' status as dissentients. Their *de facto* position could be proved by verbal evidence, and had been abundantly proved. The service of the notice was sufficient. On the whole, it was evident that the respondents acted throughout in good faith, according to their lights. The appellants had relied on technicalities which, in the opinion of the court, were not sufficiently supported. The judgment in each case would, therefore, be confirmed.

Ramsay, J. Two cases have come up before us, which give rise to a question of very general interest. The appellants contend that where there is a dissentient scholar municipality within the limits of any township or parish, the members of the dissentient body occupy so exceptional a position that they and each of them must be prepared at any moment to establish his dissentient status by proving his notice of dissent, his adherence to the dissentient body, and all the proceedings required by law to create the dissentient corporation. There is, doubtless, much to be said in support of this view; but reviewing the whole law and its objects, I do not think it was the intention of the Legislature to create an inequality of this kind. So long as there is no dissent, the one corporation exists; but the moment that there is an expression of dissent taking the form required by law, then a new corporation of a public character arises, and its members acquire a status as fully recognized by law as that of the majority who do not dissent. It seems to me that the existence of the corporation, and the status of its corporators as members of the corporation, are facts which can be proved orally; and that it is not incumbent on the corporator, in a suit for taxes by the other corporation, to prove his notice of dissent or the observance of the formalities attending the formation of the corporation to which he belongs. I would therefore confirm the judgment appealed from.

Cross, J., added, that where the law authorizes the creation of a corporation on the observance of certain formalities, and such corporation was found *de facto* existing, the status might be proved without documents.

The judgment was as follows:—

"The Court, etc.

"Considering that on the proof made in this cause, the respondents, plaintiffs in the Court below, ought not to have been granted that part of their conclusions whereby they prayed that they might be declared to have been and to be the only true and lawful proprietors of the three pieces of land therein described, and of each and every part thereof, and might be put and reinstated into the free, peaceable and undisturbed possession and enjoyment thereof, and that save in this respect and in matter of form there is no error in the judgment rendered by the Superior Court in this cause, at Sweetsburgh, on the 13th day of April, 1878, the Court of our Lady the Queen now here, proceeding to reform the said judgment, doth cancel, annul, and set the same aside, and proceeding to render the judgment which the said Superior Court ought to have rendered;

"Considering that upon the issues between the said respondents and the said appellants, the said School Commissioners of the Township of Roxton, the said respondents have sufficiently established in evidence the material averments of their declaration in this cause filed, and more particularly that they, the respondents, and before them their auteur John Boston, therein named, had long been and were dissidents as regards school matters in Roxton aforesaid, and that their lands therein and hereinafter mentioned were not at the time of the sale thereof, which is complained of in this action, subject to taxation in any wise by or for the said School Commissioners;

"And considering that the said School Commissioners have wholly failed to prove any material averments of their pleas, and considering that the sale and adjudication by the Secretary-Treasurer of the County of Shefford to the Respondent Wells H. Bates at the village

of Waterloo, in the County of Shefford and District of Bedford, on the 4th day of March, 1872, of the lot No. 11, and the east half of lot No. 16 in the tenth range, and the lot No. 20 in the eleventh range of the said township of Roxton, which has been complained of in this cause, was and is wholly illegal, and ought to be set aside, dismissing without costs the two demurrers filed in this cause by the said School Commissioners;

"Doth rescind and set aside and annul the said sale and adjudication of the said lot No. 11 and east half of lot No. 16 in the tenth range, and of said lot No. 20 in the eleventh range of the said township of Roxton, and of each and every part thereof, so made on the 4th day of March, 1872, by the said Secretary-Treasurer of the Municipal Council of the County of Shefford as such Secretary-Treasurer to the said Wells H. Bates, and doth further declare the said three pieces of land and each and every part thereof to be freed and discharged for ever from any claim whatever thereto on the part of the said Wells H. Bates, his heirs or assigns, under the said pretended sale and adjudication hereinbefore referred to, and doth condemn the appellants to pay to the respondents their costs incurred as well in this court as in the court below."

Lacoste & Globensky for Appellants.
Bethune & Bethune for Respondents.

DOUTRE (deft. below), Appellant, and DANSEREAU (plff. below), Respondent.

Contract—Agent cannot sue in his own name on contract made with principal.

The appeal was from a judgment of the Superior Court, Montreal, Papineau, J., maintaining an action for the price of some books sold to the appellant.

The action was brought by Dansereau on the following contract:—

Crédit Littéraire et Musical.

ABEL PILON, Libraire-éditeur, 33, Rue de Fleurus, à Paris.

BULLETIN DE SOUSCRIPTION.

Je, soussigné, déclare souscrire aux ouvrages ci-après désignés et m'engage à payer le montant selon les conditions suivantes:

Rayé—*Pour recevoir franc de port et emballage*, ajouter 3 p. cent en sus.
Titres des ouvrages.....liste remise . fr. 733.
Montant de la souscription, sept cent trente-trois francs.
Douane et Port payable à l'arrivée 12½ p. cent.
Que je paierai de suite. p. c.....Total.....

