The Legal News.

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CORONERS' INQUESTS.

At the time the bill respecting Coroners' Inquests was introduced last Session by Mr. Mercier, we ventured to express a fear that the bill went too far, in limiting inquests to very special cases (2 Legal News, p. 273). Public opinion and the experience of a twelvemonth have fully borne out our apprehensions. The Act of last Session led to many unseemly occurrences—Coroners unable to act, and bodies lying unburied, in cases in which there was clearly occasion for an inquiry into the cause of death. We see with satisfaction, therefore, that the Solicitor General has introduced a bill which proposes to repeal the Act of last year (42-43 Vict. c. 12), and to substitute a law which authorizes coroners to proceed at once to hold an inquest when "furnished with a requisition in writing, signed "by any representative of the attorney-general, "by any district magistrate, by any clerk of the "peace, or by the mayor, *curé*, clergyman, pas-"tor, missionary, or any justice of the peace, of "the locality."

A JUDGE'S VALEDICTORY.

There is something pathetic as well as unprecedented in the leave-taking of Mr. Justice Bleckley, of the Supreme Court of Georgia, who sent in his resignation recently. Unlike the Archbishop of Grenada, Justice Bleckley apparently did not require the reminder of a too faithful Gil Blas, to warn him of mental decadence. In his letter to the Governor, he assigned as the reason for the step, that he discovered in himself intellectual failings inconsistent with the proper discharge of his functions, considering the great mass of work devolving upon the Court. He was slow and laborious, writing an opinion only after long research and much mental labor; and he did not desire that his lack of readiness should be an impediment to the reasonably rapid discharge of the duties of the bench. When the day came for the Judge to take his leave, after reading opinions in several cases before the Court, he pronounced his farewell in the following words, expressed in the form of a judicial opinion:—

"*In the Matter of Rest.*

BLECKLEY, J.

"Rest for the hand and brow and breast,
For fingers, heart, and brain!
Rest and peace! a long release
From labor and from pain:
Pain of doubt, fatigue, despair—
Pain of darkness everywhere,
And seeking light in vain!

"Peace and rest! are they the best
For mortals here below?
Is soft repose from work and woe
A bliss for men to know?
Bliss of time is bliss of toil:
No bliss but this, from sin and soil,
Does God permit to grow."

These lines he read slowly and with emphasis, and when he had directed that they be entered upon the minutes of the Court, the Judge took his leave, intending, it is said, to retire to the mountains of Georgia for relaxation. Some of his brethren, suffering from the languor produced by unremitting labor, will be inclined to sympathize with this over-strained Judge, and all will wish him happiness and peace, in the retirement which he has been forced to seek.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

February 26, 1880.

BOURGOIN et al., Appellants, and LA COMPAGNIE DE MONTRÉAL, OTTAWA & OCCIDENTALE, Respondents.

The M., O. & O. Co. could not dissolve or transfer its undertaking without the authorization of the Parliament of Canada—C. C. 369.

On the conclusion of the judgment reported *ante*, p. 177, *Mr. Doutre, Q. C.*, intimated that, after consultation, the counsel for the appellants had come to the conclusion that even if the award were pronounced to be bad, that could affect only two of the appeals, and that they were desirous to argue the two other appeals. After some discussion their Lordships assented to the adoption of this course. Those appeals were accordingly argued, and on the 26th day of February their Lordships* delivered the following judgment upon them:

* Sir Robert P. Collier was not present.

The judgment of their Lordships, which was delivered on the 14th instant, and ruled that the award of the 28th of July, 1876, was bad on the face of it, disposed, except as to costs, of the Appeals numbered 13 and 144 respectively, and of all the questions on this record between the appellants and the respondent company.

It seemed, moreover, to leave to the appellants no substantial interest, other than costs, in the rest of the litigation. Their counsel, however, expressed a desire to argue the remaining appeals (Nos. 117 and 141), and satisfied their Lordships that they were entitled to do so. Those appeals have accordingly been heard, and their Lordships have now to give judgment upon them. In order to see clearly what are the questions raised by them, it is necessary to refer shortly to some of the proceedings in the two actions numbered respectively in the Superior Court 693 and 1,213.

