The Legal News.

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RIGHT OF ACTION.

In rendering judgment a few days ago in the case of *Gault* v. *Bertrand*, noted in our present issue, Mr. Justice Papineau expressed a hope that some of the parties in the numerous cases before the Courts, in which the right of action in Montreal has been contested on similar grounds, would carry a case to the Court of Appeal, and obtain a decision from that tribunal. It is very evident that a rule for disposing of these cases is not likely to be arrived at, until a decision in point has been pronounced by the higher Court, for we find Mr. Justice Papineau, in an elaborate opinion, and carefully drawn judgment, coming to a conclusion exactly opposite to that of the Court of Review in *Lapierre* v. *Gauvreau*, 17 L. C. J. 241, and of Mr. Justice Johnson in the recent case (against the same defendant) of *Gnaedinger* v. *Bertrand*, 2 Legal News, 377. With six Judges of the Superior Court resident in Montreal, and at least as many more fluttering in from the country districts, and occasionally participating in its deliberations, the Court of Review, with its variable composition, does not afford the best means of testing a question such as this, for the judgment would simply depend on the names of the three Judges who happened to be on the Bench when the case was heard. The uncertainty is still greater as to the result of any future case before a single Judge, so that we must concur in the hope expressed by Mr. Justice Papineau.

EX-JUDGES RETURNING TO PRACTICE.

We have noticed some communications in the daily papers, from which it might be inferred that alarm is felt on the subject of pensioned ex judges returning to practice at the bar. On principle, such a course is objectionable, because judges are not supposed to retire on pensions so long as they are qualified for active work. We do not remember any case in England of a retired Judge re-appearing at the bar. As a rule, Judges are inclined rather to cling to office after the period for active work is passed than to relinquish their duties prematurely. In Canada, the English custom of bidding farewell to active work on retirement from the Bench, has prevailed. In some exceptional cases, however, a Judge may be forced to resign owing to an infirmity which disqualifies him for the Bench, though still in the full enjoyment of his mental powers. Under such circumstances it would be rather hard to exclude him from the only employment in which he may feel an interest. The exceptions to the ordinary practice have been too infrequent and unimportant to constitute an abuse, and the bar, at least, cannot feel aggrieved, for the Judge's place on the bench has been supplied from their body.

In the United States, where the Judges are elected, and, after their term of office has expired, usually return to practice, there is no pension provided. In the State of New York, however, it has recently been suggested by the Bar Association that Judges retired by age or failure of health, should be allowed a portion of their salary, and by way of *quid pro quo*, should be required to act gratuitously as referees in cases where they are agreed upon by parties or appointed by the Court. Perhaps, if our ex-Judges begin to evince an ardent desire for wholesome occupation, some similar arrangement might be devised for them.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, Dec. 1, 1879.

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

LING v. THE QUEEN.

Record of Conviction—Motion that original bill of indictment be sent up with return to writ of error.

Motion on the part of the prisoner that the original bill of indictment should be sent up with return to a writ of error.

The COURT was of opinion that under sec. 77 of the Cr. Pro. Act (32 and 33 Vic., c. 29), it was unnecessary to send up the original bill.

QUEBEC, Dec. 4, 1879.

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

THE METACOMET NATIONAL BANK, Appellant, and WALTER VAINE, Respondent.

Capias—Return of writ of appeal.

The respondent, imprisoned on *capias*, moved the return of the writ of appeal. Resisted by appellant.

The COURT ordered the appellant to return the writ without delay.

Motion granted.

QUEBEC, Dec. 6, 1879.

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

LING v. THE QUEEN.

Error—Perjury.

Held, in error, that the omission in the indictment, in setting up the original cause, to state that A. G. "was plaintiff," is fatal, where the question, on the answer to which perjury is assigned, is: "Did you not make some bargain with plaintiff to buy that property?" and when the negative averment is that "whereas in truth the said Thomas Ling had entered into an agreement with said A. G. to purchase, &c."

The prisoner was discharged.

MONTREAL, Dec. 12, 1879.

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

GOLDRING, Appellant, and BANK OF HOCHELAGA, Respondent.

Judgment—Correction of clerical error.

