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FOREIGN DIVORCE.

The Supreme Court of Illinois in *Roth* v. *Ehman*, has recognized the validity of a divorce obtained abroad, though the ground of the divorce was merely the absence of a formality which by the laws of Illinois (where the parties were married) was wholly unnecessary. Roth, a subject of Wurtemberg, came to America, and while residing in Illinois, married there a French subject. This marriage was void under the laws of Wurtemberg, because Roth had not obtained a license therefor from the sovereign of that country. Subsequently the consorts went to Wurtemberg and resided there, and during such residence proceedings were taken by Roth in Wurtemberg to have the marriage in Illinois declared null, on the ground that it was in violation of the laws of Wurtemberg. The case proceeded regularly, both parties appearing, and the decree of divorce was pronounced. Roth then married again. After his death his first wife claimed the estate by a suit in Illinois. The Supreme Court (two judges dissenting) held the foreign divorce to be valid, and maintained the pretensions of the second wife.

RIPARIAN RIGHTS.

Several questions connected with the rights of riparian proprietors were recently discussed before the Supreme Court of Vermont, in the case of *Canfield* v. *Arthur*. Two mill-owners held lots on the same stream, one above the other. The questions that arose were, as to the right of the upper owner to divert the stream; to store or pond the water, and to discharge his saw-dust and waste into it. The law as laid down by the Court was, that the upper owner could divert the water on his own land by an artificial channel, if it was conducted back into its natural course, with reasonable care and prudence, before reaching the premises of the inferior proprietor, and he having received no appreciable injury; that there was no legal injury in storing and ponding the water, if it was detained only as long as was reasonably necessary; that while the upper owner can use the water in a proper and reasonable manner, yet he must respect the rights of riparian proprietors below him, and is limited in discharging into the stream his saw-dust and refuse, to what is absolutely and indispensably necessary for the beneficial use of the water.

ENGLISH JUDGES.

The *Law Times* of London has gravely undertaken to contradict some newspaper gossip, to the effect that many of the English judges jump off the bench, mount a hack at Westminster Hall, and subsequently play lawn tennis until it is time to dress for dinner. According to the *Times*, judges on their appointment, however young in years they may be, become old in their habits. "Mr. Justice Chitty, on being made a judge, ostentatiously abandoned lawn tennis. Mr. Justice North abandoned his morning meerschaum down Oxford Street. They necessarily shrink into themselves. They hold little intercourse with the bar, and notwithstanding their youth the habits of age are forced upon them."

A SKETCH OF THE CRIMINAL LAW.

[Conclusion, from p. 212.]

I will now make a few observations on the most important and characteristic of the definitions of each of the classes of offences which I have mentioned.

In the first place, I may observe upon these crimes in general that they are all classed as being either treason, felony, or misdemeanor. Treason is sometimes said to be a kind of felony.

Felonies were originally crimes, punishable with death and forfeiture of goods, though this definition is not rigorously exact. Petty larceny and mayhem, though felonies, were not capital crimes, and piracy, though capital, was not a felony. So misprision of treason was not a felony though it involved forfeiture. All other crimes were misdemeanors, the punishment for which at common law was fine, imprisonment, and whipping at the discretion of the court. The great alterations made in legal punishments have made this classification altogether unmeaning. Many misdemeanors are now liable by statute to punishments as serious as most felonies, and forfeiture of property as a punishment for crime was abolished in the year 1870. There

are still a few distinctions in the proceedings appropriate to felony and misdemeanor, but the classification has for many years become a mere source of embarrassment and intricacy.