In the latter of these, which was brought by the appellants against the company in December, 1874, in order to recover the amount due on the award, the respondent, the Attorney General, intervened in the month of February, 1878. The cause was heard on the 18th of April, 1878, by Mr. Justice Mackay in the Superior Court against both the company, the defendants, and the Attorney General as intervenor, and the judgment of that Court dismissed the intervention, and condemned the company to pay to the appellants the amount due on the award. From this judgment the company and the Attorney General appealed separately. The Court of Queen's Bench reversed the judgment of the Superior Court against the company, and the appeal of the appellants against so much of their judgment (No. 144) has already been disposed of. The appeal of the Attorney General was also allowed, and the judgment of the Superior Court reversed as against him, but on the ground that the intervention, though legally competent, was unnecessary, without costs. Hence the Appeal No. 117.

Again, the Superior Court, by its judgment in suit No. 693, wherein the company sued to set aside the award, dismissed that suit with costs. The company appealed against that judgment, and has succeeded both in the Court of Queen's Bench and here in getting it reversed. The date, however, of the judgment of the Superior Court was the 30th of April, 1877; the appeal against it was not lodged until the 5th of October following, and intermediately, *i.e.*, on the 22nd May in that year, the appellants issued a writ of execution for their costs, under which the Sheriff seized certain lands, rolling stock, and other property as belonging to the company. On the 17th January, 1878, the Attorney General filed an "opposition à fin de distraire," by which he claimed the whole of the property seized as the property of the Queen for the use of the Province of Quebec. The appellants filed their contestation, and on the 31st May, 1878, Mr. Justice Johnson pronounced the judgment of the Superior Court, which upheld the opposition; declared that all the lands seized were the property of Her Majesty for the use of the Province of Quebec; that accordingly the seizure of the lands, immoveables, and accessories in question was null, void, and illegal, and granted main levée thereof to the opposant, with costs against the contestants, the present appellants.* That judgment was, on appeal, confirmed by the Court of Queen's Bench, and hence the Appeal No. 141.

The determination of both these appeals mainly depends on the effect to be given to the transaction between the company and the Government of Quebec which is embodied in the Notarial Act or Deed of the 16th of November, 1875, and in Act 39 Vict., c. 2, of the Legislature of Quebec. The parties to the Deed are stated to be Her Majesty the Queen, represented by the Secretary of the Province of Quebec, "acting as well for and on behalf of Her Majesty "as for and on behalf of the Province of Quebec, "party hereto of the first part, hereinafter called "'the Government,' and the Montreal, Ottawa, "and Western Railway Company, described as "a body politic and corporate, duly incorporated "by statutes of the Province of Quebec and of "the Dominion of Canada, &c., party hereto of "the second part, hereinafter called 'the Com-"pany.'" The deed, after reciting the nature of the enterprise and the commencement of the work, and that the company was then unable to proceed further with the construction of the railway by reason of certain bonds not being negotiated; and that the Government was willing to assume and complete the construction of the said railway upon such terms and conditions, and in such manner and within such time as

* See 1 Legal News, p. 279.

the Government might deem expedient, and for that purpose to acquire from the said company all its rights and assets, and to take upon itself the legitimate liabilities of the company, and to repay the disbursements of the company in manner and form and to the extent thereinafter described; and that in consideration thereof the company had agreed to transfer and convey such rights and assets to the Government also upon the conditions thereinafter expressed—proceeds to state, in different clauses, the covenants and agreements into which the parties had entered before the notary. The material clauses are the 1st, 2nd, 4th, 7th, 8th and 9th.

By the 1st, the company granted, sold and conveyed to the Government all its right, title, and interest in the uncompleted railway, with all lands acquired or bonded for right of way, stations, and other purposes, all bridges, piers, abutments, forms, and other things expressly mentioned, stating their intention to be "to "divest the company of all the property of the "said corporation, and of all and every part "and parcel of the said incomplete railway, and "of everything appertaining thereto or neces-"sary or useful or acquired for the construction "thereof, now in the possession of the com-"pany, or to which it is entitled as fully and "completely to all intents and purposes as "the same are now held by the company, and "to vest the same in the Government."

By the 2nd, the company transferred to the Government all its right, title, and interest in and to the balance of the subscription of stock in the said company by the Corporation of the City of Montreal, and the several subscriptions of stock in the said company of various other corporations, together with all the rights, claims, and demands of the said company upon the said City of Montreal for the said balance of subscriptions, and upon the said other corporations for their said subscriptions of stock and bonus.

