The Legal News.

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CHANGE OF JUDICIAL SYSTEM.

Expedition is popularly associated with superior ability, and it is true no doubt that work rapidly done is often excellently done. But Sir Watkin Williams, in a recent address referring to the changes in the judicial system of England, held up the other side of the shield. In the "good old days," as they were called, of Lord Ellenborough and Lord Abinger, it was the boast of the judges that they could despatch thirty-five causes in a day; "they, in fact, crushed through a cause list like an elephant through a rice plantation. Law was dissociated from justice and right, and became a common by-word for absurdity and wrong." "Unintelligible technicalities," he added, "were now being rapidly swept away; causes were thoroughly tried on their merits; but in place of hours they occupied days; they were more open to popular criticism on their merits, and appeals were multiplied. One thing, at least, was certain,—that there was now a more thorough attempt to do real justice as well as to administer mere law."

Another change that will probably soon be demanded is the reduction of solicitors' costs. Litigation in England is doubtless greatly restricted by the enormous charges which attorneys pile up, to the ruin of the unsuccessful litigant at least, if not both parties. "There are certain well-known firms of solicitors," says one English journal, "who can never be got to render a statement. They are perpetually applying for cheques on account, and generally have the faculty of asking for these at some critical time in the procedure, when they know that the litigant cannot help paying, in order that his case may go on. Other solicitors punish the inquisitiveness of any who may wish for a detailed bill of costs, by making it out to an extent vastly in excess of the round sum originally demanded."

The attorneys, however, have always presented an unbroken front to any assault upon their cherished privileges. Some of our readers may remember Brougham's outburst when the attorneys assailed him on account of his bill for the establishment of local jurisdiction: "Let them not lay the flattering unction to their souls," he exclaimed, "that I can be prevented by a combination of all the attorneys in Christendom, or any apprehensions of injury to myself, from endeavoring to make justice pure and cheap. These gentlemen are much mistaken if they think I will die without defending myself. The question may be whether barristers or attorneys shall prevail; and I see no reason why barristers should not open their doors to clients without the intervention of attorneys and their long bills of costs. If I discover that there is a combination against me, I will decidedly throw myself upon my clients—upon the country gentlemen, the merchants and manufacturers—and if I do not with the help of this House beat those leagued against me, I shall be more surprised at it than at any misadventure of my life."

FINDING LOST GOODS.

A singular case between loser and finder, *Felton* v. *Gregory*, was recently disposed of by the Supreme Judicial Court at Boston. (The judgment appears in the *Massachusetts Law Reporter*, Feb. 9, 1881.) The plaintiff found a pocket-book containing $850, which had been lost by the defendant. Four days afterwards, the loser advertised a reward of $200 for the return of the pocket-book, and the plaintiff, on production of the article, received the reward. It appeared that the loser's name was written in the book, and he could easily have been found. After paying the money, the loser of the book brought a criminal complaint against the finder (under Gen. Sts., c. 79, § 1), for not returning the lost property immediately, without waiting for the reward; whereupon the finder, alarmed at the prospect of imprisonment, paid back the reward, but subsequently instituted an action to recover the money, on the ground that he had paid it under duress. The Court decided that there was no duress, the only coercion influencing the mind of the finder in this case being the fear of the consequences of his own criminal act.

STOPPING THE SUPPLIES.

A curious provision has been introduced into the Constitution of the State of California. It reads as follows: "No judge of a Superior

Court, nor of the Supreme Court, shall after the first day of July, 1880, be allowed to draw or receive any monthly salary, unless he shall take and subscribe an affidavit, before an officer entitled to administer oaths, that no cause in his court remains undecided that has been submitted for decision for the period of ninety days."

It has been decided, under this provision, that the failure to make an affidavit does not work a forfeiture of the salary, but that arrears may be claimed as soon as the law has been complied with. The legislators of the Pacific Coast have certainly a practical method of lawmaking.

NOTES OF CASES.

SUPREME COURT OF CANADA.

OTTAWA, 1881.

POWER v. ELLIS.

Witness—Refusal to answer questions on cross-examination—Privileged communications—Misdirection.

Plaintiff (respondent on appeal), a teller in a bank in New York, absconded with the funds of the bank, and came to St. John, N.B., where he was arrested by the defendant (appellant on appeal), a detective residing in Halifax, N.S., and imprisoned in the police station for several hours. No charge having been made against him, he was released. While plaintiff was in custody at the police station, the defendant went to the plaintiff's boarding house, and saw his wife, and read to her a telegram, and demanded and obtained from her the money she had in her possession, telling her that it belonged to the National Bank and that her husband was in custody.

In an action for assault and false imprisonment, and for money had and received, the defendant pleaded *inter alia*, that the money had been fraudulently stolen by the plaintiff, at the city of New York, from the National Park Bank, and was not the money of the plaintiff; that defendant, as agent for the Bank, and acting for the Bank, received the money to and for the use of the Bank, and paid it over to them.