Passing to the definitions of crimes I come first to crimes against public tranquillity. The most important of these is high treason—an offence of which the definition has played an important part in English history. Bracton has not on this occasion copied the language of the "Digest;" but down to the reign of Edward the Third, high treason was a term little, if at all less vague than "majestas," and its definition in the year 1352 by statute was regarded as a highly important security against oppression. It defined treason as consisting of three main branches,* namely: (1) Compassing or imagining the death of the king and displaying such compassing and imagination by any open act; (2). Levying war against the king; (3). Adhering to the king's enemies. The first of these heads has been interpreted to mean forming an intention in the mind, which intention is displayed by any open act. There is some ground for the opinion that the "imagining" mentioned in the act (which was in Norman French) really meant attempting; but the other interpretation has always been received and acted upon. This act has remained in force for upwards of five hundred years, and its meaning has been the subject of vehement controversy. It was for centuries regarded as the law under which all attempts to make by force revolutionary changes in the government must be punished, but it is obvious that such changes might be made without any direct attempt upon the king's life, and also without "levying war" against him in the plain sense of the words. Hence at different stormy periods in English history—for instance, in the reigns of Henry the Eighth, Elizabeth, and Charles the Second—other acts were made treason, as, for instance, denying the king's supremacy over the Church, maintaining particular theological doctrines, speaking words of a seditious character, and the like. These, however, were regarded as stretches of power, and the act of Edward the Third was regarded with almost superstitious reverence as containing the true constitutional theory on the subject. As it was found in practice too narrow for the purposes to which it was from time to time sought to apply it, the judges on many occasions enlarged it by "construction" or interpretation. It was held, for instance, that every one who tried to lay any restraint on the king for the purpose of making him change his measures, or who attempted to depose him, must be taken to "imagine his death," because deposed kings are often put to death. In the same way it was held that any riot having for its object the effecting by force any public general object, as, for instance, the repeal of an obnoxious law, was high treason by levying of war. These judicial interpretations or constructions were naturally unpopular, and juries sometimes refused to give effect to them. During the reign of George the Third accordingly an Act of Parliament was passed which gave them statutory authority during his life, but the greater part of this Act expired on his death in 1820. In the present reign, during the excitement produced in England and Ireland in 1848 by the continental revolutions of that year, another act was passed which left untouched the act of Edward the Third and the constructions put upon it by the judges, but re-enacted in substance the act of George the Third, declaring, however, as to the greater part of it, that offenders against it should be guilty of felony and liable to penal servitude for life, or any less punishment. It was, however, expressly declared that this should not in any way affect the older law. High treason accordingly at present is defined by the law of England twice over; namely, first by the Act of Edward the Third, upon which the judges have put a variety of constructions and interpretations; and secondly, by the Act of 1848, which embodies these constructions and interpretations, but punishes the offender with secondary instead of capital punishment. Some indeed of the constructions in question which relate to attacks on the king's person are still treason by statute.

There are a variety of other acts against political offences, some of which are strange and even antiquated. The only one of interest enough to be mentioned in such a sketch as this is the offence of seditious libel. The crime is nowhere defined on authority. Practically it

* There are some others of less importance which I omit. It is treason *e.g.*, to kill the Lord Chancellor or a Judge of the High Court whilst discharging the duties of his office. When the statute of treasons was passed, murder was clergyable, and the object was, that a man who murdered a Judge on the bench should be hanged even if he could read, and if his wife had not before her marriage been a widow.

may be described as being any writing upon a political subject adverse to the existing state of things, and such that the jury think the writer ought to be punished. In the latter part of the last century this branch of the law was the subject of a great controversy between judges and juries. The judges held that it was the duty of the jury to convict the accused if it was proved that he had written or published the matter said to be libellous, and that such parts of it as were not stated in express words, but by way of allusion, abbreviation, or the like, had the meaning ascribed to them in the indictment, and that it was the duty of the judge to say whether the matter so published was or was not a libel. Juries were continually told by the counsel for accused persons that it was their duty to determine the whole matter—the criminality or innocence of the alleged publication as well as the fact that the matter alleged to be criminal was published. This controversy was decided in the year 1792 in favor of the jury by Fox's Libel Act. Political libels were prosecuted and their authors severely punished for many years after the passing of this act; but it is, I think, more than thirty years since there has been a successful prosecution for a political libel in England, though there have some within that period in Ireland.

I must pass very lightly over offences consisting in the obstruction or corruption of public officers in the discharge of their duties. I may observe, however, that perversions of the course of justice by whatever means were anciently known by the general name of "maintenance," that is, maintaining or supporting by unlawful means either party to any legal proceeding. All through the Plantagenet period this offence was common, and many acts of Parliament were directed against it. It was one main object of the erection, or at least of the extension and development of the powers of the Court of Star Chamber to deal with such cases. By degrees the offence of maintenance ceased to be prosecuted under that name, but different forms of the offence, such as attempts to corrupt or intimidate witnesses, or to exercise undue influence over jurors, are still occasionally punished. Bribery, perjury in its various forms, and conspiracies to defeat the course of justice, also belong to this class.