By the 4th, the Government, in consideration of the above sales and transfers, agreed to pay to certain trustees for the company, upon the confirmation of the deed, the sum of $57,149.95 currency, being the amount of the then paid up capital of the company; and also to pay immediately all such disbursements and liabilities as had been adjusted between the Government and the company; and it was further agreed that if any further legitimate liabilities should be established to the satisfaction of the Government to be justly and legally due by the company, the same should also be assumed and paid by the Government.

By the 7th, it was provided that, until it should please the Government to receive possession of the property and premises thereby transferred, the company should hold and administer the same for and on behalf of the Government, and in such manner as should be directed by it, and should, in all respects, carry out the instructions of the Government in respect of the said railway; and in respect of every matter and thing connected therewith, until the transfer and delivery thereof to the Government and its complete assumption and possession thereof had been perfected; and that, so soon as such transfer and delivery should have been so perfected the company should dissolve itself, and should cease to act in any way, the Government thereupon indicating some person to accept transfers of the shares of the company held by the individual shareholders therein.

By the 8th, the company undertook to assist the Government, in any manner that might be required, in procuring the passage of any Act by the Dominion or the Provincial Parliament that the Government might deem expedient to have passed in the interest of the enterprise, and to furnish aid and assistance in other matters.

And, by the 9th, it was provided that the deed should have no force or effect after the termination of the next Session of the Legislature of the Province of Quebec, unless confirmed by the said Legislature at the next Session thereof, nor until such confirmation; but that it should be submitted for such confirmation to the next Session of the said Legislature, and, immediately upon such confirmation, should have full force and effect according to its terms.

The confirmation required by this last clause of the deed was given by the Act 39 Vict., c. 2, which was passed by the Legislature of Quebec on the 24th December, 1875. That statute not only, by its 8th section, confirmed in the fullest manner the transfer and assignment of the 2nd November, 1875, it did a great deal more: it combined the enterprise of the Montreal, Ot-

tawa, and Western Railway Company with that of another company called the North Shore Railway Company, which had made a similar transfer in favor of the Government of Quebec; it gave to the railway to be completed the new name of "The Quebec, Montreal, Ottawa and "Occidental Railway;" it declared that railway to be a public work belonging to the province of Quebec held to and for the public uses of the province, and provided for the mode of its construction; it vested the construction and management of that railway in certain Commissioners with ample and defined powers; by section 11 it made the provisions of the Quebec Railway Act, 1869, so far as they were applicable to the undertaking and not inconsistent with the provisions of that act, applicable to the said railway, and empowered the Commissioners, in cases where proceedings had been commenced by the Montreal, Ottawa, and Western Railway for the expropriation and acquisition of lands for the purposes of that railway and had not been completed, to continue such proceedings under the provisions of the Quebec Railway Act, but with the consent of the proprietor of such lands, or to discontinue such proceedings, and commence proceedings *de novo* under the said Quebec Railway Act; and by section 24 it reunited lands which had been granted to the Montreal, Ottawa, and Western Railway Company, to the public lands of the province. Sections 43, 44, 45, and 46 have even a more direct bearing upon the questions raised by the two appeals now under consideration. Section 43 in order "to avoid all doubts," enacts that the Quebec, Montreal, and Occidental Railway is thereby invested with all the rights, powers, immunities, franchises, privileges, or assets granted by the Legislature of the Province of Quebec to the Montreal Northern Colonization Railway Company, and, so far as that Legislature could do, with all the rights, powers, immunities, franchises, privileges, and assets granted by the Parliament of the Dominion of Canada to the Montreal, Ottawa, and Western Railway Company. Section 44 takes away the power of the last-mentioned company to appoint Directors, and abolishes the directorate contemplated by the former statutes. Section 45 transfers to the Commissioners the rights of the individual shareholders in the Montreal, Ottawa, and Western Railway Company, providing that their paid-up stock shall be refunded to them; and, section 46 authorizes the Commissioners, with the consent of the Lieutenant Governor in Council, to apply to the Parliament of Canada for any legislation which may be deemed necessary for the purposes of the act.

