The Legal News.

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DELAY IN SENDING UP RECORDS.

The judges of the Superior Court are sometimes made to bear the entire responsibility for the protracted delay which intervenes in some instances between the final hearing and the judgment. Frequently, however, the delay is wholly beyond their control, and is as inconvenient to them as it is to the parties. Mr. Justice Johnson referred to this subject, Nov. 30, as follows:—"I am requested, by some of my brethren on the Bench, to observe (and I do so no less on my own behalf than on theirs) that the gravest inconvenience arises in the administration of justice from the cases that have been argued not being sent up for weeks, and sometimes for months, after they have been heard. The pretext is understood to be that the stenographer's notes are not paid for by the party. The remedy would be twofold. Either the prothonotary must do his duty more strictly, and exact a sufficient deposit, as the law allows him to do, or we must have legislation to enable us to render judgment on our own view of the evidence in enquête and merits cases, leaving it to the party who wants to appeal to put in a copy of the evidence at his own expense. Something must evidently be done to prevent this mischief; for, as matters now stand, it is ridiculous to expect judges, who have heard cases argued six months before, to come to the work of deciding them, with recollections and impressions strong and fresh, as they ought to be, particularly if, as is often the case, the interval has loaded them with some dozen more cases, to which they have had to give their attention. I speak almost in despair on this subject, having already spoken so often in vain; but still I must speak, or adopt a course that will be very unpleasant both to myself and to suitors."

JURISDICTION OF CORONERS.

Some one who takes an interest in this question has put into circulation a printed slip containing citations of authorities, which are left to speak for themselves without any statement of case. We presume they are offered in connection with a recent much to be lamented event which necessitated an inquest, and it was doubted whether the Coroner of a District other than that in which the fatal accident occurred had authority to proceed with the investigation. Among the authorities before us is an extract from the judgment of Chief Justice Denman in the case of *Reg.* v. *Great Western Railway*, in which he says: "The Coroner must, before he summons a jury, make some enquiry, and if, on that enquiry, he finds that the circumstances which occasioned the death happened *out of his jurisdiction*, he ought to abstain from summoning a jury, and the body, in order to an inquest, *must* be removed into the county where the circumstances occurred." This would seem to leave no doubt as to the practice in England.

Coroners were originally local persons of distinction, and possessed of landed property. Cowell's Interpreter (A.D. 1637) says: "There be certaine Coroners speciall within divers liberties, as well as these ordinary officers in every countie: as the Coroner of the verge, which is a certain compass about the King's Court. * * * And I know certaine charters belonging to colleges, and other corporations, whereby they are licensed to appoint their Coroner within their own precincts"—a very dangerous privilege, by the way. The Statute Westm. I. cap. 10, says: "Coroners shall be chosen in all counties, of the wisest and sufficientest knights;" and 14 E. III. cap. 7, enacts "that no Coroner shall be chosen unless he have land in fee sufficient in the same county." This ancient system did not long continue unchanged, for in Cowell's time the Coroner is spoken of as being then often "some inferiour gentleman that hath some smattering in the law." We have our own Statute regulating the jurisdiction of Coroners. See C.S.L.C., cap. 76, sec. 14.

LEGISLATION.

The measures promised in the Speech from the Throne are: for the winding up of insolvent Banks and incorporated companies; for the amendment of the Railway Act of 1879; for the revision and consolidation of the laws relating to Government Railways; and for the improvement, in several respects, of the Criminal Law.

The Minister of Justice appears to be disposed to carry out the Provincial legislation of last

Session, as he has given notice of a bill entitled "An Act to provide for the salaries of an additional Judge of the Court of Queen's Bench and an additional Judge of the Superior Court in the Province of Quebec." On the other hand, Mr. Blake has given notice of motion for a statement of "the number of judgeships in each Province at the time of the union of such Province with Canada, the incumbents of which were under the law entitled in certain events to retiring allowances; and the number of Judges in each such Province actually receiving such retiring allowances at such time; and a like statement for each year since Confederation, as to each Province during such year in the Union down to, and inclusive of, the year 1880."