Béique, for the respondent, made application that the order of the Court on the 24th June last, granting leave to Goldring to appeal to the Privy Council (see 2 Legal News, 232), be amended in a certain particular. When the motion for leave to appeal was made, he had consented to show cause immediately, as Goldring was in jail; but in the order of the Court it was made to appear that he had consented to the appeal, which was an error.

G. Doutre appeared for the appellant.

Sir A. A. DORION, C.J., said there was no doubt as to the facts. The respondent had a right to notice of the motion, but the appellant being in jail, and the term at an end, the respondent's counsel consented to waive notice, and showed cause forthwith. After argument, the motion for leave to appeal was granted, but in the judgment, by a clerical error, the respondent was represented as having consented to the judgment. A motion was now made to correct the error. It was right that the Court should come to the relief of the respondent. It was not necessary to correct the register, but the Court would make an order to meet the case.

The order made was as follows:—

"The Court having heard the parties by their respective counsel on the petition of the respondents, La Banque d' Hochelaga, praying that the order of this Court on the 24th day of June last (1879), granting to the said H. W. Goldring leave to appeal to Her Majesty in Her Privy Council, be amended by substituting to the words 'by and with the consent of the respondents,' the words following, 'after having heard the said appellant by his counsel in favor of said motion and the respondents by their counsel against the same;'

"Doth declare that the said respondents upon the hearing of the said motion of the 24th day of June last, for leave to appeal to Her Majesty in Her P. C., did not consent that the motion should be granted, but merely consented to show cause immediately and without notice, and cause having been shown, leave to appeal was granted to the appellant; and that the said order should have been so entered;

"And it is hereby directed that an entry of the present declaration be made on the register of this Court, and a copy thereof, together with a copy of the petition of the respondents and affidavit annexed, be transmitted to the Registrar of the Privy Council with the transcript of the record."

Doutre & Co. for appellant.

Béique & Choquet for respondents.

GOFF, Appellant, and GRAND TRUNK RAILWAY Co., and PERKINS (intervening), Respondent.

Costs—Tender—Notice.

The respondent moved that, seeing the death of J. C. Beckett, and the insolvency of R. Jellyman, sureties for the appellant, the latter

be ordered to furnish new security, and, in default, that the appeal be dismissed.

J. L. Morris, for appellant, objected that there had been default entered against respondent, and he had been relieved from that default last term on condition of his paying costs of the motion. These costs had not been paid.

G. Doutre, for respondent, said the costs had been deposited in the office of the clerk of the Court.

Morris, in reply, said if that were the case, the appellant had received no notice of the deposit.

Sir A. A. Dorion, C.J. It does not appear that when the respondent gave notice of his intention to move for new security, he notified the other party that the costs on taking off the foreclosure had been deposited. There is nothing to show that he has conformed to the judgment of September last. The motion must, therefore, be rejected, *quant à présent*, with costs.

J. C. Hatton for Appellant.

Doutre & Co. for Respondent.

SUPERIOR COURT.

Montreal, Dec. 13, 1879.

Gault et al. v. Bertrand.

Right of action—Order obtained by travelling agent

The action was in assumpsit form, on an account for goods sold and delivered. The defendant was personally served at his domicile in the District of Kamouraska.

He pleaded a declinatory exception, alleging that the cause of action arose at Isle Verte, in the District of Kamouraska, and that he could not be sued in Montreal.

The plaintiffs answered that their traveller took the order at Isle Verte, but that it wa accepted at Montreal, and the goods were delivered there.

Papineau, J., remarked that the facts were clearly proved. The plaintiffs, by their travelling clerk, took the order from defendant in the District of Kamouraska. This order contained the name, quantity, and price of the goods. The three things essential to the contract of sale, the thing sold, the price, and the consent of the parties, were all present in the transaction at Kamouraska, and the ratification by the plaintiffs at Montreal had a retroactive effect; so that it was the same as if the plaintiffs had been present at Kamouraska instead of their clerk. The delivery of the goods had nothing to do with the perfection of the contract, but only with its execution on the part of the plaintiffs. After a full examination of the question, and reference to numerous authorities (including *Wurtele* v. *Lenghan et al.*, 1 Q. L. R. 61; *Mulholland* v. *La Compagnie de Fonderie de A. Chagnon et al.*, 21 L. C. J. 114; *Gault* v. *Wright*, 13 L. C. Jurist, p. 60, and *National Ins. Co. & Paige*, 2 Legal News, p. 93), his Honor said he adhered to the opinion which he had expressed in other cases, that the exception was well founded, and must be maintained.