Comptant en recevant trente-six francs 65, et les frais et le solde, par trente-six francs 65 le mois, jusqu'à libération complète, et à défaut de paiement de deux termes échus, la somme entière est exigible.

Rayé.—Pour la Province, inscrire au dos la date et le montant des traites, qui ne peuvent être inférieures à vingt francs....

Nom.....G. Doutre
Qualité.....Avocat
Rue.....St. François-Xavier, 82
Ville.....Montréal
Département.....Canada.
Lieu de naissance.....Montréal.

Ml. le 2 mai 1877.

(Signature) GONZALVE DOUTRE.

The defence was that the contract produced showed that the books were not bought from the respondent, but from Abel Pilon, Paris, France, and that this gentleman had no right to sue in the name of his agent, Mr. Dansereau. The court below over-ruled this plea, the judgment being as follows:—

"La cour, etc.

"Considérant que le demandeur a prouvé les allégués essentiels de sa demande, et spécialement qu'il a agi, dans la vente en question, dans cette cause, comme facteur d'un principal demeurant en pays étranger;

"Considérant qu'en contractant ainsi avec le défendeur, pour un principal étranger, même nommé dans le contrat de vente, il s'est obligé personnellement envers le défendeur, son acheteur;

"Considérant que la vente est un contrat synallagmatique où l'une des parties ne peut être obligée sans que l'autre le soit également envers elle, et que par conséquent, le défendeur s'est obligé envers le demandeur et que ce dernier a droit d'action contre lui pour le contraindre à l'exécution de cette obligation;

"Considérant que le principal du demandeur n'a pas notifié le défendeur avant l'institution de l'action en cette cause, qu'il entendait que le paiement du prix de vente lui fut fait à lui-même et non au demandeur, et qu'il n'a pas fait non plus demande judiciaire de ce paiement avant l'institution de la présente cause, et que conséquemment le droit d'action du demandeur, personnellement contre le défendeur, n'a pas été enlevé par l'exercice du droit prééminent d'action du principal contre le défendeur;

"La Cour condamne le dit défendeur à payer au dit demandeur la somme de $130.68, cours du Canada, balance restant due tant sur la dite

vente que sur le transport des livres vendus, et laquelle balance de créance, le dit demandeur a, présentement, le droit d'exiger et recouvrer en entier du dit défendeur, à défaut par ce dernier d'avoir payé deux versements consécutifs sur icelle dite balance de créance, le tout aux termes et suivant les conditions de la dite vente: avec intérêt sur la susdite somme de $130.68, à compter du 13 Novembre 1877, jour d'assignation, jusqu'à paiement, et les dépens distraits," etc.

Sir A. A. DORION, C.J., was of opinion that the action was wrongly brought. It ought to have been in the name of Pilon, the contract showing that it was with him that the appellant had contracted.

RAMSAY, J. This case is not similar to that of *Crane & Nolan* (19 L.C.J., p. 309). In that case I thought the action rightly brought, as the plaintiff was the factor of a foreign principal. In this case the action is brought on a contract between the appellant and the principal, and the question of factorship does not arise. I would reverse.

The judgment was as follows:—

"La Cour, etc....

"Considérant que l'intimé n'a vendu les effets mentionnés en la déclaration en cette cause que comme l'agent de la maison Abel Pilon & Cie. de Paris, ainsi qu'il l'allègue dans sa déclaration; que le compte produit, ou bulletin de souscription produit par l'intimé est fait au nom d'Abel Pilon, et ne constate une obligation de la part de l'appelant qu'envers le dit Abel Pilon, et non envers l'intimé;

"Considérant que sous ces circonstances l'Art. 1738 du Code Civil est inapplicable à cette cause, et que l'intimé n'avait aucune action contre l'appelant;

"Et considérant qu'il y a erreur dans le jugement rendu par la Cour Supérieure siégeant à Montréal, le 17 Mai 1878, et dans le jugement rendu par la Cour Supérieure siégeant en révision à Montréal le 21 Juin 1878;

"Cette Cour casse et annule le dit jugement du 21 Juin 1878, et renvoie l'action de l'intimé avec dépens tant en Cour Inférieure que sur le présent appel, et condamne l'appelant aux frais encourus sur l'inscription en révision."

Judgment reversed.

Doutre & Doutre, for Appellant.

Ethier & Pelletier, for Respondent.

LEGGE (plff. below), Appellant, and LAURENTIAN RAILWAY Co. (defts. below), Respondents.

Parol Evidence—Agreement by engineer to take salary in bonds of a railway.

This was an action instituted by Mr. Charles Legge, and continued by his brother as curator, for the recovery of $855, for engineering services performed by Mr. Legge in connection with the respondents' railway.

The plea admitted the indebtedness in great part, but said that the appellant had agreed to take payment in bonds or debentures of the Company, and bonds were tendered.

The plaintiff denied the agreement, and alleged further, that the bonds produced by the Company were utterly worthless.