Mr. Keeler has given early notice of his bill to repeal the Supreme Court Act.

CAPIAS.

The case of *Molson & Carter* presented some interesting questions under the law of capias. We shall not repeat the facts here, as the case is well known to the bar, and a report is to be found at page 258 of this volume. A special application was made to the Privy Council for leave to appeal from the judgment of our Court of Queen's Bench, but this has been refused. The judgment will be found in the present issue. Their lordships, according to their custom, looked into the merits of the case far enough to satisfy themselves that the judgment was sufficiently sustained by the facts. There were two dissentient opinions in the case (by Monk and Cross, JJ.), but their lordships do not appear to have considered the grounds on which the dissent of the minority was based as creating difficulties of a formidable character.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 24, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, CROSS, JJ., and DOHERTY, J. *ad hoc.*

GUY et al. (plffs. below), Appellants, & THE CITY OF MONTREAL (defts. below), Respondents.

Public street—Dedication by proprietor to the public—Prescription by open use by public.

A writing is not required to establish that property has been abandoned to the public for use as a public street; but the acts from which a dedication or abandonment can be inferred must be of a totally unequivocal character.

The fact that a street was openly used by the public without dispute for upwards of ten years as a highway, and that the corporation of the city exercised visible ownership by constructing a sidewalk thereon and filling in a swamp, more than ten years before the institution of an action, is sufficient proof of dedication by the proprietor.

The action was brought against the City of Montreal, claiming possession of a piece of land in the St. Joseph suburb, which, it was alleged, the city had unlawfully taken for the purpose of opening a public street.

The Corporation pleaded that the land in question, for more than 30 years before the institution of the action, had been used as a public street, forming the continuation of Guy street from its intersection with St. Joseph street; and, moreover, that the land in question had been destined by the late Etienne Guy, *auteur* of the plaintiffs, for a public street. That for more than ten years before the bringing of the action the land had been opened as a public street and registered as such in the defendants' register.

The Court below, Superior Court, Montreal, Dorion, J., Sept. 10, 1877, dismissed the action with costs.

As to destination, the respondents relied especially upon the fact that on the 26th Oct., 1831, the appellant, Michel P. Guy, proceeded with his brother Etienne and his sister Madame Berthelet to the partition of their father's estate, and in the deed the immoveable property south of St. Joseph street was designated as bounded on one side *by the continuation of Guy street*, and the part so referred to was excluded from the partition.

Sir A. A. DORION, C.J., after referring to the evidence, stated that the conclusion to which the Court had come was that there had been destination of the land on the part of the proprietor, and also open use by the public for many years as a public street. It was not necessary that the city should have a title in writing. His Honor referred to the case of *Myrand & Légaré*, 6 Q.L.R. 120, as a case in which a similar question had been decided.

RAMSAY, J. The pretension of the appellants in law is, 1st, that the Corporation can only acquire a street by possession of ten years and enregistration by the Council; 2ndly, that in that case they owe indemnity. As a matter of fact, they contend that there was no sufficient proof of possession of ten years apart from the production of a certain register, and that this is not the register required by the Statute, as it is not based upon, and it does not purport to be based upon, any resolution or decree of the Council, as it does not appear by whom it was written, and as the entry bears no date.

The Corporation, respondent, contends that there is full proof of the possession of ten years, and that the register is sufficient.