The judgment, which sets out the grounds at length, is as follows:—

"La cour, etc....

"Considérant qu'il est prouvé que l'ordre produit par les demandeurs comme leur exhibit A, pour les marchandises dont ils réclament le prix par leur action, a été pris par le commis des demandeurs chez le défendeur à l'Isle Verte, dans le district de Kamouraska, et que le dit ordre écrit et signé par le dit commis contient la quantité, le prix, et le nom des marchandises requises et achetées par le défendeur avec le terme de paiement, ainsi que la voie par laquelle ces marchandises devaient être expédiées jusqu'à Québec au soin du nommé G. Tanguay pour le défendeur;

"Considérant que cet écrit et la convention dont il a été le résultat contiennent les trois choses essentielles à une vente, savoir le consentement des demandeurs, vendeurs, par leur commis préposé aux ventes (salesman), le consentement de l'acheteur, le défendeur, sur des marchandises déterminées quant à la qualité et à la quantité et sur le prix de ces marchandises, et que cette vente se trouvait parfaite à l'Isle Verte, dans le district de Kamouraska;

"Considérant que dans l'hypothèse même où la dite vente n'aurait été complétée que par l'acceptation subséquente des demandeurs et la livraison des marchandises à Montréal, le droit d'action, contre le défendeur, résultant aux demandeurs de la dite vente, n'aurait pas entièrement pris naissance à Montréal, vû qu'un des éléments essentiels au dit contrat, le consentement du défendeur, aurait été obtenu hors du district de Montréal;

"Considérant d'ailleurs que la dite vente, faite à l'Isle Verte par le commis autorisé des

demandeurs, doit être considérée comme faite par eux-mêmes, et qu'en la ratifiant subséquemment à Montréal comme il est prouvé qu'ils l'ont ratifiée, les demandeurs lui ont nécessairement donné un effet remontant à l'instant où elle a été convenue à l'Isle Verte;

"Considérant que le défendeur n'était pas domicilié dans le district de Montréal, lors de la signification de l'exploit d'assignation, et que telle signification ne lui a pas été faite personnellement dans ce district, mais dans celui de Kamouraska, et qu'il n'est pas justiciable de ce tribunal pour les causes mentionnées dans la demande;

"Considérant que les mots "le droit d'action" dans le troisième paragraphe de l'article 34 du C.P.C. ne constituent pas une innovation du droit, mais ne font qu'exprimer en d'autres termes l'idée rendue par les mots "la cause d'action" dans la 26me section du chap. 82 des S.R.B.C., et que pour donner jurisdiction à cette cour sur le défendeur, il faudrait que le lien de droit eut été complètement formé dans ce district;

"Considérant que le défendeur a prouvé les faits nécessaires au maintien de son exception déclinatoire, la cour la maintient avec dépens."

Davidson & Cushing, for plaintiffs.

D'Amour & Dumas, for defendant.

MONTREAL, Oct. 28, 1879.

QUEBEC BANK v. KAPP, and KAPP, petitioner.

Writ of Attachment in insolvency, not returned, cannot be used by other creditors.

In this matter a writ of attachment in insolvency issued but was not returned, plaintiff filing discontinuance before return day. The defendant, alleging that, if he were not relieved by an order of the Court from the consequences of the issuing of the writ, other creditors might make use of the proceedings instituted, to his detriment, petitioned the Judge, on the day following the return day, for such order.

To this a preliminary answer was made to the jurisdiction.

JETTÉ, J., held that as the writ had not been returned into Court it must be treated as a nullity, and no other creditor of defendant could found any proceedings upon those had in this matter: he, therefore, rejected the petition, with costs.

Abbott, Tait, Wotherspoon & Abbott for the plaintiffs.

