THE

LEGAL NEWS.

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SUPREME COURT OF CANADA.

OTTAWA, Feb. 23, 1892.

New Brunswick.]

GUARDIAN ASSURANCE CO. v. CONNELY.

Fire insurance—Application—Description of building—Variance—Falsa demonstratio non nocet.

An insurance policy insured goods in a one-and-a-half story building with shingled roof, occupied as a storehouse for storing feed and provisions, said building shown on plan on back of application for insurance as "feed house," situate attached to woodshed of assured's dwelling house. The building marked feed house on the said plan was not a one-and-a-half story building with shingled roof, was not attached to the wood shed, and was not used as a store house; but another building on the plan answered the description in the policy, and the goods insured were in said last mentioned building when they were destroyed by fire. The plan had been drawn by a canvasser who had obtained the application. He was not a salaried officer of the insurance company, but received a commission on each policy obtained through his efforts.

The insurance company refused to pay the loss, claiming that the policy was made void by the alleged misrepresentation as to the building. On the trial of an action on the policy the jury found for the plaintiff, leave being reserved to move for nonsuit on the ground of misrepresentation. The full Court refused to nonsuit.

Held, affirming the judgment of the Court below, there was no misrepresentation; that the company was in no way damnified by the misdescription in the plan, and the maxim *falsa demonstratio non nocet* applied; that if that maxim did not apply the matter was one for the jury, who had pronounced on it in favour of the assured; and that it was evident that the intention was to insure goods in the building which really contained them.

Held, also, that the canvasser could not be regarded as the agent of the assured, but was the agent of the company, which was bound by his acts and could not take advantage of his mistake.

Appeal dismissed with costs.

Weldon, Q.C., for appellant.
McLeod, Q.C., for respondent.

Ottawa, Feb. 9, 1892.

Ontario.]

EAST NORTHUMBERLAND ELECTION CASE.—NORTH PERTH ELECTION CASE.

Controverted Elections Act—Appeal—Deposit—Proper officer—R. S. C., c. 9, s. 51—54-55 V., c. 20, s. 12 (D.)

By sec. 51 of the Controverted Elections Act, R. S. C., ch. 9, as amended by 54-55 V., c. 20, s. 12 (D), a party desiring to appeal from the decision of a judge on a preliminary objection, or from the decision of the judges who have tried the petition, is to deposit the sum specified as security for costs "with the clerk "of the Court which gave such decision, or of which the judges "who gave such decision are members, or with the proper officer "for receiving moneys paid into such Court." By s. 4 of R. S. C., c. 9, as amended, the distribution of cases for trial in Ontario between the Court of Appeal and the several divisions of the High Court of Justice shall, if not prescribed by the law of the province or practice of the Court, be arranged by the judges.

In the North Perth election case the petition was filed in the Chancery division and assigned for trial to two judges of the Queen's Bench Division. The deposit was made to the registrar of the Chancery Division. In the West Northumberland case the petition was filed in the Court of Appeal and trial before two judges of one of the Divisional Courts, the deposit being with the registrar of the Court of Appeal. On motion to quash the appeal:

Held, that making the deposit to the registrar of the Court in which the petition was filed was a sufficient compliance with the act.

Held, further, that in the N. Perth case the deposit was made to the officer who was the accountant of the Supreme Court of Judicature, and, therefore, the proper officer to receive moneys paid into any of the Divisional Courts.

Motion dismissed with costs.

North Perth case:

Lash, Q.C., for the motion.

Aylesworth, Q.C., contra.

West Northumberland case:

Ferguson, Q.C., for the motion.

Aylesworth, Q.C., contra.

Ottawa, Feb. 22, 1892.

New Brunswick.]

ESSON v. MCGREGOR.

Promissory note—Failure of consideration—Laches.