The case is rendered somewhat involved from the extraordinary form of the legislation to which our attention has been particularly directed. It is very difficult to put any reasonable interpretation on the 23rd Vict. It would seem that "*les rues, ruelles, allées, chemins et places publiques*" shall only become *chemins et terreins publics une fois enregistrés.* It seems, however, from the last two lines of the section, that the object in view was to enact that: "When the Council shall declare that any unregistered street, &c., is a public street, &c., or that any street, &c., has been used by the public as such for a period of ten years or upwards, such declaration shall be registered in a book to be kept by the City Inspector, and the entry in such book shall be *prima facie* evidence that such street, &c., is a public street, &c." If this be the true meaning of the Statute, it is clear that it is not the registration which alone gives the character to the place, nor even the declaration or *constatation* of the Council; the character depends on the antecedent fact that it was a public street, or that it had been in public use for ten years or upwards. But here a distinction has to be considered. The two categories are not similar. The declaration that a public street is a public street has no effect except to permit the registration so as to make a record of an already existing fact. But if there be no prescription of ten years for highways, or if there be no dedication to be presumed by ten years' use, then the registration or the declaration gives an effect to the antecedent fact which it had not independently. It is the declaration of the will of the Corporation, by its mouthpiece the Council, that it takes advantage of the decennial enjoyment of ten years. It would then be an expropriation, as Mr. Loranger has argued, and would give the party the right on general principles to indemnity. Perhaps under the action as drawn the question of indemnity might not come up, but the decree of the Council and the sufficiency of the registration would be important. It seems to me, therefore, to be all-important to decide whether there be a prescription of ten years by law, and what amounts to a destination or dedication of the property to public use by the owner. I may at once say that I do not think the City Charter gives a peremptory answer to the action, and that we must look further.

By the 18th Vict., cap. 100, sec. 41, ss. 9, a special statutory prescription of ten years was given to all roads left open and used by the public for ten years. That is to say, a right of way or servitude was established in favor of the public by ten years' enjoyment. But in the Act of 1860, which was an Act to consolidate the Act of the 18th Vict. and its amendments, the section giving this prescription was omitted, and it does not appear in any subsequent Act. There was, however, no clause repealing the section referred to. It may be a question whether the 18th Vict. was not impliedly repealed by the consolidating Act. But this does not appear to be applicable to roads in towns, and therefore we must hold that the only prescription that can accrue to the public in towns is that of 30 years. It may be a fair enough inference from the judgment in *Myrand & Légaré* (6 Q.L.R., p. 120) that we had decided that the 18th Vict. was still in force. I am not prepared to say that I feel bound by that dictum. There was a 60 years' possession, the road being perfectly cut off from the rest of the property, and I see by my notes, which are not printed in the report, that this was the view I expressed. It can hardly be seriously contended that there is evidence in the case before us of a prescription of 30 years. We have, therefore, only to enquire whether, as matter of fact, there was an abandonment of the continuation of the street by Mr. Guy, the father, and subsequently by the children, to the public.

It must be at once admitted that neither the plan made by old Mr. Guy, nor the *partage* made by the children, could by itself, or both

together, give any right to the Corporation or to the public. They might at most characterize subsequent acts. Again, the acts from which a dedication to the public can be inferred must be of a totally unequivocal character. Occasional, or even very frequent, use will not suffice. There must be something more than toleration; there must be acts from which the extent of the tacit donation can be gathered. The law of England and that of France appear to agree, although Mr. Dillon calls the doctrine anomalous, p. 597, and the Supreme Court of the United States has likewise adopted it. This indicates, I think, that some great principle justifies the existence of the doctrine, and I don't think it is difficult to discover it. When the law requires that a donation shall be in writing, it is a rule of positive law that it declares, and not what is essential to the contract. A donation might quite well exist without a writing, and certain donations without writings are maintained.

One only requires a writing absolutely where a writing can be of use. But what use would a writing be to the public? It is to be observed, it is to the public, and not to the Corporation, the dedication is made, and what the Corporation pleads is its enjoyment through the public right. Therefore it is that all legislations are agreed that the deed, of which there could be no formal acceptance, is not requisite to give validity to a donation for public uses.

We have therefore to enquire whether there be evidence of any such unequivocal acts of the appellants or of their predecessors.