Monk & Butler for petitioner.

MONTREAL, Nov. 7, 1879.

PREVOST v. SOCIÉTÉ CAN. FR. DE CONSTRUCTION DE MONTREAL.

Building Society—A rule irregularly enacted not binding on a non-assenting member.

MACKAY, J. On the 20th August, 1878, the plaintiff says he ceased to be a member of the defendant's Company; that from 9th October, 1871, he was a member, and had thirty shares; that on the 20th of August, using Article 13 of the original *Réglemens* of defendant's Society, the plaintiff claimed to be paid back all the *versemens* he had paid in. He waited three months, and then sued, the amount claimed being $1,072.50, with interest from service of process.

The plea is that on the 9th October, 1871, *Réglement* 13, under which plaintiff claims, was not in force; that at a meeting of 14th February, 1871, it was abrogated, and for it another article (No. 13) substituted, and only by sale or transfer, after that, could a member part with his shares; that when plaintiff became a member this new Article, No. 13, governed; that plaintiff knew it when he became a member, and so, right to retire the amount paid in, was and is not competent to plaintiff. The defendants further contend that if plaintiff be under the original rule, he has to pay proportion of *dépenses*, $119.88, and compensation is asked *pro tanto* in the case, in which plaintiff may be held to have a right to get back his *mise*, $952.62;—the most plaintiff can get in any event, say the defendants.

In disposing of this case the Court has to consider chap. 69 of the Consolidated Statutes of Lower Canada. The defendants' Society is constituted under it. Sections 5, 6 and 7 enact that the rules shall be entered in a book, to be open for inspection. Such entry shall be deemed sufficient notice to the members, to make the rules binding. And rules so entered can be repealed only at a general meeting, called after notice to members of proposed alterations. Till 14th February, 1871, the defendants' Company existed under Rules of

which Article 13 was one. On the 14th February, 1871, this Article was abrogated and a new one substituted, materially differing from the original one. Only after that, in October, did plaintiff become a member of defendants' Company, and his contention is that he did become a member from seeing the statute, and knowing the original rules, but not knowing of the substituted one. We see from the evidence of plaintiff's witnesses that the formalities of Section 7 of the Consolidated Statutes, Cap. 69, were not observed for the purposes of the meeting of 14th February, 1871. That meeting was irregular, and the *réglement* made by it could not bind; at any rate could not bind non-assenting members. The plaintiff was not a member at the time, but claims not the less to have right to say that he was not bound by the new *réglement*, and is not. When he invested, he says he did not know of it, and thought he was acting under the Consolidated Statutes, and the rules of defendant's Company of the time before February, 1871. Upon what terms did the plaintiff invest? That is the question. The defendants have failed to prove his knowledge in October, 1871, or until quite lately, of the substituted *réglement*, passed at the irregular meeting. The most they do at the last is to argue from the improbability of Prevost investing large sums of money while not knowing of the new *réglement*. Under all the circumstances, though the case is not free from difficulty, Prevost's case is the strongest, and his action must be maintained, not for all the money he asks; but for it, less the share of *dépenses* that defendants say they may claim against him, even under the original *réglement* of the time before February, 1871. Costs against defendants.

Prevost & Prefontaine for plaintiff.

M. E. Charpentier for defendants.

[In Chambers.]

MONTREAL, December 1, 1879.

MCCLANAGHAN v. THE ST. ANN'S MUTUAL BUILDING SOCIETY OF MONTREAL.

Security for investments made by administrators—Constitutionality of Act for liquidation of affairs of Building Societies, 42 Vict. (Can.) Chap. 48.

This was a petition for a writ of injunction. The petitioner set forth that he was a member of the Building Society, incorporated under the Consolidated Statutes of Lower Canada, chap. 69, and under rule 8 of the Society he was proprietor of an appropriation of $2,000, and had conformed to the requirements of rules 9 and 10, which authorize the proprietor of an appropriation to furnish security on real estate of sufficient value to obtain the amount of the appropriation. That the security had been judged sufficient according to the rules, but the Society had refused to deliver the amount. Moreover, the Society had gone into liquidation, under the pretended authority of the Federal Act, 42 Victoria, chapter 48 (15th May, 1879). That a dividend was now (26th August, 1879), to be distributed to the shareholders, portion of which comes out of the appropriation in question; that the act in question by the Federal Legislature was unconstitutional, and the liquidation at any rate could not take place in prejudice of the rights of petitioner. An injunction was, therefore, asked for against the Society, liquidators and Secretary-Treasurer, prohibiting them from distributing the funds, and adjudging that they had no power to proceed to said liquidation, and prohibiting said corporation from doing so.