The combined effect, therefore, of the deed and of this statute, if the transaction was valid, was to transfer a federal railway, with all its appurtenances, and all the property, liabilities, rights, and powers of the existing company, to the Quebec Government, and, through it, to a company with a new title and a different organization; to dissolve the old federal company, and to substitute for it one which was to be governed by, and subject to, provincial legislation.

It is contended on the part of the appellants that this transaction was invalid, and altogether inoperative to affect the obligations of the company. They insist that, by the general law and by reason of the special legislation which governed it, the company was incompetent thus to dissolve itself, to abandon its undertaking, and to transfer that, and its own property, liabilities, powers, and rights to another body, without the sanction of an Act of a competent Legislature; and, further, that the Legislature of Quebec was incompetent to give such sanction. This contention appears to their Lordships to be well founded.

That such a transfer, except under the authority of an Act of Parliament, would in this country be held to be *ultra vires* of a railway company, appears from the judgment of Lord Cairns *in re* Gardner *v.* London, Dover, and Chatham Railway Company, 2 Chancery Appeals, 201 and 212. That it is equally repugnant to the law of the Province of Quebec, so far as that is to be gathered from the civil code, is shown by the 369th article of that code. But the strongest ground in favour of the appellants' contention is to be found in the special legislation touching this railway company. The history of the company and of its conversion from a provincial into a federal railway company has been stated in the judgment already delivered. By section 1 of the Canadian Statute 36 Vict. c. 82, which effected that conversion, the railway was declared to be a work for the general advantage of Canada. By the 5th section of the same Statute, it was enacted that the con-

tinuations of the line thereby authorized should be deemed to be railways or a railway to be constructed under the authority of a special Act passed by the Parliament of Canada, and that the company should be deemed to be a company incorporated for the construction and working of such railways and railway, according to the true intent and meaning of "The Railway Act, 1868" (the Dominion Statute). By the 6th section, parts 1st and 2nd of "The Railway Act, 1868" (which comprise all the general and material provisions of that statute,) were made applicable to the whole line of the railway, whether within or beyond the enterprise originally contemplated; and it was enacted that no part of "The Quebec Railway Act, 1869," should apply to the said railway, or any part thereof, or to the said company. And by the 7th section it was provided that the two Acts of the Quebec Legislature (32 Vict. c. 35, and 34 Vict. c. 28,) by which the company had been incorporated and previously governed, should be read and construed and have effect as if the changes of expression therein mentioned (the effect of which would be to make them speak as Acts of the Canadian Parliament) had been made in them; that so read and construed and taking effect, they should be deemed to be special Acts according to the true intent and meaning of "The Railway Act, 1868," and that no part of "The Quebec Railway Act, 1869," should be incorporated with the said special Acts, or either of them, or form part thereof, or be construed therewith as forming one Act.

These provisions, taken in connection with, and read by the light of those of the Imperial Statute, "the British North American Act, 1867," which are contained in section 91, and sub-section 10 *c* of section 92, establish to their Lordships' satisfaction, that the transaction between the company and the Government of Quebec could not be validated to all intents and purposes by an act of the provincial Legislature, but that an Act of the Parliament of Canada was essential in order to give it full force and effect. This proposition was, finally, hardly disputed by the learned Counsel for the respondent, but they relied upon the 8th clause of the deed, and the 46th section of the Quebec Act, as showing that recourse to the Parliament of Canada for its sanction was within the contemplation of the parties, and contended that, before that sanction was obtained, the transaction was valid for some purposes, and gave certain inchoate rights which were capable of being asserted. In support of their argument they cited the Great Western Railway Company *v.* The Birmingham and Oxford Junction Railway, 2 Phill. 597, and what was said by Lord Cottenham in that case. It is to be observed, however, that Lord Cottenham, when ruling that the contract, which could not be fully carried out without Parliamentary sanction, was not, in the absence of such sanction, to be treated as a nullity, and that some of its provisions might nevertheless be binding, was dealing with the rights of the parties to the contract *inter se*. Here the public, and the creditors of the company, in which category the appellants fell since the questions raised by these two appeals must be considered as if the award were valid, were no parties to the transaction, and could not be affected by it until it was fully validated by an Act of the Parliament of Canada, to obtain which no attempt seems ever to have been made. In their Lordships' opinion, therefore, the transaction, considered as a whole, was of no force or validity as against the rights of the appellants when the decisions of the Canadian Courts upon the intervention and the opposition were passed.