In estimating the evidence, it should be remarked that paper 15 of the record, respondent's exhibit 3, does not establish such a registration as is required by sec. 10, ss. 6, 23 Vict., cap. 72. The burthen of proof, therefore, falls entirely on the Corporation. They must establish the facts which amount to a dedication. There can be no doubt that the ground in litigation was extensively used. It is also beyond controversy that it was fenced off as a street for a great number of years. One of the appellants admits this. It is also proved that the Corporation treated it as a street so far as to make a footpath in wood on one side. On the other hand, it may be said that any presumption arising from the *arpentage* in 1817, the *partage* in 1831, and the leases, is rebutted by the fact of the donation in 1826-7. The donor had exercised his liberality, and in projecting a continuation of the street he was calculating on the return he might expect from his prudent generosity. It may also be said that the use does not signify much, as evidence of the intention to alienate, and the fencing off of the street, seems easily explained without attributing an intention to make a further donation. There is also some evidence, and about as much as one could expect in support of a fact of the kind, to show that the appellants had used the vacant space between the line fences for purposes incompatible with a street, and it is also proved by the witnesses of the respondents, as well as those of the appellants, that the road was totally insufficient for the purposes of a street; that it was neither macadamized nor lighted nor drained. So far, then, it would seem the respondents had not maintained their pretension. But there are two facts proved, and not explained in any way, which seem to me to alter the complexion of the case. It is proved that the *marais*, or principal difficulty in the use of this passage, was filled by the Corporation. The time of this is not, it is true, very well established. But in addition to this filling of the *marais*, we have the fact proved that 14 or 15 years before 1873, Hagerty laid a *new* footpath for the Corporation on the north-east side of the ground in dispute (p. 24, respondents' factum.) Peter Nicholson says it was in 1860. And this footpath was put in the place of another. This work was done without opposition, and it was not removed. It seems to me that this is a fact of a very conclusive character, being totally unexplained. It is not intermittent, like use by persons on foot and in vehicles; it is a continuous and very visible act of possession. Now, if we take altogether the idea that the appellants and their *auteurs* contemplated a road passing there, that this was so evidently necessary for the development of their property that they did not think it worth their while to let it enter into the *partage*; if we consider their negligence of its enclosure at the two ends, notwithstanding all the progressive movement going on in its neighborhood, and the suffering the Corporation to repair, if not originally to make, a footpath, then it seems to me impossible to believe that they did not purposely abandon the ground in

dispute for the use for which they evidently thought it fit. Nor does it require one to attribute to the appellants a species of generosity the law does not readily presume to arrive at this conclusion. We know very well that opening a street through an extensive block of land is good policy, and if people were to be permitted to affect to do it for a long period of time, and till others had shaped their course in consequence, and then to withdraw their seeming gift, very great injustice would be done.

There is only one other point in the case to which it is necessary to allude. By appellants' factum it would appear the conclusions of the declaration were double. It was pointed out by appellants' counsel that this was an error of the factum. It is evidently not an error of the declaration. The pretension being that the registration did not exist, it would have been out of place to give an option to pay the value. The action is purely petitory, coupled with the usual demand for rents, issues and profits. The defence is the title is in the public, and it appears to me this is proved. I am, therefore, disposed to confirm.

Judgment confirmed.

Loranger & Co. for appellants.

R. Roy, Q.C., for respondents.

SUPERIOR COURT.

MONTREAL, Nov. 30, 1880.

JOHNSON, J.

BELL v. DOMINION TELEGRAPH CO.

Telegraph message—Failure to deliver—Damages.

A Telegraph Company is responsible to the party to whom the message is directed, for negligence in failing to deliver a telegram. The fact that the sender did not repeat the message does not affect the rights of the person to whom the message is addressed.

JOHNSON, J. The plaintiff telegraphed from Montreal to a Mr. Machar at Kingston, Ontario, on the 13th May, 1875, and Mr. Machar immediately sent back his answer, both the message and the answer being sent by the defendants' line. The answer, however, was never delivered, and the consequence was that some expense was incurred by the plaintiff in sending some men by railway to work in a mine known as the Frontenac Mine, and whom he would not have sent forward if he had got Machar's answer.

The defendants admit their undertaking with Machar at Kingston, but plead an alleged condition printed on the message, to the effect that the sender was obliged to repeat it.

