The Legal News.

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JUDICIAL PENSIONS.

A return, laid before the House of Commons, embraces several statements on the subject of pensions granted to judges in the several provinces. The first shows the number of judgeships in each province on its union with Canada, the incumbents of which were entitled, in certain events, to retiring allowances. In the Province of Quebec there were 24, viz. 5 Q. B., 18 S.C., and 1 Vice-Admiralty. In the Province of Ontario there were 9, viz. 3 Q. B., 3 C.P., and 3 Chancery. At that date (A.D. 1867) there was in Lower Canada no statute specifying the pensions or the judges entitled to receive them; but by Statute, a lump sum was placed at the disposal of the Government for judicial pensions. The number of judges, at confederation, actually in receipt of retiring allowances was very small: only two in Quebec, and one in Ontario; the total charge per annum for the former being $4,799.96, and for the latter $3,333.33.

The increase since confederation, both in the number entitled to, and in the number actually in receipt of, retiring allowances, has been very striking. In the Province of Quebec there was a judge added to the Superior Court in 1869, a second in 1871, and 6 more in 1872, bringing the number of judges entitled, in certain events, to retiring allowances, up to 32. In Ontario the increase is still more marked. In 1872, 49 judges and junior judges of the County Court became entitled under 36 Vict. c. 31. In 1873 the Court of Appeal was created, with four new judges, and the total for Ontario was brought up to 61, at which figure it has remained. In 1875, the enactment of the Supreme Court Act added 6 judges of the Supreme and Exchequer Courts for the Dominion. In Nova Scotia there are now 15 judges entitled, in New Brunswick 12, in British Columbia 9, in Prince Edward Island 6, and in Manitoba 3. It may also be remarked that in 1880, by Act of the Quebec Legislature, one judge has been added to the Court of Queen's Bench and one to the Superior Court, but the appointments have not yet been made.

The increase in the actual charge upon the Treasury has also been very large, and although the number of judicial officers entitled in Ontario is nearly double the number entitled in Quebec we find the actual charge many times greater in the latter Province. In Ontario the charge decreased until in 1876 it vanished altogether. In 1878 it re-appeared, and now stands at $3,200. In Quebec the increase has been almost continuous. In 1868 the whole amount was $7,068.05; in 1871 it was $9,201.37; in 1872, $11,068.01; in 1874, $19,566.57; in 1875, $21,899.90; in 1876, $24,566.56; in 1877, $25,766.56; and in 1879 and 1880, $28,332.22. The total number in Ontario is 2 against 10 in Quebec. It is apparent, therefore, that a much larger proportion of Ontario judges die in harness than of their Quebec brethren. This fact has been attributed in some quarters to the less agreeable position of the latter, many of the Superior Court judges being obliged to reside in country districts, and the duty of holding the Circuit Court for the decision of petty causes being imposed upon them.

THE BRIEF TRADE.

Brief-selling is an established trade in the United States. A company exists, under the name of the "New York Brief Company," which advertises its readiness to supply briefs "skillfully and logically prepared by able and experienced lawyers," and "satisfaction and *absolute secrecy*" are guaranteed. These briefs are to be "submitted without argument," and are intended, apparently, to supersede oral arguments. This seems to promise a solution of the problem which has puzzled sundry ambitious persons for centuries—How to practice law without Brains. We shall soon see a new item in the market reports, and briefs will be quoted "dull," "sluggish," or "lively" as the case may be.

MASTER AND SERVANT.

A decision was recently given by the Supreme Court of Austria, which illustrates the law of that country on the subject of the employer's liability for injuries to employees resulting from defective machinery. The North German Ice Works are engaged in the ice business at

Berlin, and have ice-houses on the bank of the Danube, near Vienna. The ice, after being cut, is elevated by crane and pulley to the store-house, and slides down inside. On the downward slide the ice moves by its own weight, and with increasing velocity, its course being directed by laborers stationed along the sides to keep the blocks on the track. Popp, the injured party, was one of those so engaged. But a large cake of over a hundred weight jumped the track, and though Popp sprang to one side, he was not quick enough, and was thrown down and his left leg broken. He claimed damages, but the sympathies of the company were apparently as cold as the article they deal in. Mr. Popp, however, gained the day—the Court holding that it was the duty of the company to provide railings or beams along the sides of the slide to keep the ice from falling off,—and after the company had dragged the plaintiff through three Courts, the judgment in his favor has been affirmed finally by the Imperial Supreme Court of Austria.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Jan. 31, 1881.