Several witnesses were examined, and the plaintiff, having been called as a witness on his behalf, did not, on cross-examination, answer certain questions, relying, as he said, upon his counsel to advise him, and on being interrogated as to his belief that his doing so would tend to criminate him, he remained silent, and on being pressed he refused to answer whether he apprehended serious consequences if he answered the questions. The judge then told the jury that there was no identification of the money, and directed them that if they should be of opinion that the money was obtained by force or duress from plaintiff's wife they should find for the plaintiff.

Held (Henry, J., dissenting), that the defendant was entitled to the oath of the party that he objected to answer because he believed his answering would tend to criminate him.

Per Gwynne, J., that there was misdirection in this case.

Barker, Q.C., for the appellant.

Weldon, Q.C., for the respondent.

TEMPLE v. NICHOLSON et al.

Bill of sale—License to grantee to take possession—Progeny—Trover.

Trover. The declaration charged the appellant with the wrongful conversion of a horse and colt, the property of the respondents.

The defendant pleaded, *inter alia*, that the colt was the property of one Thomas Hackett, and the defendant, as Sheriff of York, took the same under an execution against Hackett.

The plaintiffs claimed the property was vested in them by a mortgage bill of sale, and given to them by Hackett as collateral security with other mortgages which they had on his real estate.

The colt was the progeny of a mare which was mentioned in the bill of sale, and which always remained in the possession of Hackett. In the mortgage there was a proviso that until default said Thomas Hackett might remain in possession of all the property mortgaged or intended so to be; but with full power to the plaintiffs, in default of payment, to take possession and dispose of the property as they would see fit. At the time the colt was foaled it was proved that there had been default in payment both of principal and interest money secured by the chattel mortgage.

Held, that the plaintiffs, being under the bill of sale the absolute owners of the mare, and after default entitled to take possession of her,

and the foal having been dropped while plaintiffs were such owners and entitled to the possession of the mare, the colt was their property,—"*Partus sequitur ventrem.*"

Gregory for appellant.

Wetmore, Q.C., for respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, January 25, 1881.

DORION, C.J., MONK, RAMSAY, CROSS, BABY, JJ.

FLETCHER (plff. below), Appellant, & THE MUTUAL FIRE INSURANCE CO. FOR STANSTEAD & SHERBROOKE COUNTIES (defts. below), Respondents.

Procedure—Motion in arrest of judgment to be made before Court of Review.

The appeal was from a judgment of the Superior Court, at Sherbrooke, granting a motion for a new trial.

The action was brought for $800, amount of respondent's policy, and the case being tried before a special jury, the appellant obtained a verdict for $600.

The respondents then gave notice of three motions, one asking for a new trial, a second in arrest of judgment, and the third for judgment *non obstante veredicto.*

The second of these motions—that in arrest of judgment—was presented to the Superior Court at Sherbrooke, and was granted. It was from this judgment that the present appeal was taken. (The other two motions, according to the notice, were to be presented before the Court of Review at Montreal).

The appellant, among other grounds, contended that the Court, consisting of one judge, could not legally adjudicate upon a motion in arrest of judgment.

The appeal was maintained, and the judgment reversed unanimously. The judgment reads as follows:—

"Considering that under Art. 423, C.C.P., as amended by 34 Vict. ch. 4, sect. 10, and by 35 Vict. ch. 6, sect. 13, and under the provisions of Art. 424, all motions for new trial, for judgment *non obstante veredicto*, and in arrest of judgment, must be made before three Judges of the Superior Court sitting in Review, and that a single Judge sitting in the Superior Court had no jurisdiction to hear and adjudicate on the motion in arrest of judgment made in this cause;

"And considering further that the said motion in arrest of judgment is not based on any of the grounds for which a motion in arrest of judgment can be made;

"And considering that there is error in the judgment rendered by the Superior Court sitting at Sherbrooke on the 20th of November, 1878;

"This Court doth reverse the said judgment of the 20th November, 1878, and doth reject the said motion in arrest of judgment, and doth condemn the respondents to pay to the appellant the costs incurred as well on the said motion as on the present appeal, and the Court doth order that the record be remitted to the Court below, in order that such further proceedings may be had as to justice may appertain."

Judgment reversed.

Ives, Brown & Merry for appellant.

Brooks, Camirand & Hurd for respondents

COURT OF QUEEN'S BENCH.

MONTREAL, January 27, 1881.

DORION, C. J., MONK, RAMSAY, CROSS, BABY, JJ.

THE CORPORATION OF THE VILLAGE OF VERDUN (plff. below), Appellant, and LES SŒURS DE LA CONGREGATION NOTRE DAME DE MONTREAL (defts. below), Respondents.