If the contract of the telegraph company was with Machar alone, it would seem strange that they should hold the plaintiff bound by a condition to which he was no party. These particular contracts are of very modern date; but there are many decisions, nevertheless, particularly in the United States, directly in point, and some in Canada that have a very important bearing on the points raised here. In the first place, there is a series of cases quoted by Field in his treatise on Damages, page 361, holding that the party to whom the message is sent can maintain an action. The point in most of those cases was the form of action to be taken; whether it should be on the contract, or as for a tort. Field, No. 430, has this :—"*Can the party to whom the message is sent maintain an action?* Some controversy has existed in reference to the question whether the party to whom the message is sent can maintain an action on the contract, express or implied, made between the sender and the company, but there can be no doubt that the action can be maintained by such party for the negligence resulting in loss, as for a tort; and in New York, as well as in some other States, he may sue on the contract." The same thing in point of principle (though there it was a letter instead of a telegram) was held in the well known case of *Delaporte et al.* v. *Madden*, where all the English authorities are cited, in 17 L.C. Jurist, p. 29.

Here, where no distinctions of form are known, the right of action by the plaintiff would therefore appear clear. Then, as to the condition, it appears to me equally clear that such a condition could not shield the company from the consequences of their own neglect. I can understand such a thing applying to a misdirection of the message, not the fault of the company; but when it comes to not delivering the message at all, rightly or wrongly, as occurred here, the impossibility of the company pleading it as a dispensation from any obligation on their part is a principle that runs through all these reported cases. And in Cooley on Torts, page 687, under the head "Restric-

tions of liability by telegraph companies," I find a case cited in the note where it was held that the force of the condition seems to be restricted to errors arising from causes beyond the companies' control; and another where it was denied that telegraph companies can contract not to be responsible for their own negligence. The text of our own law in relation to common carriers is explicit. Art. 1676, C.C., says :— "Notice by carriers, of special conditions limiting their liability, is binding only upon persons to whom it is made known ; and notwithstanding such notice and the knowledge thereof, carriers are liable whenever it is proved that the damage is caused by their fault, or the fault of those for whom they are responsible."

Now, applying these principles to the case in hand, it is very evident that the fault of the company, defendant here, consisted in not delivering the message to any Mr. Bell at all, or to any one else, a fault that would not have been remedied if it had been written over again any number of times. It is proved by the production of the directory that only one Robert Bell resided in the city. I, therefore, maintain the plaintiff's action. The amount of damage is very inconsiderable. He had to pay some $40 as passage money for these men, and there is the breach of contract that gives rise to nominal damages also. I shall give judgment for $50 and costs as of the lowest class in this Court.

Trenholme & Co. for plaintiff.
Lacoste & Co. for defendants.

GUILLAUME v. CITY OF MONTREAL.

CITY OF MONTREAL v. LAROSE.

Corporation—State of sidewalks—Responsibility of proprietor.

The Corporation of Montreal is liable for damages caused by the bad state of the public footpaths in the city, and the Corporation has a recourse en garantie for such damages against the proprietor of the premises opposite the footpath.

JOHNSON, J. The plaintiff here brings his action for damages against the Corporation for an injury he received by a fall, which was occasioned by the bad condition of the sidewalk opposite the house of one Larose, in St. Catherine street. It is said to have been covered with glare ice, of very uneven surface and extremely dangerous : not having even a sprinkling of ashes over it to prevent people from breaking their necks. The plea admits the dangerous state of the sidewalk, but denies any fault or negligence on the part of the Corporation, the accident having occurred, as they contend, solely from the gross negligence of the proprietor Larose, who was bound by law to spread ashes, and keep the sidewalk even and safe. The plaintiff replies that the Corporation is liable to the public for the consequences of a dangerous state of the sidewalks, and though they can exercise their recourse *en garantie* against Larose, they do not cease to be primarily liable to the plaintiff. This is no doubt the law, on the authorities cited, and indeed admitted; and the Corporation has called in Larose by an action *en garantie ;* so that we must first see if there are any damages in the case against the Corporation. I find the case clearly proved, and on the authority of *Grenier* v. *The Corporation*, 21 L. C. J., p. 296, I must give judgment against them for the amount proved, and I hold this to be $120.