In an action on a promissory note the defence set up was that it was given in purchase of a machine for polishing wood, which machine did not do the work for which it was purchased and which it was represented to do. At the trial the evidence showed that the machine had been used for a long time in connection with building cars; that the work was under control of a contractor with the defendant; and that the superintendent of defendant's establishment had inspected the cars as they were finished and delivered, as well as watched the progress of the work. Evidence was offered on behalf of the defendant to show that the contractor had never told him that the machine was defective, and he never knew it until the case was tried; and that the machine could not be used until a fan had been attached to it for keeping off the dust. The defendant himself was not examined nor was an effort made to obtain the evidence of the contractor, who had left the province. The jury found in favour of plaintiffs, and a new trial was refused on the ground that defendant must be charged with the knowledge of the contractor, or at all events his superintendent was in a position to discover

the manner in which the machine worked. On appeal to the Supreme Court of Canada:

Held, that the new trial was properly refused.

Appeal dismissed with costs.

McLeod, Q.C., for appellant.
Alward, Q.C., for respondent.

Ottawa, Nov. 20, 1891.

British Columbia.]

BOWKER v. LAUMEISTER.

Deed—Construction of—Trust—Parol evidence of—Enforcement.

A suit was brought to enforce an alleged trust in a deed absolute on its face, or in the alternative, to have the property reconveyed or sold upon the terms of the alleged agreement. The defendant claimed that he had given valuable consideration for the property, which had been accepted by plaintiff in full satisfaction and payment. At the trial parol evidence was given to establish the alleged trust, and a decree was made granting the alternative relief prayed for, and directing the property to be sold and the proceeds applied, as plaintiff claimed had been agreed. The Court affirmed this decree.

Held, that the existence of the trust having been found as a fact by the Court of first instance, and the finding having been affirmed by the full Court, it should not be disturbed.

Appeal dismissed with costs.

S. H. Blake, Q. C., for the appellant.
Robinson, Q.C., for the respondent.

Ottawa, Nov. 17, 1891.

British Columbia.]

POIRIER v. BRULÉ.

Contract—Rescission—Mistake—Performance of conditions—Revocation of trust.

By a deed made between B. grantor, of the first part, P. grantee of the second part, and certain named persons, trustees, of the third part, B. conveyed his farm with the stock and chattels thereon to the trustees. The trusts declared in the deed were

that the grantee should perform certain conditions intended for the support and maintenance and other advantage of the grantor, and if he survived the grantor the trustees were to convey the property to him; if the grantor should survive, the trustees should reconvey to him. The deed was executed and acted on for some few years when an action was brought by B. to have it set aside on the ground of mistake, he alleging that when he executed it, being illiterate and not understanding the English language, he did not know its terms. The trial judge found that this allegation was proved by the evidence, and ordered the deed to be set aside. The full Court on appeal held against this finding of mistake, but affirmed the decision setting aside the deed on the ground that P, the grantee, had not performed the conditions on which his right to the property, in case he survived, depended. On appeal to the Supreme Court of Canada :

Held, affirming the decision of the Court below, that P. having failed to perform the obligations which he had undertaken the trust in his favour failed, and the trustees held the property in trust for B., in whose favour the law raised a resulting trust.

Appeal dismissed with costs.

S. H. Blake, Q.C., for the appellant.

Gemmill for the respondent.

Ottawa, Nov. 17, 1891.

Ontario.]

CITY OF HAMILTON v. THE TOWNSHIP OF BARTON.

Municipal corporation—Powers of—Right to enter lands of another municipality for sewage purposes—Restrictions—R. S. O. (1887), *c.* 184, *s.* 479, *ss.* 15—51 *V.*, *c.* 28, *s.* 20 (*O.*)

The Municipal Act of Ontario (R. S. O. 1887, c. 184), by section 479 gave power to one municipality to enter upon the lands of another for the purpose of extending a sewer into, or connecting with an existing sewer of, the latter upon such terms and conditions as shall be agreed upon between the respective municipalities, and failing an agreement, upon terms and conditions to be determined by arbitration. If the municipality into which the entry is proposed objects thereto, the arbitrators shall determine not merely the said terms and conditions, but whether or not such entry shall be allowed at all.