The defendants pleaded that one W. E. Doran was a member of the Society, and on 22nd June, 1878, was allotted by ballot an appropriation of $2,000, which he transferred to petitioner on the 22nd April, 1879, who then became a member of the Society, bound to conform to its rules. That the subject of liquidation had been for a considerable time, before 22nd April, 1879, before the shareholders, and it was a matter of public notoriety that they would go into liquidation, and the said federal Act was so passed to enable building societies to do so. That the property offered as security by petitioner was not sufficient for the purpose, and the Directors in the exercise of the discretion conferred upon them by the by-laws declined to make the advance in question, and by letter of 9th May informed petitioner that his application could not be entertained without additional security; that at the annual general meeting, 14th May, a resolution was passed instructing the Directors to loan no further amounts pending a settlement of the Society's affairs, to wit, by liquidation under said Act; that petitioner did

not offer the additional security, and on 16th June the Society went into liquidation. Petitioner answered that the Directors had never regularly refused the guarantee, but had refused the advance in order to go into liquidation; that they had asked the additional guarantee, which was at once given. That the assembly of 14th May had not power to order the liquidation. That the Federal Act was only passed subsequently.

TORRANCE, J. Two questions present themselves. 1. The sufficiency of the security and the exercise of discretion by the Directors of the Society. 2. The validity of the Act of the Federal Legislature, 42 Vic., cap. 48. The property owned and offered by the petitioner as security was valued by the City Corporation at $2,000, and by Mr. Hopkins and Mr. Brown at $3,500. On the other hand, Mr. Trihey, the valuator of the Trust and Loan Company, says the security would not be good for $2,000, and his company would not lend money on it at all as being unproductive. The other property under discussion, though not formally offered or examined, was valued by the Corporation at $500. Mr. Hynes, the owner, paid $700 for it, and it was mortgaged for $300. Mr. Hynes intended to remove the mortgage, but cannot say that he informed the officers of the defendants of this intention. In respect to the exercise of discretion by the directors in accepting a security, I would refer to the evidence of Daniel Phelan. Against his reasons for refusal I am unable to say a word. I would also call attention to the bill before the Quebec Legislature to define the investments to be made by administrators and trustees. By this bill they are not allowed to lend money on a security less than double the amount to be loaned, and the value is taken from the valuation roll of the municipality. It is to be remarked that the value of the two properties in question is only $2,500 according the Corporation roll. Mr. Phelan also says that they would have a greater claim against the borrower than the $2,000 advanced, namely, for fines. My conclusion is, therefore, that the security offered was wisely refused. It may be unnecessary to pronounce upon the validity of the Federal Act (15th May, 1879), 42 Vic., cap. 48, but it appears to me that a legislature which has power in matters of bankruptcy and insolvency and savings banks, may reasonably claim power to legislate for the liquidation of this Society, for the reasons mentioned in the preamble to the Act. Petition dismissed.

Lacoste, Q.C., for petitioner.

D. R. McCord for defendants.

COURT OF REVIEW.

MONTREAL, Nov. 29, 1879.

SICOTTE, JOHNSON, LAFRAMBOISE, JJ.

O'REILLY v. O'REILLY, and KEARNS, adjudicataire.

[From S. C. Montreal.

Contempt of Court—Adjudicataire receiving title to property before complying with all the conditions of the licitation.