JOHNSON, RAINVILLE, PAPINEAU, JJ.

[From S. C., Montreal.

OSBORNE et al. v. PAQUETTE.

Evidence—Certificate of Prothonotary not sufficient proof of execution of deed of composition between Insolvent and his creditors.

The judgment inscribed in Review was rendered by the Superior Court, Montreal, Jetté, J., May 31, 1880.

JOHNSON, J. On the 15th April, 1879, the defendant was arrested under a capias *ad respondendum* at the suit of the plaintiffs, and went to prison in default of bail. On the 23rd of June he gave bail under article 825 C. P., that he would surrender to the sheriff when required to do so by an order of the Court, within a month of the service of such order on him or on his sureties—in default, the sureties to be liable, &c. After giving this bond, he was liberated, and on the 17th of September judgment was given for the debt, interest and costs sued for, and also maintaining the capias. On the 13th of February the plaintiff moved that as the defendant had not made an abandonment of his property under Art. 766, he should be imprisoned, and also that the Court should give the order contemplated by the bail bond—to surrender within a month after it should be served on him.

The first part of the motion was unfounded, and seems to have been unnoticed. The second part asking for the order to surrender was answered, not by contesting the right that was claimed by the plaintiff to have this order, but by in effect alleging a reason why the right could not in this case be exercised as asked; that is to say, he advanced a fact or an allegation of facts; and he produced as his only proof of them a certificate of the Prothonotary. He said: "You cannot ask for this order, because when you get it, it will be of no use, inasmuch as I have a deed of composition with my creditors." Whether this would be a complete answer, and whether a composition not confirmed by the Court would discharge the debtor from liability to this order, we need not discuss. The only point now is whether the certificate of the Prothonotary is a complete proof of the execution of such a deed between these parties; and it seems clear that it cannot be so held, and still less is it a proof of the facts of the composition. We see, however, that this man may have a right; and yet we see also that the inscribing party here is entitled to succeed completely, because this right has not been established. We, therefore, render the judgment that might have been given below, and we order that the motion be answered in writing within eight days, and we discharge the inscription, and condemn the defendant to pay the costs of review.

Inscription discharged.

L. N. Benjamin for plaintiffs.
Doutre & Joseph for defendant.

COURT OF REVIEW.

MONTREAL, Jan. 31, 1881.

JOHNSON, TORRANCE, JETTÉ, JJ.

[From S. C., Montreal.

MCALLEN v. ASHBY, & ASHBY, Petr.

Capias — Affidavit — Existence of debt at time of alleged secretion.

The judgment under Review was rendered by

the Superior Court, Montreal, Rainville, J., Jan. 15, 1881.

JOHNSON, J. We are asked by the plaintiff to review a judgment ordering the liberation of the defendant who was held under a capias. The insufficiency of the affidavit was made the subject of a petition, and what the defendant objected to was substantially that it did not allege the secretion to have taken place since the indebtedness. It said that in February, 1879, there had been a conversation between the parties, and that since that time the defendant has secreted. The debt was contracted some months after that. Therefore, it is not expressly said that there was a debt at the moment of secretion. The affidavit is wanting in precision, and is therefore technically deficient. The judge who heard the case granted the petition, and subsequently suspended the discharge because this review was taken. The affidavit may, perhaps, be construed to mean all that the law requires; but we think where a party has been liberated, or at least the principle of his liberation has been already granted, we should not, as it were, send him back by resorting to construction; but rather take the strict view of the law, and maintain the judgment. We therefore order his discharge now.

Judgment confirmed.

Macmaster & Co. for plaintiff.

Davidson, Monk & Cross for defendant.

COURT OF REVIEW.

MONTREAL, Jan. 31, 1881.

TORRANCE, RAINVILLE, LAFRAMBOISE, JJ.

[From S. C., Montreal.

STAFFORD et al., insolvents, JOSEPH, claimant, and SMITH et al., contesting.

Insolvent estate—Landlord's claim for unexpired lease—Estimate of value where right to terminate lease was stipulated in favor of the lessee.