By 51 V., c. 28, s. 20, a municipal council may pass a by-law for taking land in or adjacent to the municipality necessary or convenient for the purpose of opening, making, etc., drains, sewers or water courses within its jurisdiction, or enter upon, take and use any land not adjacent to the municipality for the purpose of providing an outlet for any sewer, but subject always to the restrictions contained in the Municipal Act.

Held, affirming the judgment of the Court of Appeal, that the latter Act did not take away the necessity for having the terms and conditions of entering upon lands of another municipality settled by agreement or by arbitration as provided by s. 179 of The Municipal Act.

Appeal dismissed with costs.

MacKelcan, Q.C., and *Moss, Q.C.*, for the appellant.

S. H. Blake, Q.C., for the respondent.

Ottawa, Nov. 17, 1891.

New Brunswick.]

SIMONDS v. CHESLEY.

Trespass to land—Title—Application for new trial—Misdirection—Misconduct of jurors—Nominal damages.

S. brought an action against C. for trespass on his land by placing ships' knees thereon, whereby S. was deprived of the use of a portion of the land and prevented from selling or leasing the same. On the trial S. gave no evidence of substantial damage suffered by the trespass, but contended that an action was necessary to preserve his title. The defendants, however, did not set up title in themselves, but only denied that plaintiff had title. Before the verdict was given the jury viewed the premises, one of the conditions on which the view was granted being that "nothing said or done by any of the parties or their counsel should prejudice the verdict." The jury found a verdict in favour of C., and S. moved for a new trial on the ground of the misdirection and misconduct of the defendant's counsel at the view. The Court below refused a new trial.

Held, that by the terms on which the view was granted S. could not set up misconduct thereat in support of his application.

Held, further, that there was no misdirection, but if there was, all that S. could obtain at a new trial would be nominal damages, and it was properly refused by the Court below.

Appeal dismissed with costs.

Skinner, Q.C., and *Simonds*, for appellant.

Currie for respondents.

COUNTY COURT, COUNTY OF YORK.

February 2, 1892.

Before McDOUGALL, J. C. C.

GRIFFITH v. CANADIAN PACIFIC R. Co.

Railway—Animals killed while straying on track—Special case.

Where cattle or horses, not being unruly or breachy, lawfully pasturing upon the land of their owner, situate in a township with an organized municipal corporation which has passed no by-laws respecting cattle running at large, escape from the land of their owner, without any negligence on the part of plaintiffs or defendants, to adjoining land within the same township, which adjoining land is unfenced, and upon which horses and cattle were in the habit of going without any objection by the owner of such adjoining land, but without any express permission from him, and thence wander on to the line of a railway in consequence of the railway company having omitted to erect a fence along the side of the railway, and are there killed by a passing train, the company are not liable to the owner of the cattle and horses for damages caused by the death of the animals.

McDOUGALL, J. C.C.:—

The matter for decision herein is upon the facts of a special case agreed upon by counsel in the following terms:—

"Where cattle or horses not being unruly or breachy, lawfully "pasturing upon the land of their owner, situate in a Township "in the District of Nipissing (which Township has an organized "Municipal Corporation and a portion of which has been surveyed and subdivided into lots for settlement, and which corporation has passed no by-laws respecting cattle running at large) "escape from the said land of their owner without any negligence on the part of the plaintiffs or defendants, on to adjoining "land within the same Township, which adjoining land is unfenced, and upon which horses and cattle were in the habit of "going without any objection by the owner of such adjoining "land, but without any express permission from him, and from "the said adjoining land wander on to the line of a railway "through the said Township, (which railway is subject to the "provisions of the Railway Act) at a point within the said Township, in consequence of the Railway Company having omitted

" to erect a fence along the side of the Railway, and are there " killed by a passing train. Is the Railway Company liable to " the owner of the cattle and horses for damage caused by the " death of such animals? All the admissions of facts herein " made are to be taken only for the purpose of this stated case, " and neither party to be bound thereby in case of a trial of this " action."

The Railway Act of 1888, 51 Vic. cap. 29, sec. 194 (D.) sub. sec. 1, provides:—"When a municipal council for any Township has been organized, and the whole or any portion of such Township has been surveyed and sub-divided into lots for settlement, fences shall be erected and maintained on each side of the Railway through such Township, of the height and strength of an ordinary division fence," etc.