At enquête, it was proved by the verbal evidence of Peter S. Murphy, managing director of the Company, that Mr. Legge had agreed to take his salary as chief engineer in debentures of the Company at 50 cents in the dollar, the same as all the other officers of the Company. The Company, in fact, had no money, and nothing but bonds to pay anybody with.

At the time this evidence was offered Charles Legge had been interdicted for mental alienation, and could not be examined.

The Court below maintained the plea.

Sir A. A. DORION, C.J., said the Court was of opinion to confirm the judgment on the main point, the admission of verbal evidence to prove the fact set up by the plea. It was an agreement of a commercial character, and the way in which payment was to be made might be proved by parol testimony. There was an error, however, in the tender. The respondents should have tendered $1,239 in bonds for the $619.50, balance due. Their offer of $1,500 in bonds, on condition that the appellant should pay them the difference between $1,239 and $1,500, could not be sustained. The judgment must, therefore, be reformed, and respondents condemned to pay appellant $619.50, unless bonds to the amount of $1,239 were handed to him.

The judgment is as follows:—

"La Cour, etc.,

"Considérant que la Compagnie intimée a reconnu devoir la somme de $619.50 à Charles Legge représentée en cette cause par l'appelant, pour les causes mentionnées en la déclaration en cette cause;

"Et considérant que l'intimée a prouvé que cette somme ne devait être payée qu'en bonds ou débentures de la Compagnie au taux de cinquante pour cent de leur valeur nominale, ce qui formerait un montant de $1,239, que la Compagnie intimée doit payer au demandeur en bonds ou débentures prises au cours du par ;

"Mais considérant que les offres et la consignation que l'intimée a faite d'une somme de $1,500 en bonds ou débentures de la Compagnie sous la condition que l'appelant rembourserait à l'intimée la différence entre $1,239, montant dû, et celle de $1,500, ne constituent des offres légales que l'appelant soit tenu d'accepter ;

"Et considérant qu'il y a erreur dans le jugement rendu par la Cour Supérieure le 31me jour de Mai 1878 ;

"Cette Cour casse et annule le dit jugement du 31 Mai 1878, et procédant à rendre le jugement qu'aurait du rendre la dite Cour Supérieure, condamne la Compagnie intimée à remettre au dit appelant es qualité, sous quinze jours de la signification de ce jugement, des bonds ou débentures de la Compagnie intimée au montant de $1,239, et à défaut par la dite Compagnie de le faire, la Cour condamne la dite Compagnie à payer à l'appelant ès qualité la somme de $619.50 pour tenir lieu des dites débentures, et condamne en outre la dite Compagnie intimée à payer à l'appelant les intérêts sur la dite somme de $619.50 à compter du 20 Octobre 1877, date de l'assignation en cette cause, et les frais," etc.

Keller & McCorkill for Appellant.
De Bellefeuille & Turgeon for Respondent.

HART et al. (plffs. below), Appellants, and HART, (deft. below), Respondent.

Account not contested held to be admitted—C. C. P. 527, 530.

The appeal was from a judgment of the Superior Court, Montreal, (Dorion, J.), dismissing an action *en reddition de compte*, praying for an account of the respondent's administration of Mrs. Hart's estate. The respondent produced an account, and notified the appellants to file any contestation which they might have to make to the account produced, within a delay stated. No contestation was made, and appellants were foreclosed from contesting.

The Court below rendered the following judgment :—

"Considérant que le défendeur s'est conformé à la demande des demandeurs en leur action, et qu'il a produit devant cette Cour les comptes de sa gestion et administration comme curateur des biens des successions de feu Harriot Judith Hart et de feu Benjamin Hart son époux ;

"Considérant que les demandeurs n'ont pas débattu ou contesté les dits comptes dans le délai voulu par la loi, et qu'ils ont été forclos de le faire ;

"Considérant qu'il appert par les dits comptes, que le défendeur n'est reliquataire d'aucune somme de deniers aux dits demandeurs *es qualités ;*

"Donne Acte au dit défendeur de la production des dits comptes et le décharge de l'action des dits demandeurs *es qualités*, sans frais."

TESSIER, J., rendered the judgment, holding that Articles 527 and 530 C.C.P. were decisive of the question. The former says that parties accounted to are bound to take communication of the account, and to file their contestation, if they contest it, within a delay of fifteen days. And Art. 530 says that in default of filing the contestations, answers or replications within the delay, the party bound to file them is held to admit whatever is contained in the document he fails to contest. The judgment of the Court below was in conformity to these enactments of the Code. The appellants had an opportunity of contesting, but had not taken advantage of it.

Judgment confirmed.

A. M. Hart for Appellants.
Coursol, Girouard, Wurtele & Sexton for Respondents.

NOTE.—The attorneys for appellant in *Montrait & Williams*, p. 12, should have read "Judah & Branchaud," instead of "Judah & Wurtele."

LADY LAW STUDENTS.—A young lady in England, who applied to be examined at the preliminary examination for solicitors, has been notified by the Council of the Incorporated Law Society that "they do not feel themselves at liberty to accept the notice of any woman." Another lady who wished to qualify for a call to the bar, has been informed that under the regulations of the Inns of Court ladies are not allowed to enter as students.