On crimes against the morals, health, and general convenience of the public, I will make only one observation. As I have already observed in passing, a large addition was made to the criminal law of England by the decisions of the Court of Star Chamber. When that Court was abolished and after the restoration of Charles the Second, the Court of King's Bench not only recognized the decisions of the Court of Star Chamber, but to a certain extent considered itself as having succeeded to its authority as *custos morum*, and the judges claimed and exercised the power of treating as criminal any act which appeared to be at once immoral and opposed to the interests of the public. The publication of obscene books was first punished expressly on this ground. To some degree this power has been asserted even in our own day.

I now come to the great leading heads of the criminal law—the offences, namely, which are punished under one or other of the five acts passed in 1861, and which affect the person or property of individuals. Offences against the persons of individuals consist either in the destruction of life or the infliction of injuries short of death, or the infringement of rights inseparably annexed to the person, such as conjugal and parental rights, and the right to a good reputation.

No part of the law of England is more elaborate or more difficult to reduce to anything like order and system than the law relating to homicide in its different degrees. The act relating to offences against the person throws no light upon it whatever. It provides in a few words for the punishment of murder and manslaughter, but it assumes that the legal definitions of these offences are known. Of these definitions I have not space to write with anything like the fullness which they deserve. I will only say in general, that upon a full examination of the different legal decisions which have been given by the courts, and the different expositions of the matter which have been made by writers regarded as authoritative, it will be found that the apparently simple definitions,* already given and quoted below, require, in order that they may be fully understood, that answers should be given to the following questions:—

* "Murder is unlawful homicide with malice aforethought." "Manslaughter is unlawful homicide without malice aforethought."

First, What is homicide? Must a child be fully born before it can be killed? Or is it homicide to kill a living unborn infant? Is it homicide to frighten a man to death, or to break a woman's heart by systematic unkindness which, operating on weak nerves, causes paralysis and death? Is it homicide to allow a man to die when you can save him without danger or serious trouble, *e.g.*, by throwing a rope to a drowning man? If a person having the charge of a child or infirm person omits to render proper services whereby death is caused, is that homicide? If a physician causes his patient's death by mistaken treatment, is it homicide? If A injures B and B refuses to submit to a surgical operation and dies, has A killed B? Or suppose the operation is performed and B dies of the operation, has A killed B? Does it make any difference if the operation was unnecessary or was unskilfully performed?

Next, in what cases is homicide unlawful? The full answer to this question involves a statement of the law as to the cases which justify the use of personal violence, and in particular its use for self-defence, for the prevention of crimes, for the arrest of criminals, for the execution of legal process, and for the assertion of particular legal rights. A, a far stronger man than B, comes by force into B's house and stays there making a disturbance. B tries to remove him. A successfully resists. At what point if at any point may B shoot A or stab him with a knife?

When we have assigned, by answering these questions, a definite meaning to the expression "unlawful homicide," it becomes necessary to distinguish between the two classes into which it is divided by defining each of the words "malice" and "aforethought." Does the word "aforethought" imply premeditation extending over a day, an hour, a minute, or is it a practically unmeaning word? A variety of authorities show that it is practically unmeaning. If a man with a loaded gun in his hand suddenly conceives and executes the intention to shoot dead an unoffending passer-by, his crime is regarded by the law of England as being, to say the very least, quite as bad as if he committed it after long deliberation.

As for the word "malice" I have already described the strangely unnatural meaning which has been attached to it in relation to this matter. The most important of these meanings are (1) an intention to kill, (2) an intention to inflict grievous bodily harm, (3) an intention to commit any crime described as a felony, (4) knowledge that the act which causes death is dangerous to life, and a determination to run the risk of killing. For instance, when a man intending to rescue a prisoner from a prison, exploded a barrel of gunpowder against the wall of the prison and blew part of it down, destroying at the same time the lives of many people in the neighborhood of the explosion, he was held to have acted with "malice aforethought" though he probably knew none of the people who were killed, and hoped, if he thought about the subject at all, that they might be absent at the time of the explosion or otherwise escape its effects.