The third sub-section of section 193 was repealed by 53 Vic. cap. 28, sec. 2 (D.) and the following sub-section substituted therefor:—"If the Company omits to erect and complete as aforesaid any fence or cattle guard, or, if it is completed, the Company neglects to maintain the same aforesaid, and if in consequence of such omission or neglect any animal gets upon the railway from an adjoining place where under the circumstances *it might properly be*, then the Company shall be liable to the owner of every such animal for all damages in respect of it caused by any of the Company's trains or engines, and no animal *allowed by law* to run at large shall be held to be improperly on a place adjoining the railway, merely for the reason that the owner or occupant of such place has not permitted it to be there," etc.

The stated case admits that the land in question from which the cattle escaped upon the railway track and were killed, was land in a township (in the unorganized territory of Nipissing) having an organized municipal corporation, and so coming within the description of locality to which 51 Vic. (D.) cap. 29, sec. 194, as amended, applies.

Mr. Macdonald cited the case of *Fawcett* v. *York and North Midland*, 16 Q. B. 610, as an authority for the proposition that the obligation upon the Railway Company to fence both sides of their track was an obligation which made them responsible not only for injuries to cattle of the adjacent land owner getting from his lands upon the track in consequence of the absence of fences, but also for injuries to any cattle straying upon the track through the unfenced lands, and owned by persons other than the adjacent land proprietor. That case was decided upon the

language of an English statute which enacted that the railway company should keep gates closed across the highway, to prevent cattle and horses passing along the highway from entering upon the railway while the gates were closed. The enactment did not, said Patterson, J., say to prevent cattle lawfully passing, etc.; and he held that the straying cattle were on the highway *lawfully* as against the railway company, and that they, the railway company, were bound to keep their gates closed as against everything, whether straying or passing on the highway. It was the fault of the companies that the gates were open, and in consequence of their fault the accident happened.

Renaud v. *Great Western Railway Co.*, 12 U.C. Q.B. 408, was another case of cattle getting upon the railway track from a highway, and being killed, and the Court held, *dubitante*, that the companies were bound to erect gates across the highway and keep them closed—but if not so bound that they were guilty of negligence in crossing the highway at too great a speed, the said negligence causing the accident.

Parnell v. *Great Western Railway*, 4 C.P. 517—another highway case—was to the same effect as *Renaud* v. *Great Western*; but there the Court held—McLean, J., dissenting—that the railway company were bound to put gates on the highway, and that their absence was the cause of the killing of plaintiff's horses which were straying upon the highway, and that the company were liable.

McLellan v. *Grand Trunk*, 8 C.P. 411; *Gillis* v. *G.W.R. Co.*, 12 U. C. Q.B. 427; *Douglass* v. *G.T.R.*, 5 App. 585—all show that under the old Railway Act the Railway Company were only bound to fence as against adjacent land proprietors, and that A's horse getting upon the track from B's land by reason of a defect in B's fence, and being killed, the animal having no right to be upon B's land, A. could not recover damages against the railway company for its loss.

What change, then, has there been in the Railway Act since these decisions? I have set out the clauses in the present Railway Act at the commencement of this judgment. The new section says that if "any animal gets upon the railway from an adjoining place *where under the circumstances it might properly be*, then the company shall be liable to the owner if it is injured or killed by reason of its getting upon the track through the negligence of the railway in not fencing."

What is meant by the expression: "Where under the circum-

stances it might properly be"? McMahon, J., in *Duncan* v. *C.P.R.* —(not yet reported, but I have been favoured with a copy of his considered judgment)*—holds that these words are equivalent to: "it might lawfully be"; and this construction seems to be the only reasonable meaning that can be attached to this somewhat loosely-worded sentence.