Then comes the next case of the Corporation against Larose. The liability of the defendant *en garantie* is clear under the by-law. He has only a general plea, and his occupation and right of property, as well as notice to him to keep the place in order, are proved ; so that the judgment against Larose *en garantie* is a matter of course.

D'Amour & Dumas for plaintiff.
R. Roy, Q.C., for defendant and plaintiff *en garantie.*
Maillet for Larose, defendant *en garantie.*

SUPERIOR COURT.

MONTREAL, NOV. 13, 1880.

RAINVILLE, J.

VAILLANCOURT v. COLLETTE, and PERRAULT, tiers opposant, BEAUBIEN, collocated, and NANTEL, contestant.

Privileged costs—C.C.P. 728.

The costs incurred in order to obtain the dismissal of a tierce opposition to the Sheriff's sale of an immoveable, are costs upon proceedings incidental to the seizure, and as such must be collocated as privileged under C.C.P. 728.

The plaintiff Vaillancourt was hypothecary creditor of one Bellefleur. The latter sold the property on which the hypothec existed to the defendant Collette. The plaintiff instituted a hypothecary action against Collette, and obtained judgment. Collette then made an abandonment of the property. But in the meantime, Bellefleur having become insolvent, his assignee Perrault brought an action to set aside the sale to Collette as made in fraud of the creditors of Bellefleur. When Vaillancourt caused the property to be seized under his judgment, Perrault filed an opposition, based on the same grounds as the revocatory action. This opposition was maintained by the Court of Review as to the demand in revocation against Collette, and dismissed in so far as Vaillancourt was concerned, with costs against Perrault in favor of Vaillancourt's attorneys.

The Sheriff then proceeded with the sale, and the proceeds of the property were now to be distributed.

The question was whether the costs incurred by Vaillancourt, in getting the opposition of Perrault rejected, were privileged. The report of distribution not having collocated the costs in question as privileged, Nantel, the transferree of the costs, contested the report of distribution.

RAINVILLE, J., was of opinion that the costs had been incurred by Vaillancourt in the common interest of the creditors, in order to remove an obstacle to the sale of the property. They were law costs, and must be collocated in the order prescribed by Art. 728 of the Code of Procedure.

De Bellefeuille & Bonin for creditor collocated.
Champagne & Nantel for contestant.
J. A. Ouimet, Q.C., counsel.

IN THE PRIVY COUNCIL.

WHITEHALL, November 27, 1880.

Sir JAMES COLVILLE, Sir BARNES PEACOCK, Sir MONTAGUE SMITH, Sir ROBERT COLLIER.

MOLSON, Appellant, & CARTER, Respondent.

Appeal to P. C.—Capias—Secretion.

The case came up on application for special leave to appeal from the judgment of the Court of Queen's Bench, Montreal, to be found at p. 258 of this volume.

Sir JAMES COLVILE.—This is an application for special leave to appeal against an order of the Court of Queen's Bench for the province of Quebec, of the 22nd June, 1880, which confirmed an order of the Superior Court of the 16th November, 1878, granting a *capias* against the petitioner under the provisions of the 796th and subsequent sections of the Canadian Code of Procedure. It is obvious that their Lordships would not, according to their usual practice, nor could they with propriety grant special leave to appeal upon a question of this kind unless they saw clearly that there had been some miscarriage in point of law, or very gross miscarriage in the two Courts whose concurrent judgments are under appeal, on the matters of fact.

Now, without going into the complicated proceedings that have been commented upon in this case, it is sufficient to state that the judgments of the Court below may be taken to have proceeded almost exclusively upon the act of the petitioner in altering the deposit account of a certain sum of money in the Mechanics' Bank, and the facts which led to that were simply these: The defendant borrowed from the plaintiff a sum which may be stated in round numbers at $32,000, ostensibly upon the security of certain property. He paid that sum of money into this Bank in his own name, with a sort of special mark. As found, in July, 1874, he altered the heading of that deposit account so as to make it appear that the money was his wife's. The Bank became insolvent a month or two later, but just when it was on the eve of insolvency he drew out the $32,000 upon a receipt signed by him for and as the agent of his wife; and it is upon that transaction that the Courts below have principally proceeded.