JOHNSON, J. The plaintiff in this case inscribes for review a judgment refusing to make absolute a rule taken by the plaintiff against Kearns, who had become *adjudicataire* under a *licitation forcée*. The *cahier des charges* stipulated for half of the price to be paid down, and security to be given by the *adjudicataire* for the other half, he paying interest until the death of William O'Reilly. The *adjudicataire* paid the $3,000, and got from the Court a title simply and absolutely, without mention of the obligation to give security. The party plaintiff took a rule for contempt, and on its return the rule was discharged, because the omission complained of was not a contempt of Court in the person of the *adjudicataire*, but, at most, an error on the part of the officer of the Court;—an error, if it be one, that is subject, no doubt, to rectification and for which the party has his recourse, if it constitutes any grievance to him; but it cannot be held to be the act of the *adjudicataire*, which can subject him to imprisonment for contempt. Judgment confirmed.

J. M. Glass for petitioner for rule.

Doutre & Co. for adjudicataire.

MONTREAL, Dec. 15th, 1879.

MAILLÉ v. RICHLER.

Lessor and Lessee—Right of lessor to exact assessments from lessee before he (the lessor) has paid them to the city.

The plaintiff sued for a balance of rent, and also for the assessments due on the premises to the Corporation of Montreal.

BELANGER, J., said the only question was whether the plaintiff had a right of action against the defendant for these taxes and assessments, when at the time he took out his action he himself had not paid them to the Corporation. By the terms of the lease the tenant, defendant, was bound to pay the taxes which might be imposed on the premises leased during the term of the lease. By virtue of this stipulation the defendant became bound to pay the taxes to the Corporation to the exoneration of the plaintiff. The default of the tenant to pay the taxes could not, *de plein droit*, give plaintiff a right to demand payment of them, without having himself paid them to the Corporation. The taxes being exigible by the Corporation from the tenant as well as from the landlord, the tenant was bound to pay to the lessor only when the lessor brought him a receipt from the Corporation. Otherwise the tenant would be exposed to the obligation of paying a second time, if the lessor, after receiving the taxes from the tenant, did not pay them over to the Corporation. His Honor said he could not adopt the doctrine recently promulgated by certain judgments of this Court, giving a right of action to the lessor for the recovery of assessments, without having previously paid them himself. The lessor was not a creditor, as regards the taxes, until he had paid them to the Corporation, and he had no right to demand payment. The action would be maintained as regards the amount of the rent due, but dismissed as regards the assessments.

Lasalle, for plaintiff.
J. & W. Bates, for defendant.

CURRENT EVENTS.

ENGLAND.

SIR JOHN HOLKER.—It is rumored that the Attorney General will at no distant date take the place of the Chief Baron of the Exchequer Division of the High Court of Justice. The present Chief Baron (Kelly) is eighty-four.

LIFE ASSURANCE—CONCEALMENT OF MATERIAL FACTS.—To the questions, "Has a proposal ever been made on your life at any other office or offices? If so, when? Was it accepted at the ordinary premium, or at an increased premium, or declined?" the answer was: "Insured now in two offices for £16,000, at ordinary rates, policies effected last year." The answer was true so far as it went; but the applicant had made proposals for policies to several life offices which had been declined. *Held*, that there had been a concealment of material facts, such as entitled the company to have the contract rescinded. In the contract of life insurance *uberrima fides* is required.—*London Assurance* v. *Mansel*, 41 Law Times, 225.

EASEMENT—TWENTY YEARS' USE.—A confectioner had for more than twenty years used large mortars in his back kitchen, which abutted on the garden of a physician. Subsequently the physician erected in his garden a consulting room, one of the side walls of which was the party wall between the confectioner's kitchen and the garden. The noise and vibration caused by the use of the mortars, which had previously caused no material annoyance to the physician, then became a nuisance to him, and he brought an action for an injunction. *Held*, that the defendant had not acquired an easement either at common law or under the Prescription Act, and that the plaintiff was entitled to an injunction.—*Sturgess* v. *Bridgman*, 41 Law Times, 219.