Now, there was no by-law of the Township relating to the running at large of cattle; and hence I am of opinion that in the absence of a by-law the common-law rule will prevail, and that all persons are bound under that rule to keep their cattle from trespassing upon the lands of others. Mr. Macdonald urged that the latter clause of sub-section 3 of section 194 as amended, helped his contention, in that cattle upon another man's land were not to be held to be improperly there, because not expressly permitted to be there by the owner of the land; but the rider to this part of the section is contained in the earlier words, which apply only to animals *allowed by law to run at large.* It being admitted that there is no by-law, I need only cite the case of *Crowe* v. *Steeper,* 46 U.C. Q.B., 91, as showing that the common-law rule can only be abrogated by clear and unequivocal words either in a statute or a by-law. The concluding portion of sub-section 3 of section 194, therefore, does not help the plaintiff.

Mr. MacDonald also referred to R.S.O. cap. 91, sec. 82; but I do not see its application to this case, and I agree with the view expressed by McMahon, J., in *Duncan* v. *C.P.R.*, that it seems to have been drawn in ignorance of the common-law rule as to the running at large of cattle.

I must therefore answer the query raised by the stated case by holding that the Railway Company would not be liable upon the facts therein submitted.

Stay of proceedings ordered for 30 days to give plaintiffs time to appeal.

Harvey & McDonald for plaintiffs.
Wells & MacMurchy for defendants.

NEW TRIAL.—The English Court of Appeal, in a recent case, *Ferrand* v. *Bingley Township District Local Board,* granted a new trial on the sole ground that the verdict was against the weight of evidence.

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* See *ante,* p. 14.

INSOLVENT NOTICES.

Quebec Official Gazette, Feb. 6, 13, 20.

LANGEVIN, Appolinaire, cheese-maker, Ste. Cécile de Milton.—First and final dividend, P. S. Grandpré, St. Valérien de Milton, curator.

LARUE, W. H., Murray Bay.—First and final dividend, payable March 8, H. A. Bedard, Quebec, joint curator.

LEMYRE, N. P., Maskinongé.—First and final dividend, payable March 1, H. A. Bedard, Quebec, curator.

LOISEAU, J. E. A.—First and final dividend, payable Feb. 22, Bilodeau & Renaud, Montreal, joint curator.

MARION, Sévérin, hotel-keeper, St Félix de Valois.—First and final dividend, payable March 16, at office of H. Champagne, curator, St. Gabriel de Brandon.

MARTIN, fils & Co., Rimouski.—First dividend, payable March 15, Kent & Turcotte, Montreal, joint curator.

MORRIER, D., Capelton.—First and final dividend, payable Feb. 22, Royer & Burrage, Sherbrooke, joint curator.

RENAUD, X.—Second and final dividend, payable Feb. 26, C. Desmarteau, Montreal, curator.

TURGEON, Z., Montreal.—First and final dividend on proceeds of real property, payable March 15, Kent & Turcotte, Montreal, joint curator.

VINEBERG, J. L., Sherbrooke.—First dividend, payable March 15, Kent & Turcotte, Montreal, joint curator.

VINETTE, Dame A. S., Montreal.—First and final dividend, payable March 3, C. Desmarteau, Montreal, curator.

Quebec Official Gazette, Feb. 27, *March* 5, 12, 19, 26.

Judicial Abandonments.

ALLARD, HENRI, tobacconist, Montreal, March 1.

DÉCHÊNE & CIE., F. M., dry goods dealers, Quebec, March 11.

DESCHENE, GEORGE HONORÉ, St. Epiphane, March 18.

DIONNE, JOSEPH M., St. Antoine, Feb. 19.

HUOT & LANGEVIN, Quebec, Feb. 19.

HURTEAU, J. ARTHUR, boot and shoe dealer, Montreal, Feb. 20.

INGLIS, ERNEST C., Brome, March 9.

KNAPTON, JOSEPH HENRY, Bedford, Feb. 20.

LABBÉ & Co., Jos., tea merchants, Quebec, Feb. 15.

LAVERGNE, JOS. ELZÉAR, Ste. Louise, l'Islet, March 5.

LEMAY, J. N. F., St. Côme, Beauce, March 7.