The judgment under Review was rendered by the Superior Court, Montreal, Mackay, J., July 7, 1880.

TORRANCE, J. This was an appeal from a judgment settling the amount of the claim of a landlord against the insolvent estate of his tenants. Two points were especially complained of by the landlord. 1. That the judgment only allowed him $800 damages for unexpired lease, in place of $4,500 for six years claimed by him. The evidence shows that the lease gave the tenants the right to terminate the lease on the 1st day of May, 1880, by giving six months' previous notice. The insolvency took place in 1879, and the lease was terminated by the creditors on the 1st of May, 1879, from which time the landlord recovered possession, and the Court, considering the fact that the lease might have terminated on the 1st of May, 1880, has only allowed one year's damages, namely, $800. We do not see error in this estimate of damages. 2. The other point to which attention has been called by the claimant is that the judgment orders the claimant to tender back to the assignee an iron staircase at such place in the city as the assignee might in eight days indicate. The reason of this order was that the claimant objected to the assignee removing the staircase in the previous year, on the ground that the tenant had the use of it and could not be disturbed. We see nothing unreasonable in this order, and on the whole we confirm the judgment. The apportionment of costs is also complained of, but we think as to costs that the discretion of the Court was reasonably exercised.

LAFRAMBOISE, J., differed from the majority.

Judgment confirmed.

C. S. Burroughs for claimant.

Davidson, Monk & Cross for contestants.

COURT OF REVIEW.

MONTREAL, Jan. 31, 1881.

SICOTTE, RAINVILLE, JETTÉ, JJ.

[From S. C., Montreal.

EVANS v. FRASER.

Libel in way of Profession—Damages.

The judgment under Review was rendered by the Superior Court, Montreal, Johnson, J., May 31, 1880, as follows:

When this case was submitted the other day there was a motion made to reopen the defendant's enquête with a view of establishing omissions in the accounts of the estate Fraser. There are affidavits on both sides; and I think the affidavit produced on the plaintiff's behalf is conclusive against granting the application. I need not indeed go so far as that; for it is no

ground for reopening evidence that you have got more to offer, unless it has been discovered since the case was closed, or was unknown at the time. Motion to reopen enquête dismissed.

As to the merits of the case, it is an action by a professional accountant against a person who apparently conceives it to be his business not only to enquire into, but to publicly stigmatize the conduct of private persons who are employed by the executors or trustees appointed under the will of the late Hugh Fraser; and under that impression, or that illusion, he has addressed a letter to the chairman of an insurance company, and afterwards sent a copy of it to the Mayor of the city, who read it to the Council; and he has also had it published in the newspapers.

This letter was a very long affair, and perhaps I had better not read it all; but its substance was that the late Hugh Fraser had died leaving an estate worth about $500,000, of which the writer mentioned the component assets; and that Mr. John Henry Menzies, as agent of the executors and trustees, and in the names of Menzies & Co. and Moore & Co., having misconducted certain duties with which he had been charged in connection with the accounts, Messrs. Riddell & Evans (the plaintiff) had been called in to examine matters and to make a balance sheet, which they did, and in which the whole indebtedness of Menzies & Co. and of Moore & Co., and of Mr. Menzies individually, was suppressed. It went on further to say that, whether Mr. Menzies or Messrs. Riddell & Evans were the authors of the balance sheet, it was false and fraudulent; and in fact he plainly charged Mr. Menzies with false and fraudulent conduct, and the plaintiff just as plainly with aiding and abetting it; and the plaintiff therefore brought his action and laid his damages at $5,000.

The defendant pleaded the whole story of the bequest for the Fraser Institute, the incorporation of it, and that as a relative of the testator, and as a citizen of Montreal, he was interested in seeing this benevolence carried out. That in writing the letter he had had no intention of injuring the plaintiff, but had merely wished to point out certain irregularities in Mr. Menzies' system of bookkeeping, which he held the plaintiff was bound to have detected when he was called upon to examine the accounts; that as to the charge of suppression, he only meant to say the plaintiff had been unskilful and negligent, and that he had a right to say what he did in the letter, and he offered to prove the truth of it.