Now, it is to be remarked that one of the learned Judges, Mr. Justice Monk, whose final judgment was in favor of the defendant, says this:—"If Molson had altered the heading of the account on the eve, or immediately before the insolvency of the Bank for the purpose of making it falsely appear that the $30,000 deposited in the Bank belonged to his wife and children, when they really belonged to himself, and if this had been done with a view of making the withdrawal of the sum from the Bank possible, or, at all events, more easy of accomplishment, and with the further view,

after such withdrawal, of making away with the amount to the detriment of his creditors in general and the plaintiff in particular, I think the *capias* might have been maintained; for this would not be a case of so-called constructive secretion which it is not clear the law recognises, but a case of actual secretion; the altering of the heading of the account being the first step in the process." But afterwards, and in some degree because this alteration of the account was not immediately before the insolvency of the Bank, but a month or two earlier, the learned Judge comes to the conclusion at which he ultimately arrived in favor of the defendant. It appears, however, to their Lordships that there was abundant evidence from which Mr. Justice Papineau, sitting in the Superior Court, and the majority of the Judges of the Appellate Court, might come to the conclusion that the transaction was really one of the nature described by Mr. Justice Monk, and that it was a case of actual secretion or making away of property of the debtor within the meaning of the Code of Procedure. It is not necessary for them, they think, to go further and to express a fuller opinion of their own on the facts of the case which they have not heard fully, and, of course, having had no opportunity, of going into detail through the evidence in the case. Their Lordships, however, think that the Judges had before them ample evidence of the fraudulent intent which was imputed to the petitioner.

The case was put finally by Mr. Digby in this way :—That the money was either the money of the wife or that it was not; that if it was her money, it was right to give it to her; that if it was not her money, then that it could be shown to be properly applied. But their Lordships think there is no pretence whatever on the facts for saying that this money was the money of the wife. It was set up, after the transaction of borrowing took place, that the property pledged was property which the defendant had no right to pledge, but that it was property which his wife and children, under his father's will, had by some substitution of interest which prevented his disposing of it. The money was borrowed by him on his own credit. The only inference to be drawn from the title of the wife, supposing it to be a good title, would be that it was a fraudulent transaction, in so far as it purported to pledge property that was not his. She could not have both the property and the money, and it is quite clear from some of the evidence which has been brought before their Lordships that the petitioner has been treating the property as hers; that a lease has been granted of it, and he himself admits he is receiving rent payable by the lessee as *aliment* for his wife and children. Then, if it were not her money, the fraudulent act, if it were fraudulent, was complete when it was transferred into her name and afterwards withdrawn in her name, and withdrawn too, as he then avowed, in order that he should not himself come upon the street, a statement which could only mean that he either wished to make a provision for his wife to keep him off the street, or that he had withdrawn it for his own purposes. The subsequent application of it to other creditors would not, if established, have been material, and that therefore is an answer to the argument that the case should be sent for a new trial or otherwise put into a way for further investigation, in order that Mr. Barnard, the petitioner's solicitor, should be examined.

On the whole, their Lordships think that they cannot advise Her Majesty to grant special leave to appeal, and that this petition must be dismissed with costs.

GENERAL NOTES.

An English notice of the late Lord Justice Thesiger says that "he had the invaluable aid to an advocate with his fellows of being known never to take an advantage not permitted by the rules of the game."

LEGAL CHRISTMAS BOXES.—In the report of the Commissioners for enquiring into the duties salaries, and emoluments of the judges, &c., of the courts of justice in England, it appears that the Lord Chief Justice of the Court of King's Bench, "according to ancient usage," receives annually at Christmas four yards of broadcloth from Blackwell Hall, and thirty-six loaves of sugar presented to him by particular officers on the plea side of the Court; and that each *Puisne* judge receives annually from the same officers a small silver plate and eighteen loaves of sugar.—*Literary Panorama*, Dec., 1818.