The law relating to the infliction of bodily injuries short of death has in itself no special interest, but it has a curious history. In Anglo-Saxon times the laws provided a scale of fines or *weres* for bodily injuries almost surgically minute. Thus twenty shillings were to be paid to one whose great toe was struck off, and five to one who lost his little toe. Under the early English kings weres went out of use; but maiming, *i.e.*, destroying any member of the body which might be used in fighting or which was essential to manhood, was a felony; but it was the only felony (except petty larceny) not punished with death, and it came to be treated as a misdemeanor only. I suppose that in ages when violence was extremely common, people were left in this matter to defend and to revenge themselves. The effect of this was that till quite modern times the most violent attempts to murder were only misdemeanors. By degrees, however, public attention was attracted by particular acts of violence, and laws were passed for their punishment; but this legislation was occasional and fragmentary to an almost incredible degree. Thus, for instance, in the reign of Charles the Second, the enemies of Sir William Coventry set upon him and gashed his face, and in particular his nose, in order to disfigure him. Hereupon an act was passed (long known as the Coventry Act) which made it felony without benefit of clergy, to cut a man's nose or face with intent to disfigure him. All this fragmentary and occasional legislation was thrown together, first in an act passed in 1827, and afterwards in the act now in force which was passed in 1861. The strangest instance of its character which can be

given is that different provisions in the act punish specifically seven different ways of attempting to commit murder, to which is added a further provision punishing in the same way all attempts to commit murder by ways other than those specified. As the punishment is the same in all cases, a single provision punishing the attempt to commit murder would have been sufficient. The explanation of this intricacy is that at one time some of these acts were and others were not capital crimes.

The acts which punish wilful injuries to property (of which burning houses, etc., are the most serious), forgery, and offences committed with the coinage, I pass over without any further observation than that they have the same elaborate and yet fragmentary and occasional character as the other acts. The act relating to forgery in particular exemplifies this in the strongest way. Forgery at common law was regarded only as a misdemeanor; but as commerce increased, and in particular as bills of exchange and other negotiable instruments came to furnish a supplementary currency, forgery came to be of more importance, and a succession of acts were passed making it felony without benefit of clergy to forge deeds, bills, notes, and many other commercial papers. It became usual, indeed, when any statute was passed which required almost any sort of document to be used, to make a special provision for punishing its forgery. The forgery act is an imperfect collection of these provisions. It is at once most elaborate, most minute, and quite imperfect. I think a very few general provisions might replace the whole of it.

The act most commonly in use, most important, and most remarkable, is that relating to theft and other offences consisting in the dishonest appropriation of property. It is a production which no one could possibly understand without being aware of the history of the law upon the subject, and of the common law theories upon which it is founded.

Bracton's definition of theft, as I have already observed, was taken almost verbatim from the "Digest," but the whole theory of the English common law upon the subject differs widely from that of the Roman law. Most of the differences arise, I think, from the circumstance that the Roman lawyers regarded theft as a private wrong, whereas the common law treated it from very early times as a capital crime. The extreme severity of this view was mitigated in practice by several extraordinary doctrines, the inconvenience of which was recognized as time went on, and to some extent remedied by Parliamentary enactments. I will mention the most important of these doctrines. The first was obviously intended to restrict the law to the class of things most likely to be stolen, and of which the theft was of most importance in a rude state of society, such as cattle, articles of furniture, money, stores of food, etc.. It was that certain classes of things were not capable of being stolen. First of all it was considered that as it was a physical impossibility to steal a piece of land, so it should be made legally impossible to steal anything which formed part of, grew from, or was permanently affixed to the soil. So far was this carried that it was not theft at common law to cut down a tree and carry it away, or to rip lead off a roof and melt it down. Coal forming part of a mine, even fruit on a tree, or growing corn was not capable of being stolen at common law. A second exception applied to title-deeds, bonds, and other legal documents. As a legal right was physically incapable of being stolen, it was held that the evidence of a legal right, such as a deed or a bond, should be legally incapable of being stolen. When bank-notes first came into use they were not capable of being stolen, because they were only evidences of the holder's right against the bank, and were otherwise of no value. Again, many kinds of animals were not regarded as capable of being stolen, because as old writers said "they were not worthy" (as oxen and sheep were) "that a man should die for them." Such were dogs and cats and wild animals kept in captivity for curiosity like bears or wolves.