The plaintiff's answer to all this was a general answer in fact and in law, and, to my surprise, at the trial evidence was offered—was not objected to, and was, of course, taken—as to the truth of a variety of matters in these accounts, justifying the imputations that the defendant had made in this letter. The plaintiff may have wished probably to give Mr. Fraser every opportunity of showing that the charges were true; but that would not alter the state of the issue. There is nothing pleaded here as to the non-publication, or as to its being a privileged communication, (which it possibly was intended to be at the outset): but the thing is put on the ground of right, and the publication was admitted by the defendant himself. Now, though Mr. Evans was spoken of throughout as being a public accountant, that cannot mean that he keeps the public accounts, or is in any sense a public officer; he is one of a private firm of persons skilled in accounts, and happened to be employed by the trustees under a will benefiting a public institution: that is all. The plaintiff had no more right to impute to him, and to publish of him even that he was unskilful and negligent in his profession, than he would have had to publish that the doctors attending the benefactor of this institution in his last illness had killed their patient. The public benefaction contemplated by the late Mr. Fraser does not turn into public characters all the accountants, attornies, collectors, scriveners or others whom his trustees may employ; and any of these would justly think it very hard that the Mayor of Montreal or the newspapers should be asked to publish that they had shown negligence or incapacity. But much more than negligence and incapacity are evidently imputed in this letter, and it is not the Governors of this institute, nor the trustees, nor the executors that are complained of, but merely a private person employed by the trustees. As matter of right, therefore, if it is meant that the plaintiff was a public character, amenable to public criticism, as long as it is true and fair, there is nothing to justify this evidence at all. As affecting the question of damages, however,

—though not the right of action,—the degree of truth, as showing the malice that may be found in the thing published, may be considered. As to this, however, this charge of suppression and connivance brought against Mr. Evans, though it was pressed with the greatest pertinacity, it resulted in absolutely nothing but the triumph of Mr. Evans. It became a conflict between counsel acting under instructions, and with his client by his side evidently actuated by the strongest feeling, and a skilled and cool accountant who explained everything as fast as it was brought forward. But what, if all this bewildering evidence should show that what Mr. Fraser wrote was true? Has Mr. Fraser the right to impute publicly to Mr. Evans, a professional accountant, that he has been guilty of suppression and connivance? Clearly not, unless the laws and liberties of the land have been changed: unless the subjects of the Queen of England, instead of having their alleged offences discussed in her Courts of Justice, are obliged to submit to what has been called "trial by newspaper." It is evident to me that Mr. Fraser is acting under strong feeling. He imagines himself wronged, which may be true, or illusory,—I have nothing to do with that; it cannot affect the rights of Mr. Evans, however it may alleviate the idea of malice in Mr. Fraser. But granting all this, supposing Mr. Fraser to be perfectly honest, who is to pay for Mr. Fraser's honest mistakes? It is said no damage is proved. That is not quite correct, however; there is no special damage proved, nor is any even alleged; but the *injure* is there, and it is for the Court to adjudge and fix the damage. Mr. Evans proved by the most respectable witnesses a very high character and a most responsible position; it was proved, indeed, by Mr. Workman that these gentlemen, Messrs. Riddell & Evans, were selected for this task on account of their character and fitness. It is not likely that the amount of money is the thing principally sought by this action: it is the vindication of character; and that has been completely accomplished, and the defendant has been proved to have done a wrong, which under all the circumstances will probably not affect Mr. Evans in the slightest degree. On the other hand, there is no evidence of Mr. Fraser's ability to pay heavy damages, and I gather, indeed, that such are not asked; I give enough to carry full costs; not meaning, however, to say that Mr. Fraser's conduct was in any degree justified; but merely that it is looked at in the most lenient way in my power. Judgment for $50 and full costs.

JETTÉ, J., rendered the judgment in Review which confirmed the above in all respects.

Macmaster & Co. for plaintiff.
R. & L. Laflamme for defendant.

SUPERIOR COURT.

MONTREAL, Jan. 31, 1881.

Before JOHNSON, J.

OUIMET v. BEAUCHEMIN.

Pleading—Inconsistent allegations.

JOHNSON, J. By an additional plea to a *demande supplétoire* in an action for rent the defendant has alleged that he only owes $3 a month, and that the occupation of the place is not even worth so much as that. The plaintiff moves to compel the defendant to choose between these allegations as inconsistent. They do not seem to the Court absolutely inconsistent. A man may owe (as having promised to pay) more than is actually due. It is surplusage of course; but if we begin to deal at the present day with the surplusage of pleadings in this Court, I am afraid we shall have hard work. It seems in the present case merely that the defendant wants to boast what a fine fellow he is by implying that he is willing to give more than he owes. The motion is dismissed with costs.