This being their Lordships' conclusion, they proceed to consider how it affects the two appeals, and first that which relates to the Attorney General's intervention. Now, if it be admitted, for the sake of argument, though their Lordships must not be taken to affirm the proposition, that the Attorney General had such an inchoate right under the transaction as would have justified his intervention had there been reason to suppose that the expiring company would fail to make a substantial defence to the action No. 1,213, it is to be observed that that was not the actual state of things. The action itself was not commenced until December 1876, and the defences of the company were filed on the 30th of that month. The transaction between the company and the Quebec Government was completed, so far as it was ever completed, in December 1875. It is, therefore, obvious that, in the first instance, the Quebec Government intended to defend the action, in the name of the company, under the provisions of the 7th clause of the deed. All objections which the

company could take to the award, and in particular the one which has proved fatal to it, were taken in their defences. The intervention of the Attorney General was not until 1878, and the reasons filed by him on the 17th of September in that year are sufficient to show that the object of the intervention was to raise objections to the validity of the award, founded upon the attempted transfer of 1875, which could not have been taken in the name of the company. Those reasons, the contestation of them, and the other pleadings show that the new issues raised between the parties were the validity of the transfer as against the appellants, the right of the Commissioners under the Quebec Act to continue or discontinue the proceedings in the expropriation, the abandonment of the railway, and its transformation into a new railway, to be constructed under different conditions. This intervention was only necessary for the trial of these fresh and additional issues; and was, as the Court of Queen's Bench itself has found, wholly unnecessary for the trial of the original issues. Upon the trial of the action in the Superior Court, Mr. Justice Mackay expressly found "que les faits allégués dans la dite "intervention, savoir le transport des droits et "actions de la dite Défenderesse au Gouverne-"ment de la dite Province de Québec, n'a pas "été prouvé avoir lieu légalement," a finding in accordance with the conclusion to which their Lordships have come touching the transaction of 1875, and one which would justify the dismissal of the intervention, even if the learned Judge had taken a view different from that which he did take of the validity of the award. The Attorney General had failed to show any grounds for inflicting upon the appellants the costs of unnecessary and expensive proceedings. In these circumstances, their Lordships are of opinion that the Court of Queen's Bench ought to have dismissed the appeal of the Attorney General, and to have affirmed the judgment of the Superior Court, in so far as it related to the intervention, with costs.

Their Lordships have now to consider appeal No. 144, which arises out of the "opposition à "fin de distraire." That opposition to the execution could not succeed as to such of the lands seized as had belonged to the company, unless it were established that the property in those lands had been changed by the attempted transfer of 1875. Their Lordships are of opinion that there was no such change of property. The transaction, viewed as a whole, and as one single contract, could not, for the reasons above stated, operate as a valid transfer of the lands of the company to the Government of Quebec. Their Lordships feel bound to dissent from two propositions, on one of which the judgment of Mr. Justice Johnson, and on the other of which the judgment of Chief Justice Dorion, in part proceeds. Mr. Justice Johnson ruled that the contestants ought, if they questioned the validity of the transaction of 1875, to have concluded that it should be set aside or declared null, and that, by reason of their failure to do so, they must be taken to be bound by it. Chief Justice Dorion expressed an opinion that it was only at the instance of the Government of Canada (the Dominion,) or of an individual who could show that he had a special interest distinct from that of the public, that the transfer could be set aside. These reasons are somewhat contradictory, and their Lordships cannot think that either affords a good ground for the judgment impeached. If the transaction, not having the sanction of the Parliament of Canada, were *ultra vires* of the company and the Government and Legislature of Quebec, it was of no legal force or validity against the appellants, and might be so treated by them whether it were formally set aside or not. The other ground on which the judgment proceeds, and which has been chiefly insisted upon here, is more plausible. It is that the company had power, under the second sub-section of the 7th section of "the Railway Act, 1868," to "alienate, sell, and dispose of its lands;" that the transaction of 1875, even if invalid as a whole, is severable, and that the company must be taken to have sold by it their land to the Government of Quebec in the exercise of that power. Their Lordships cannot accede to this argument. It appears to them that the contract is not severable in the manner suggested. It is a contract whereby, for the same consideration, everything which it purported to pass was intended to pass. Suppose what was suggested by Chief Justice Dorion were really to happen, that the Dominion Government were to take steps to set aside the transaction, could the Government of Quebec be heard to say, "True, the transaction will not "stand as a transfer of the railway, or of the

" rights, powers, liabilities, and duties of the " company, but it may enure as a sale of the " lands acquired in order to the construction of " the railway, or part of them, in the exercise " of the power in question." Would not the answer be, " there is no trace of such a contract, " or of an intention to make it?"