All these exceptions from the general rule as to theft are themselves subject to exceptions made by act of parliament, and the sub-exceptions are so wide that they are all but co-extensive with the original exceptions. Thus the rule that documents which are evidences of rights cannot be stolen, is qualified by statutory exceptions which enumerate nearly every imaginable document which can fall within the exception, and provide special punishments for stealing them; and the same is true of the other excepted classes I have mentioned.

Another rule of the common law has caused much greater intricacy and complication than this. This rule is, that it is essential to theft that there should be an unlawful *taking*. If a man gets possession of a thing lawfully, and afterwards misappropriates it, he is not guilty of theft. For instance, if having hired a horse honestly, the hirer rode away with him, and sold him, he would not have been guilty of theft at common law, nor was it theft at common law to misappropriate a watch lent for use or entrusted to the misappropriator to be repaired. Nor, again, was a servant who received money on his master's account and spent it, guilty of theft at common law.

It would not be worth while to attempt to give an account of the extraordinary intricacies and hardly intelligible technicalities into which these doctrines have run, and it would be hopeless to try to show to what extent they have been removed by statute. It is enough to say that there has been an immense quantity of legislation on the subject, as occasional, as minute, and as incomplete as the other legislation already referred to.

Even this, however, does not bring us to the end of the intricacies of the law of theft. As I have already observed, the old law was comparatively simple. Theft or larceny (*latrocinium*), as it was called, was divided into grand and petit. Grand larceny was theft of things worth a shilling or upwards, and was punishable with death. Petit larceny was theft of things worth less than a shilling, and was originally punished by flogging and imprisonment. Grand larceny, however, a clergyable felony; that is to say, offenders for the first offence were branded on the brawn of the thumb, and imprisoned for a short time and discharged. On a second conviction they were hanged. This was not considered severe enough for many forms of theft, and accordingly acts of Parliament were passed excluding particular classes of thieves from benefit of clergy, as, for instance, those who stole to the value of forty shillings in a dwelling house, those who stole cattle, those who stole five shillings from a shop, and many others. These are the principal intricacies which were imported into this offence, either by the rules of the common law or by the course of Parliamentary legislation. All of them must be borne in mind before the principle on which the Larceny Act of 1861 is drawn can be understood. It sweeps together all the exceptions to each of the common law rules already referred to, and it punishes with special severity every form of theft which in earlier times was excluded from the benefit of clergy. It also punishes various forms of fraud allied to theft, and provides for theft aggravated by personal violence, which is robbery, and for extortion by means of threats. It thus forms upon the whole one of the most intricate, unwieldy, and at first sight hopelessly unintelligible productions of a legislative kind that I have ever met with. It consists of one hundred and twenty-three sections, and is, I should think, nearly as long as the *Strafgesetzbuch* of the German Empire.

I have now completed my very rough outline of the criminal law of England as it is. I may observe upon it in general, that it is surprisingly minute and distinct, and, when you have learnt it, so well ascertained that few questions arise on its meaning, but it is to the last degree fragmentary. It is destitute of any sort of arrangement, a great deal of it has never been reduced to writing at all in any authoritative way, and the part which has been is unintelligible to any one who is unacquainted with the unwritten definitions and doctrines of which it assumes the existence.

Of the plans for its codification which have attracted public attention in the course of the last three years, I have only to say that I am now fully convinced that the task of codification —which practically means giving literary form to large bodies of law—is one which a popular assembly like the British Parliament is quite incompetent to perform itself, and most unlikely to entrust to any one else. Parliament can no more write a law-book than it can paint a picture, and a thorough revision and re-enactment in an improved form of the whole body of the criminal law would raise so many questions of various sorts, upon which great difference of opinion exists, that I do not believe that any ministry is likely to encumber themselves with so extensive a measure, or that any Parliament is likely to pass it. I think, however, I am justified in saying that the bills referred to prove the possibility (which in England has sometimes been denied) of drawing a criminal code, whatever may be the difficulty of passing it when it is drawn. I also think that they show what an

immense quantity of sense and experience the criminal law of England contains, notwithstanding some undeniable defects in substance and defects of form which can hardly be exaggerated.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, July 7, 1882.