Motion rejected.

F. D. Monk for plaintiff.
Taillon for defendant.

SUPERIOR COURT.

MONTREAL, Jan. 31, 1881.

Before JOHNSON, J.

BERNARD v. GAUDRY.

Action for Penalty—Joint and Several Condemnation.

JOHNSON, J. This is a *qui tam* action brought under c. 65 of the Consolidated Statutes of L. C., for omission to register a partnership. The declaration is excepted to upon a great many grounds of form. The first is that under the Stat. 27-28 Vict., c. 43, the affidavit which

is required in these cases to prevent collusion is not conformable in all respects to the requirements of the 1st section of the statute; but I have compared the affidavit, sentence by sentence, with the 1st section, and I find no inconformity whatever, even verbal. The second objection, though a very narrow and simple one, has more weight. It is said there is no affidavit *at all*, that is, that the paper called an affidavit is not sworn. There is a form of jurat, but of course to have validity it must be certain as to date, without which it would be impossible to visit the deponent with the penalties of perjury. The words are: 'Assermenté à Montréal ce onze Novembre,' &c. (*dix* erased.) There is nothing to authenticate the word 'onze,' nothing to authenticate the *exclusion* of the word 'dix.' If this wer , there might be a serious objection; but it is not so. The word 'dix' is one of two words accounted for as being erased. Then the conclusion is for a joint and several condemnation for a penalty. This appeared to me at first sight objectionable, but I see the statute expressly authorizes it in sec. 1 par. 4. 'Each and every member shall be liable,' &c. The last objection to the form is the insufficiency of service and return, the person making it not saying he is a bailiff, nor where residing, as the article requires; but he signs H. C. S., and he says he returns sous serment d'office, and this appears sufficient.

There are some other technical objections to the service, but these are all that were argued.

Exception à la forme dismissed with costs.

Painchaud for plaintiff.

St. Pierre & Scallon for defendant.

SUPERIOR COURT.

MONTREAL, Jan. 31, 1881.

Before JOHNSON, J.

LAFRICAIN v. VILLENEUVE, & DUGAS et al., T. S.

Exemption from seizure—Salary of "Précepteur."

JOHNSON, J. This is a contestation by the defendant of the declaration of one of the tiers saisis (Mr. Massue), who makes statement that in his quality of executor of the will of the late Mr. Massue, he has engaged the defendant as travelling tutor to young Mr. Massue, a minor, and the tutor and the pupil are now in Europe for the purpose of the latter's education; the tutor receiving a salary of $1,000 a year, payable half-yearly in advance; and the garnishee added that on the 15th July, 1879, there was due to this gentleman under this engagement $500, which he had paid to the defendant's sister under an arrangement made to that effect before his departure, and on the 15th January, 1880, there would be due $500 more. It is contended that this money would be *insaisissable* under Art. 628; and the contestant relies on the new law introduced by, that article exempting from seizure the salaries of school teachers. The French text says "Salaire des Instituteurs." The remuneration stipulated in this case does not come under this head of exemption. Mr. Villeneuve is certainly not a school teacher; and I feel sure also that he is not an "instituteur" in the plain meaning of the article: "Précepteur" would be the proper word to describe his position; and indeed the contestation itself sets out that the defendant was engaged as *précepteur*. Contestation dismissed with costs.

Longpré & David for plaintiff.

Lacoste, Globensky & Bisaillon for defendant.

SUPERIOR COURT.

MONTREAL, Jan. 31, 1881.

Before JOHNSON, J.

DEMERS v. LAMARCHE et al.

Demurrer—Allegation of Time and Place.