PALARDY, MARC, Eastman, Feb. 12.
PAYER, HECTOR, Ste. Hélène de Chester, March 3.
PELLETIER, JOSEPH, St. Jean Port Joli, March 14.
POIRIER, JOSEPH, Metapedia, March 18.
ROSS, REGIS, Cedar Hall, Feb. 20.
ROY, PIERRE E., Coaticook, March 17.
RUSSELL, H. C. & Co., iron and steel merchant, Montreal, Feb. 26.
SOUCY & Co., E., Quebec, Feb. 25.

Curators Appointed.

ALLARD, HENRI, Montreal.—C. Desmarteau, Montreal, curator, March 9.
BÉRÉ, J. THÉOP.—D. N. Germain, Montreal, curator, Feb. 19.
BERTRAND, DAVID.—J. B. Prince, Trois Pistoles, curator, Feb. 10.
BESSETTE, DAME A.—C. Desmarteau, Montreal, curator, Feb. 21.
BILODEAU, JEAN, St. Elzéar, and J. BILODEAU & FILS, Ste. Marie.—H. A. Bedard, Quebec, curator, Feb. 27.
BISSON, H. & J.—A. Lemieux, Lévis, curator, March 7.
BOUVIER, ALEXIS, St. Barnabé.—J. Morin, St. Hyacinthe, curator, March 5.
BROUSSEAU, MILES R., St. Paul d'Abbottsford.—L. N. Belisle, St. Pie, curator, Feb. 26.
CAMPBELL, PETER, mill owner, Lachute.—W. J. Simpson, Lachute, curator, Feb. 22.
CALEDONIAN LAUNDRY Co., Montreal.—W. A. Caldwell, Montreal, liquidator, March 1.
CAMPBELL & FERGUSON, Sherbrooke.—J. McD. Hains, Montreal, curator.
COMPAGNIE CANADIENNE DES CONDUITES d'EAU.—A. W. Stevenson, Montreal, liquidator, Feb. 27.
CRAVEN & Co., W. A., Montreal.—A. F. Riddell, Montreal, curator, March 1.
DÉCHÊNE & Co., F. M., Quebec.—G. H. Burroughs, Quebec, curator, March 23.
DEVAULT, GEO. C., Montreal.—C. Desmarteau, Montreal, curator, March 18.
DIONNE, Jos. M., St. Antoine.—H. A. Bedard, Quebec, curator, March 10.
FISH, JAMES, Lachute.—W. J. Simpson, curator, Feb. 22.
HOLLAND & Co., R. H., Montreal.—A. W. Stevenson, Montreal, curator, March 9.
HUOT & LANGEVIN, Quebec.—H. A. Bedard, Quebec, curator, March 4.

KNAPTON, JOSEPH H., Bedford.—J. McD. Hains, Montreal, curator, Feb. 29.

LABBÉ & Co., Jos., Quebec.—N. Matte, Quebec, curator, Feb. 29.

LAFORTUNE, NAPOLEON, Montreal.—Kent & Turcotte, Montreal, joint curator, Feb. 19.

LEFÈVRE, J. F., cigar manufacturer, Montreal.—C. Desmarteau, Montreal, curator, Feb. 20.

MONGENAIS, L. N., Rigaud.—Lamarche & Olivier, Montreal, joint curator, March 5.

MORIN & CIE., DR. ED., Quebec.—H. A. Bedard, Quebec, curator, March 3.

NAUD, F. X., St. Casimir.—G. H. Burroughs, Quebec, curator, March 1.

PALARDY, MARC, Eastman.—D. Seath, Montreal, curator, Feb. 22.

PITON, ALPHONSE, Quebec.—G. Darveau, Quebec, curator, Feb. 6.

PROVOST, HUBERT.—C. Desmarteau, Montreal, curator, Feb. 20.

RICHNER, CHS.—M. Cassidy, Montreal, curator, Feb. 18.

ROBERGE et al., F.—J. Shepherd, (office of White & Duclos), Montreal, curator.

ROSS, REGIS, Cedar Hall.—H. A. Bedard, Quebec, curator, March 3.

RUSSELL & Co., H. C., Montreal.—John Hyde, Montreal, curator, March 7.