Before TORRANCE, J.

THE CONSOLIDATED BANK OF CANADA v. THE TOWN OF ST. HENRI et al.

Execution—Sale super non domino.

This was an action to set aside a sale made by the Sheriff of Montreal upon a warrant of the Mayor of St. Henri, for taxes due on certain property there situate, of which the defendant, William Henderson, was described in the proceedings as the known proprietor, and he was made defendant in the proceedings to recover taxes, as appeared by the Sheriff's deed. The property was seized by the Sheriff on the 19th May, 1880, and was sold to Thomas R. Johnson, as the last and highest bidder, for $341, on the 29th July, 1880, and a deed was subsequently executed on the 6th August, 1880. The plaintiffs sued to have this deed set aside as having been made *super non domino, et non possidente*, Henderson not having been the proprietor or in possession of the property, *animo domini*, for several years. Plaintiffs alleged that they were proprietors and in possession of the property by deed of sale, dated 13th June, 1878, duly registered 27th of the same month, for $9,000, from Fulton, the assignee of Henderson's insolvent estate, he having become insolvent by deed of assignment to James Tyre on the 28th of July, 1875, and which assignment was duly registered on the 8th of September, 1875, and the estate afterwards duly transferred to Fulton.

The defendant Johnson specially denied registration of the deed of assignment or transfer thereof, in reference to said land, and plaintiff's possession or any act of ownership, such as payment of taxes, and also any notification of change of title. He alleged good faith in purchasing and the liability of the municipality of St. Henri to guarantee his title, and that he was entitled to receive from plaintiffs the amount by him disbursed in the purchase of the lots, and no offer was made to him by plaintiff's declaration, &c. The corporation defendant pleaded want of notice to them of the sale, the want of registration of the alleged deed of assignment, and the want of right of the assignee to convey title; also that plaintiffs never had possession; and the corporation were authorized by their charter to cause the lands to be sold by the Sheriff as was done.

PER CURIAM. It is necessary first to settle whether the plaintiffs have a *locus standi* here—whether they had a title by the deed from the assignee Fulton. Non-registration of the title of the assignee is alleged. I am satisfied that plaintiffs held by a good title. The assignment to Tyre was duly made by Henderson the insolvent and then registered. Fulton then took his place by resolution of the creditors, and the sale was, by the Court, ordered on the 7th March, 1878, on the petition of plaintiffs, and the order directed to Fulton as assignee. It was sufficient. Next, have the plaintiffs forfeited their rights by subsequent proceedings?

The sale sought to be set aside was made by the Sheriff under 40 Vic. cap. 29. S. 384 says: "The Sheriff shall be bound to execute such warrant (warrant for sale) by observing the same formalities and with the same effects as in the case of a writ *de terris*." C. C. P. 632 says: "The seizure of immovables can only be made against the judgment debtor, and he must be, or be reputed to be, in possession of the same *animo domini*." Let us now turn to the ordinance 25th Geo. III., cap. 2, sec. 33. "The sale by the sheriff * * shall have the same force and effect as the *décret* had heretofore"—*i.e.*, after the observance of the formalities prescribed. What, then, is the effect of the *décret* referred to? Pothier, Droit de Propriété, says (n. 252): "Lorsque c'est un héritage ou autre immeuble qui a été saisi réellement et vendu par décret solennel sur un possesseur qui n'en était pas le propriétaire, l'adjudication par décret ne laisse pas de transférer le domaine de propriété à l'adjudicataire, faute par le propriétaire de s'être opposé au décret avant qu'il ait été mis à chef." This rule is to be applied with some qualification, and explanation De Hericourt, De la vente des immeubles par décret, cap. iv., sec. 1, discusses the question whether there are cases where the seizure which is not made upon the proprietor can be valid. "C'est une règle constante dans notre jurisprudence que l'on ne peut saisir réellement un immeu-