JOHNSON, J. Two of the defendants plead together, the third separately; but all plead a *défense en droit* to one count of the plaintiff's declaration, *i.e.*, the count which alleges a conspiracy among all the defendants to ruin the plaintiff by putting him into bankruptcy, through the instrumentality of one Perrault. This passage in the declaration, which is demurred to, is quoted in the demurrer, or rather misquoted; for after looking a long time in vain for it throughout the copy of declaration which is made to do service for the original, I found a marginal reference in a very small and cramped hand, which I suppose is the count objected to; and the misquotation is evident. The passage as quoted in the demurrer said that the count charged the defendants with conspiracy *dans le but de le ruiner et d'exercer ses droits*. The passage itself of course reads: dans le but de *l'empêcher* d'exercer ses droits. I only mention this as an instance of how careless the defendants themselves are. However, the

objection itself is to plaintiff's omission to give in this marginal note, which is called by the defendants a "*second chef*," the day and the place on which the defendants did these things. That would be no ground of demurrer. At most it would be ground of objection to form as deficient in particularity. The demurrer is dismissed with costs.

Défense en droit dismissed.

Longpré & Co. for plaintiff.

Archambault & Co. for defendants.

SUPERIOR COURT.

MONTREAL, Jan. 31, 1881.

Before TORRANCE, J.

LEONARD v. JOBIN.

Wages—Services rendered to a near relative without agreement as to remuneration—Prescription—Evidence.

The demand was to recover remuneration as housekeeper of Marie Sophie Jobin, deceased. Mlle. Leonard had lived with the deceased from 28th October, 1876, until 28th December, 1878. She claimed at the rate of $12 per month, which would make a sum of $312, but the demand was reduced to $100 by reason of prescription under C. C. 2261, s. 3. It was made against the legatee. The defendant pleaded 1st. prescription of one year under C. C. 2262, s. 3; 2nd. that Mlle. Leonard resided with deceased as a friend and without any engagement.

PER CURIAM. The plaintiff left the house of the deceased in December, 1878. The deceased died in July, 1879, and the action was only instituted on the 4th September, 1880. The deceased had a small store and the post-office in Isle Perrot, and for some time the head of the establishment was the Curé Ricard who was towards the end without means, and must have depended upon the kindness of the deceased for board and lodging. He was the uncle of the plaintiff. She herself was daughter of a well-to-do notary of Beauharnois, and at her father's, wanted for nothing, and was under no obligation to go elsewhere for a living. She states in her testimony that the curé promised to make her his heir, but that he had nothing. She also frankly states that she had never stipulated from the curé or the deceased a price for her services in the household, nor any agreement for salary or wages, and she had never made any demand upon either for salary or wages. She added that Mlle. Jobin, the deceased, had told her that if she had the means to pay her in her lifetime, she would pay her, and if she had not the means, her heir, the defendant, would pay her. She had not thought of making any demand in the lifetime of the deceased. Joseph St. Maurice, a witness, says he heard a conversation between the deceased and the father of plaintiff, deceased, saying to him, "let me have Alma (meaning plaintiff), I will pay her, and if I do not, my family will." The deceased also sent a message to plaintiff, saying that Mme. Masson (defendant) wished her to be there, and had conscience to pay her, and would pay her well. These are the main facts. Next as to the prescription of one year. I do not see how I can avoid applying it. Plaintiff was an employee, if such at all, for less than a year. And even if it did not apply, I have difficulty in allowing verbal evidence of a promise to pay on the part of the deceased. It is a matter over $50 and not commercial. Lastly, the parties were friends. The curé and the deceased lived jointly on the produce of an orchard and establishment, and the ferry to the island, and plaintiff was niece of the curé. I apply here a dictum to be found in Addison on Contracts (738): "But if the service has been with parent or uncle, or other near relation of the party serving, a hiring cannot be implied or presumed from it, but an express hiring must be proved in order to support a claim for wages, for the law regards services rendered by near relations to one another as gratuitous acts of kindness and charity, and does not presume that they are to be paid for unless there is an express contract to that effect." Action dismissed.

Longpré & David for plaintiff.

Duhamel & Co. for defendant.

SUPERIOR COURT.

MONTREAL, Jan. 31, 1881.

Before TORRANCE, J.

RHEAUME v. BOUCHARD.

Action en déclaration d'hypothèque — Defendant exposed to trouble entitled to security.