By the evidence taken on this proceeding, it appeared that a considerable part of the lands, rolling stock, and other property seized, had never belonged to the company, but had been purchased by the Commissioners since 1875.

In respect of that property, the Attorney General was entitled to succeed in his opposition. He should, however, have been held to have failed as to the lands, &c. which had belonged to the company. And in their Lordships' opinion, the proper order to be made was one which would have upheld the seizure as to this latter part of the property in question, whilst it granted main levée as to the rest, leaving each party to pay their own costs. Since the execution must now altogether fail by reason of the award having been set aside, it will not be necessary to draw up a formal order to the above effect.

The order which their Lordships will humbly recommend Her Majesty to make on the four consolidated appeals will be to the following effect, viz., to dismiss the appeals numbered respectively 13 and 144, and to allow those numbered respectively 117 and 141; to affirm the judgment of the Court of Queen's Bench (record 180) in the suit No. 693, wherein the company was plaintiff, and the appellants and others were defendants; to reverse so much of the judgment of the Court of Queen's Bench (record 286) in the action 1213, wherein the appellants were plaintiffs, and the company were defendants, and the Attorney General intervenor, as relates to the intervention of the Attorney General, and in lieu thereof to affirm so much of the judgment of the Superior Court in the same suit as relates to such intervention, with the costs of the appeal to the Queen's Bench; but to affirm in all other respects the last mentioned judgment of the Court of Queen's Bench; to reverse the judgment of the Court of Queen's Bench in the matter of the opposition "à fin de distraire," and to declare that in lieu thereof, an order should have been made reversing the judgment of the Superior Court in such matter, and declaring that the opposition should have been allowed as to so much only of the property seized as had been purchased by the Commissioners since 1875, and disallowed as to the rest, and that each party should bear their own costs in both Courts, but that by reason of the failure of the execution in consequence of the setting aside of the award, it had become unnecessary to draw up any such order.

Their Lordships are of opinion that, under the circumstances, no order should be made as to the costs of these consolidated appeals.

COMMUNICATIONS.

APPEALS FROM INTERLOCUTORY JUDGMENTS.

QUEBEC, June 5, 1880.

To the Editor of THE LEGAL NEWS:

SIR,—Would you kindly permit me to point out what seems to me a material difference between the law respecting appeals to the Court of Queen's Bench from interlocutory judgments of the Superior Court, under the Code of Procedure, and the law as it stood previously; a difference which has never, so far as I have been able to ascertain, been brought under the notice of the Courts.

Before 1867, the subject was governed by the 25th Geo. III, cap. 2, sect. 24, reproduced in the Consolidated Statutes for Lower Canada, cap. 77, sect. 26, §§ 3 and 4, as follows:—

" 3. An appeal may be had and obtained, in " manner above said, from interlocutory judg- " ments which would carry execution by order- " ing something to be done or executed that " cannot be remedied by the final judgment, or " whereby the matter in contestation between " the parties may be in part decided, or whereby " final hearing and judgment would be un- " necessarily delayed;

" 4. But such appeal from an interlocutory " judgment shall not be granted and allowed, " unless the party desiring to obtain the appeal, " or his attorney, obtains a rule, upon motion " made in the Court of Queen's Bench, and " served upon the other party or his attorney, " to show cause why a writ of appeal from such " interlocutory judgment should not be granted."

Under these provisions the Court of Appeals may have had a discretion to examine the merits of the interlocutory judgment before granting leave to appeal from it. At all events it was so held by the Court in *Mann et al.* v. *Lambe*, 6 L. C. J., p. 75, a ruling always acted upon since.

The Code of Civil Procedure, which came into force on the 28th June, 1867, provides for

appeals from interlocutory judgments at Articles 1116, 1119 and 1120, in the following words:

"1116. An appeal also lies from interlocu-
"tory judgments in the following cases:

"1. When they in part decide the issues;

"2. When they order the doing of anything
"which cannot be remedied by the final judg-
"ment;

"3. When they unnecessarily delay the trial
"of the suit.