ble que sur le propriétaire. Il n'y a point de praticien qui mêlant le Latin avec le Français, ne dise qu'une saisie réelle est nulle quand elle est faite *super non domino*. En effet les dettes d'un particulier ne peuvent être payées du bien d'un tiers; mais cette régle générale souffre des exceptions, ou plutôt demande des explications, sur lesquelles il faut faire une attention particulière." When the seizure has been made upon a person not the proprietor, if the proprietor was in possession before the seizure and so continued till after the adjudication, the seizure and sale did him no harm. He goes on to mention the edict of Henry II. requiring the appointment of a Commissioner to seizures under pain of nullity of seizure, and required him to lease out the land seized, and then mentioned the case of Claude Guignard, whose lands in his vacant succession had been seized, and among his lands was seized a land belonging to his brother. The seizure was in form, the Commissioner had offered a lease of the lands, and failed to get a tenant, and for want of a tenant who went into possession the seizure was declared null. Guyot, Rep., vo. Décret, p. 307, writes to the same effect. Nouveau Denisart, vo. Décret d'Immeubles p. 47, n. 7, says: "On jugeait autrefois que le décret purgeoit la propriété contre les tiers, qui ne s'y étaient point opposés; voyez sur ce point un arrêt de l'année 1674 au Journal des Audiences, tom. 3, liv. 3, ch. 23. Mais la jurisprudence constante est aujourd'hui que, pour purger la propriété, il faut, outre le décret, une possession de dix ans entre présens," etc. So long as a proprietor has not been disturbed in his possession, nor dispossessed by the hand of justice, it cannot be urged against him that he did not oppose. Otherwise, he adds, no citizen would be sure of keeping his property, and it would be a means of fraud. The counsel for the plaintiffs has cited C. C. P. of France, Art. 717, that the adjudication does not give the buyer other rights of property than those belonging to the defendant (*saisi*), and the C. C. P. of Quebec 708, part of which is in the same sense. I would also call attention to C. C. 1487, "The sale of a thing which does not belong to the seller is null," corresponding to 1599 of the French code. Troplong, Vente, commenting on this article, says that the sale of what belonged to another was allowed in the old law because by the subtlety of the Roman law, popularized by Pothier, the precise object of the contract of sale was not to make the buyer proprietor, but only to put him in possession and defend him against all troubles and evictions. From this theory, it was concluded that the sale of the property of another was allowed. But the code, more conformable to natural law than the Roman and old French law, meant that sales should hereafter have the precise effect of transferring property, and in order to transfer property in a thing one must be proprietor, for *nemo plus juris ad alium transferre potest quam ipse haberet*. Matters of commerce are excepted. Some stress has been laid upon the evidence of David H. Henderson, who deposes that the defendant William Henderson, the insolvent upon whom the property was seized and sold, did the road work required by the Corporation. The statement is vague and does not much sustain the plea of Johnson. It has also been objected that the sheriff should have been made a party to the action. I have not known of this objection being maintained before. A similar objection was made in the case of *Desjardins* v. *La Banque du Peuple*, 8 L. C. Jur. 106, because the plaintiff and defendant in the case in which the property was seized and sold were not made parties in the cause. The objection was successful in the Court below, but was not made as to the Sheriff. The lower Court held that the plaintiff, defendant, and *adjudicataire* should have been brought into Court. This was reversed in appeal. I would add, in conclusion, that the title under consideration is a tax title, and the defendant must show affirmatively that the officers acted strictly in conformity with the law. Blackwell, on tax titles, p. 71, says, "By the common law, which views every invasion of the sanctity of property with peculiar jealousy, an authority to divest the title of another is to be strictly pursued." He adds, "out of, at least, a thousand cases of this description, which have found their way into the appellate courts of the country, not twenty of them have been found to be legal and regular." The defendant Johnson claims, in conclusion, that if he is deprived of the property, he should hold possession till reimbursed what he has paid out. His recourse is against the corporation who levied the money, and had it distributed. The plaintiff is entitled to judgment.

Abbott, Tait & Abbotts, for plaintiff.
Robertson & Fleet, for defendants.