THIBAUDEAU & Co., U. A. F., St. Célestin.—Lamarche & Olivier, Montreal, joint curator, Feb. 18.

TRUDEAU, AIMÉ, Windsor Mills.—Royer & Burrage, Sherbrooke, joint curator, Feb. 23.

WATTERS, ADAM.—A. C. Joseph, Quebec, curator, Feb. 29.

YOUNG, LEWIS A., Stanstead.—Royer & Burrage, Sherbrooke, joint curator, March 15.

Dividends.

ANCTIL, L. E., Coaticook.—First and final dividend, payable March 22, Royer & Burrage, Sherbrooke, joint curator.

BAPTIST, SON & Co., GEORGE, Three Rivers.—Dividend on proceeds of part of timber limits, payable March 22, Macintosh & Hyde, Montreal, joint curator.

BEAUCHAMP & Co., W., Montreal.—First and final dividend, payable March 28, Lamarche & Olivier, Montreal, joint curator.

BOUCHARD & BRETON, Quebec.—Final dividend, payable March 14, N. Matte, Quebec, curator.

CARDINAL & Co.—First and final dividend, payable April 4, Bilodeau & Renaud, Montreal, joint curator.

CLAPIN, LEOPOLD.—First and final dividend, payable March 23, Millier & Griffith, Sherbrooke, joint curator.

COLE, F. R., Montreal.—Second dividend, payable March 30, Joseph R. Fair, Montreal, curator.

CRILLY, JOHN.—Second and final dividend, Wm. Angus, Montreal, curator.

DESCHÊNES & fils, Quebec.—Final dividend, payable March 14, N. Matte, Quebec, curator.

DUBUC & Co., Drummondville.—First dividend, payable April 15, Kent & Turcotte, Montreal, joint curator.

DUGRENIER *et al.*—Dividend, L. Jodoin, Waterloo, curator.

DUMARESQ & Co., Montreal.—First and final dividend, payable March 15, W. A. Caldwell, Montreal, curator.

FORTIN, REMI.—First and final amended dividend, payable April 12, Millier & Griffith, Sherbrooke, joint curator.

GIGUÈRE, RICHARD.—First and final dividend, payable April 4, N. Lambert, curator.

GODIN, EUGÈNE.—First and final dividend, payable March 19, L. G. G. Beliveau, Montreal, curator.

GORDON & HOWIE, Stanstead Junction.—First and final dividend, payable March 22, J. McD. Hains, Montreal, curator.

GUEST, JAMES, Montreal.—Third and final dividend, payable March 15, A. F. Riddell, Montreal, curator.

HERALD Co., Montreal.—First dividend, payable April 4, W. H. Whyte, Montreal, liquidator.

HUA, RICHARDSON & Co., Montreal.—First and final dividend, payable April 5, W. A. Caldwell, Montreal, curator.

HURTEAU, J. A.—First and final dividend, payable April 13, C. Desmarteau, Montreal, curator.

JOANETTE, JÉRÉMIE, Montreal.—Second and final dividend, payable March 30, C. Desmarteau, Montreal, curator.

LAFERRIERE, WIDOW J. A., St. Hyacinthe.—First and final dividend, payable April 6, J. O. Dion, St. Hyacinthe, curator.

LAPERLE, ARTHUR, St. Guillaume d'Upton.—First and final dividend, payable March 16, C. Desmarteau, Montreal, curator.

LEFÈBVRE, J. F.—First and final dividend, payable March 30, C. Desmarteau, Montreal, curator.

LEFEBVRE, ODINA, Quebec.—First and final dividend, payable March 14, N. Matte, Quebec, curator.

LOYER, DAME J. S.—Second and final dividend, payable March 23, C. Desmarteau, Montreal, curator.

MALBŒUF, C. A. L., Montreal.—First and final dividend, payable April 15, Kent & Turcotte, Montreal, joint curator.

MARCHAND, L. E. N.—First and final dividend, payable April 5, C. Desmarteau, Montreal, curator.

QUEVILLON, JOSEPH BENOIT, Coaticook.—First and final dividend, payable April 12, Millier & Griffith, Sherbrooke, joint curator.