The action was *en déclaration d'hypothèque* to recover $251 with interest and costs amounting

to the further sum of $36, which Ambroise Trudel stipulated with Bouchard that he should pay to plaintiff. The defendant pleaded that over and above the sums by him undertaken to be paid to Rhéaume, there was an encumbrance on the property of $492, duly registered, under a sale from Marc Trudel and Onesime Deblois, 13 October, 1877 ; that he had just reason to fear trouble by an hypothecary action from Trudel and Deblois, and he had a right to delay payment of the sums now demanded until plaintiff or Ambroise Trudel, his vendor, should have removed this fear or given security in the terms of C. C. 1535. He offered the interest due on the price for the time of his enjoyment, namely, $11.87, from 1st January, 1880, until the institution of the action. He concluded that the part of the action demanding a personal condemnation against him be dismissed for the surplus over $11.87, unless plaintiff should cause the fear of trouble to disappear, or give security in terms of the article 1535.

PER CURIAM. I have no difficulty in holding that the stipulation in favor of Rhéaume is a valid one. (See Journal du Palais, A.D. 1877, p. 784 ; *Gadoury* v. *Archambault*, S. S., A. D. 1878 ; in review at Montreal) But there is behind, the plea of the defendant, alleging an incumbrance and fear of trouble, and asking for security under C.C. 1535. The allegations of the plea are supported by the evidence, and the Court therefore grants the conclusions, and orders security to be given as prayed.

Laflamme & Co. for plaintiff.

J. E. Robidoux for defendant.

RECENT ENGLISH DECISIONS.

Will—Conditions in restraint of marriage to particular class not invalid.—A testatrix devised real estate in strict settlement to her brother for life, with remainder to his issue in tail, with remainders over in default of failure of her brother's issue. The will contained a proviso that if the brother married a domestic servant the limitations in favor of himself and his issue were to be absolutely null and void, and in lieu thereof the testatrix devised her real estate to the use of such persons, and with such limitations as the same were devised in default or failure of issue of her said brother. The brother married a domestic servant. *Held*, that the condition not being in general restraint of marriage, but only in restraint of marriage with one of a specified class, was good. *Perrin* v. *Lyon*. 9 East, 170, followed.—*Jenner* v. *Turner*, 43 L. T. Rep. (N.S.) 468.

Slander—Words not slanderous in primary sense must be shown slanderous innuendo.—In an action of slander where the plaintiff, in his statement of claim, annexes a meaning to the words complained of, and fails to sustain such meaning, he cannot discard that and adopt another. Where words which are not slanderous in their primary sense are taken in a secondary sense distinct from their primary sense, there must be evidence of facts which would reasonably make them defamatory in their secondary sense. In this case the plaintiff alleged in his statement of claim that the defendant falsely and maliciously spoke and published of the plaintiff the words, "His shop is in the market," meaning thereby that the plaintiff was going away and was guilty of fraudulent conduct in his business, inasmuch as he had received subscriptions from members of a certain club, well knowing that they would be unable to obtain any benefit therefrom. There was no evidence to support the innuendo. *Held*, that the words, not being in themselves defamatory, and there being no evidence to wholly support the innuendo, the defendant was entitled to judgment.—*Capital and Counties Bank* v. *Henty*, L.R., 5 C.P.D. 94.

GENERAL NOTES.

OATHS AND GLOVES.—During the hearing of a case in the Edmonton County Court recently, Mr. Houghton, barrister, directed a lady to take off her glove before she was sworn as a witness. The judge, Dr. Abby, said he thought that was a matter which rested entirely with him. He did not attach so much importance to oaths being taken with ungloved hands as many individuals seemed to do, and his opinion was shared by an eminent judge of the Superior Courts, whose name it is not necessary to mention. It was not the ungloved hand, but the manner in which the oath was taken, that made it binding. Some oaths were taken without a book at all ; for instance, the Chinese form of oath.

Some people imagined that the glove should be removed because there should be nothing between the sacred book and the hand of the person who held it; but the solemnity with which the oath was taken was the only point in the oath itself. If greater force were given to the oath by merely holding the holy volume in an ungloved hand—he meant if the absence of the glove caused the book itself to be regarded with increased reverence—he would ask how could the use of the gloves be justified in church, where many of the congregation could always be seen reading their Bibles when their hands were gloved? Reverence in taking the oath was the only thing which was necessary. He had seen people to whom the oath was administered so hold the book that the kiss fell upon the thumb ; but woe betide those who thought to escape the consequences of giving false testimony by such subterfuge !—*Ir. L. Times.*