EXPEDITION.—A case of *Gilbert* v. *The Comedy Opera Company, Limited*, came before the Master of the Rolls on the morning of Friday, the 1st November, about twelve o'clock at noon. His Lordship granted an injunction in the case, whereby the defendant company were restrained from performing the comic opera called "H.M.S. Pinafore" at the Opera Comique Theatre. By special leave an appeal by the company from this decision came on before the Court of Appeals at Lincoln's Inn on the afternoon of the same day, and after argument the order of the court below was reversed. The costs of the motion to the Rolls were made costs in the cause, and the plaintiff was ordered to pay the costs of the appeal. We hear a good deal about the law's delay, but the rapidity with which the opera company succeeded in getting before the Court of Appeal and inducing that court to reverse the decision of the court below must have astonished the plaintiff in the action, and a good many lawyers into the bargain. The injunction itself had been obtained upon unusually short notice.—*London Law Times.*

CANADA.

CONSTITUTIONAL QUESTIONS BEFORE THE SUPREME COURT.—Several constitutional cases involving the rights of the Provinces have recently been before the Supreme Court. During the present term, the Hon. Mr. Mowat, the Attorney-General for Ontario, made a suggestion to the Court, that their Lordships should notify such Provinces as expressed a desire to be notified whenever constitutional cases involving their rights were likely to come before the Court. For instance, that very day an important case involving the rights of the various Provinces for all time to come was before the Court as part of a private case. He added that the Superior Courts of the Province of Ontario notified him on such occasions. He frequently found that a conference with the counsel supporting the Provincial side of the case answered all necessary purposes in the public interest, and therefore he was seldom necessitated to appear in person. He merely asked the Court to do so as a matter of courtesy. Several Judges commented favourably on the proposition, and while no formal decision was given, it may be expected that the Court will in future notify both the Federal and Provincial authorities when such cases are likely to arise.

UNITED STATES.

A BURIAL CASE.—In the case of *Coppers* in the Supreme Court of New York, a peremptory mandamus was issued directing the trustees of a Catholic Cemetery to permit the burial of the deceased who had purchased a lot and paid the money, but had no other evidence of title except the receipt for the money. The objections to the burial were that the deceased was not a Catholic and was a Free Mason.

TRADE MARKS.—The United States Supreme Court has pronounced the trade-mark act unconstitutional and invalid in three cases. The court held that a trade mark does not come within the description of an invention or discovery, nor that of a literary production, as it does not involve the element of originality, nor depend upon novelty, but is simply founded on priority of appropriation. So far too as the act contemplates the establishment of universal systems of trade-mark registration, without regard to the character of the trade or the locality of the owner, the court pronounced the act in excess of congressional power.

LEGAL BUSINESS.—The *Chicago Legal News* says:—"The courts were never more active than this fall, in disposing of business and clearing up old matters. General business is increasing, and lawyers begin to feel the effects of it. There never was a more mistaken notion than that the lawyers' harvest is in hard times. When people are making money easily they part with it freely, and are more willing to pay an attorney his honest dues than they are when times are hard."

GENERAL NOTES.

THE OBSTINATE DISSENTIENT.—In one of the Western States a case was tried, and at its termination the judge charged the jury, and they retired for consultation. Hour after hour passed and no verdict was brought in. The judge's dinner hour arrived, and he became hungry and impatient. Upon inquiry he learned that one obstinate juryman was holding out against eleven. That he could not stand, and he ordered the twelve men to be brought before him. He told them that in his charge to them, he had so plainly stated the case and the law that the verdict ought to be unanimous, and the man who permitted his individual opinion to weigh against the judgment of eleven men of wisdom was unfit and disqualified ever again to act in the capacity of juryman. At the end of this excited harangue a little, squeaky voice came from one of the jurymen. He said, "Judge, will your honor allow me to say a word?" Permission being given, he added: "May it please your honor, I am the only man on your side."

BARON PLATT delighted to sit in solitary grandeur at *Nisi Prius*, and upon the trial of prisoners; and both these duties he performed with singular ability, his good common sense and thorough knowledge of the world often making up for the want of any niceties of legal distinction, and rendering him always a favorite with the jury. Like many others he was very severe on witnesses who would not "speak out." "What are you?" roared he to a burly witness six feet high, who spoke with the voice of a maiden of bashful fifteen. "I am a butcher, my lord," replied the witness in a whisper. "Then if you are a butcher, man," thundered Platt, "speak like a butcher, can't you?"—*Leisure Hour.*