RADFORD BROS & Co., Montreal.—First and final dividend (21c), payable March 15, C. R. Black, Montreal, curator.

RIEPERT & CIE.—First and final dividend, payable April 15, Kent & Turcotte, Montreal, joint curator.

ROBERGE, J. L., Thetford Mines.—First and final dividend, payable March 21, N. Matte, Quebec, curator.

ROLLAND, P. L.—First and final dividend, payable March 18, Bilodeau & Renaud, Montreal, joint curator.

ROURKE, WM., Montreal.—Final dividend, payable March 28, J. N. Fulton, Montreal, curator.

SLAYTON, T., Montreal.—First and final dividend, payable April 5, W. A. Caldwell, Montreal, curator.

TROTTIER, PAUL NOÉ.—First and final dividend, payable March 26, C. Fortin, Beauharnois, curator.

GENERAL NOTES.

CONTRACTUAL CAPACITY OF THE INSANE.—In *Imperial Loan Company* v. *Stone* (1892) 8 Times L. R. 408, the Master of the Rolls dealt with the old cases as to the contractual capacity of the insane with a truly refreshing freedom. The action was brought to recover the balance due upon a promissory note. The defendant, who signed the note as surety, pleaded that when he did so he was of unsound mind and incapable of understanding what he was doing, as the plaintiffs well knew. The action was tried before Mr. Justice Denman and a jury. The jury found that the defendant was not of sane mind, but differed as to whether or not the plaintiffs were aware of the fact. Thereupon Mr. Justice Denman entered judgment for the defendant; but this decision was reversed by the Court of Appeal, on the ground that, under *Molton* v. *Camroux*, 18 Law J. Rep. Exch. 68, the onus of proving that the plaintiff knew of his insanity rests upon the defendant. 'If we went through all the cases on the question,' said the Master of the Rolls, 'and endeavoured to point out the grounds on which they rest, one would get into a maze. The time has come when this Court must lay down the rule..... The law of England is as follows: When a person enters into an

ordinary contract and afterwards alleges that he was insane at the time.....and proves that he was so by the law of England, that contract, *whether executory or executed*, is as binding upon him in every respect as if he were sane, unless he can prove that at the time he made the contract the plaintiff knew that he was insane, and so insane as not to know what he was about.'—*Law Journal*, (*London.*)

ISSUE OF SHARES AT A DISCOUNT.—The decision of the House of Lords last week in the case of *The Ooregum Gold Mining Company of India* has finally settled the principle laid down in *The Almada and Tirito Case*, 57 Law J. Rep. Chanc. 706, that a company cannot issue its shares at a discount. There can be no question that the decision is as sound in morality as it is in law; but in the particular case before the House there was considerable hardship involved. The transactions assailed had proved beneficial to the company, and had, indeed, saved it from destruction, and the interest of creditors was not in issue. The action was brought by a shareholder, avowedly for the purpose of benefiting the holders of ordinary shares at the expense of owners of the preference shares, which had been issued at a discount. It is important to note that both Lord Watson and Lord Herschell are of opinion that there is nothing in the Acts to prevent a company from issuing shares at a price less than their nominal value, under a contract with the holders that the company shall not call upon such shareholders for any further payment, except in the case of a winding-up, and then only for the discharge of the obligations of the company and the costs of winding-up. Unfortunately no such contract could be inferred in the *Ooregum Case*, for, as Lord Watson put it, to do so would be to infer that 'a single resolution that no money shall be paid in any event is severable into two distinct resolutions—one to the effect that there shall be no payment, and the other to the effect that there shall be no payment on the occurrence of a certain event'.—*Law Journal.*

DELAYS OF JUSTICE.—Mr. Justice Lawrance, of the English bench, referring recently to complaints respecting delays in the administration of justice, observed that there seemed to be an idea that directly a case arose a judge ought to be ready to try it. Of course the object to be aimed at and attained was to keep well up with the work, but the idea of having a judge always ready to try a case was absolutely absurd and not capable of accomplishment.