"1119. If the appeal is from an interlocutory
"judgment, it must first be allowed by the
"Court of Queen's Bench, upon a motion, sup-
"ported with copies of such portion of the re-
"cord as may be necessary to decide whether
"the judgment in question is susceptible of ap-
"peal, and falls within one of the cases speci-
"fied in Article 1116. The motion must be
"made during the term next after such render-
"ing of the judgment, and cannot be received
"afterwards; saving, however, the party's right
"to urge his reasons against such judgment
"upon an appeal from or proceedings in error
"against the final judgment.

"1120. The motion must be served upon the
"opposite party, and, if required, is followed by
"a rule, calling upon such opposite party to
"give his reasons against the granting of the
"appeal; and the service of such rule upon
"him has the effect of suspending all proceed-
"ings before the Court below."

Article 1116 comes immediately after that which declares that an appeal lies from any final judgment of the Superior Court, save certain exceptions therein enumerated. In the French version, it begins by the words: "Il y a *également* appel de tout jugement interlocutoire," &c.

I contend that under these Articles of the Code, the only thing left to be determined by the Court of Queen's Bench, upon motion to appeal from an interlocutory judgment, is whether or not such judgment falls under one of the three heads given in Art. 1116, and that where the Court comes to the conclusion that it does, it can exercise no further discretion, but must allow the appeal to go as of right. Therefore, it cannot, upon such a motion, look into the merits of the judgment, but can only decide, as a preliminary matter, whether it is, under Art. 1116, susceptible of appeal or not. In the first place, the law no longer provides that an appeal *may be had and obtained*, in the cases mentioned, but positively enacts that *it also lies*, that is, that it lies as well as from final judgments. Moreover, Art. 1119 does not require that the motion to allow the appeal be supported by such portions of the record as are necessary to adjudicate upon the merits of the judgment, but such only as are necessary *to decide whether it is susceptible of appeal and falls within one of the cases specified in Art.* 1116.

The policy of the law is therefore to give litigants a right of appealing from certain interlocutory judgments, not to vest the Court of Queen's Bench with an arbitrary power to allow or refuse appeals according to its fancy. To pervert its meaning and to hold that the merits of an interlocutory judgment may be inquired into upon the preliminary motion, must have the following effects prejudicial to both parties:

1st. The Court forms an opinion at the outset and never recedes from it, so that where the appeal is allowed, all the subsequent proceedings are a farce.

2nd. The party moving for the appeal is placed, without reason, in a more favorable position than if the judgment he sought to reverse were a definitive one; for he brings the case to the Court, compels his adversary to argue it upon its merits and gets the equivalent of a judgment in appeal, without having to give security for costs or to submit to the other restraints put upon appellants.

3rd. The opinion of the Court is formed upon the record and an oral argument, neither party having the privilege, as in ordinary cases, of putting before it printed factums. I think I may safely add that cases submitted on motion do not receive as full consideration as those in which all the procedure in appeal is gone through.

4th. The profession are called upon, for insignificant fees, to discharge duties for which they would properly be entitled to full costs of appeal.

5th. The party moving is compelled to produce (and it may sometimes be at great expense) portions of the record which would not otherwise be required.

I am quite aware that the jurisprudence established under the old Statute has invariably been acted upon under the Code, the difference in the wording of the law having evidently escaped attention, and it may be a question whether this continued jurisprudence should not prevail over the express text of the law. I leave it to be solved by wiser heads than my own.

I have the honor to be,

Sir,

Your most obedient servant,

W. C. LANGUEDOC.

P. S.—The foregoing is an argument I had meant to urge at the term now being held, at Quebec, of the Court of Queen's Bench, on a motion for leave to appeal, in a case of Tourigny vs. The Ottawa Agricultural Insurance Co., from an interlocutory judgment dismissing defendants' declinatory exception. My object was to avoid the necessity of obtaining, at rather heavy expense, copies of the whole evidence taken in the Court below. However, I had scarcely begun to expound my views when I was told by Mr. Justice Ramsay that it was mere waste of energy on my part, and the Chief Justice peremptorily ruled that I had not the right to say a word upon the matter.

W. C. L.