Art. 712, *Municipal Code—Exemption from Taxation—Religious and Educational Institutions—Property not possessed solely to derive a revenue therefrom.*

The appeal was from a judgment of the Superior Court, Montreal, Johnson, J., Dec. 20, 1878, which will be found reported in 1 Legal News, p. 619.

The question was whether the respondents' property, Ile St. Paul, was exempt from municipal and school taxes.

Exemption was claimed under Art. 712, Municipal Code, which reads as follows: "The following property is not taxable: 3. Property belonging to *fabriques*, or to religious, charitable or educational institutions or corporations, or occupied by such *fabriques*, institutions or corporations for the ends for which they were established, and not possessed solely by them to derive a revenue therefrom."

The property in question, which comprises about 800 acres, and is situate in the River St. Lawrence, at the foot of the Lachine rapids, was given to the respondents over a century ago, for educational purposes. They maintain an establishment on the Island, and nuns who are sick or who require repose are sent thither for health and relaxation. Two thirds of the land is arable and the rest wooded, and it appeared that the produce was consumed either at the establishment on the Island, or at the parent institution in the City of Montreal.

The appellants claimed that the property was possessed solely to derive a revenue therefrom, and did not fall within the exemption. It was further contended, as regards the school taxes, that the exemption is limited to the buildings set apart for purposes of education, and the grounds or land on which such buildings are erected. Here the property was a large farm, and the buildings did not cover more than six acres.

The Court below dismissed the action for the recovery of taxes on the following grounds:—

"Considering that by law, to wit: Article 712 of the Municipal Code, the defendants are not liable to pay to the plaintiffs the sums demanded; that by paragraph 3, of the said Art. 712, property belonging to *fabriques*, or to religious, charitable, or educational institutions or corporations, or occupied by such for the purposes for which they were established, and not possessed solely by them to derive a revenue therefrom, is not taxable;

"Considering that the defendants' property, which has been taxed for the amount now sought to be recovered, belongs to them, and is occupied by them as a charitable and educational corporation for the ends for which they were established, and is not possessed by them solely to derive a revenue therefrom; the plea of the said defendants is maintained, and the plaintiff's action is dismissed, with costs, *distraits*," &c.

In appeal the judgment was confirmed, Dorion, C.J., and Cross, J., dissenting.

D. Macmaster for Appellants.

Lacoste & Globensky for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, January 25, 1881.

DORION, C. J., MONK, RAMSAY, CROSS, BABY, JJ.

LA BANQUE JACQUES CARTIER (deft. below), Appellant, & BEAUSOLEIL es qual. (plff. below), Respondent.

Insolvent Act of 1875, *Sect.* 68—*Action by creditor —Proof of claim.*

The appeal was from a judgment of the Court of Review at Montreal, July 9, 1879, reversing a judgment of the Superior Court, Jetté, J., Dec. 21, 1878. (For the judgment of the Court of Review see 2 Legal News, p. 253.)

The action was brought under Sect. 68 of the Insolvent Act of 1875, in the name of the assignee to the estate of one Champagne, an insolvent, to recover a sum of $320.

The facts were that a writ of attachment was, on the 27th April, 1877, issued against the estate of Champagne at the instance of the Bank (now appellant), but before the day fixed for the return of the writ Champagne paid the amount ($320), and thereupon the Bank dropped the proceedings in insolvency. Five days after the first writ issued, another writ of attachment was issued against the estate of Champagne, at the instance of Stirling, McCall & Co., other creditors of Champagne, and Beausoleil in due course was appointed assignee.

The assignee having declined to take proceedings to recover back the $320 paid to the Bank as above mentioned, the present suit was instituted by Stirling, McCall & Co., in the name of the assignee, as permitted by Sect. 68 of the Insolvent Act of 1875.

The Superior Court dismissed the action on the following grounds:—

"Considérant que la présente action est intentée contre la défenderesse au nom du demandeur ès-qualité de syndic à la faillite du nommé Rémi Champagne, pour faire remettre et payer par la dite défenderesse une somme de $320, que le demandeur ès-qualité allègue avoir été reçue par la défenderesse dans les trente jours qui ont précédé la faillite du dit Champagne, et lorsqu'il était déjà, à la connaissance de la défenderesse, en état d'insolvabilité complète, ce qui, aux termes de la clause 134 de l'acte de faillite, aurait rendu le dit paiement nul;

"Considérant que bien que la dite action soit intentée au nom du demandeur ès-qualité, il appert néanmoins qu'elle ne l'est que pour le bénéfice et avantage exclusif de John Stirling, John McCall et Joseph Shehyn, faisant affaires

en société sous la raison sociale de "Stirling, McCall & Co." et ce, sur autorisation du juge donnée aux dits "Stirling, McCall & Co." vu le refus du demandeur ès-qualité, agissant sous l'autorisation des Inspecteurs à la dite faillite, de prendre lui-même la dite poursuite;

"Considérant qu'en conséquence, aux termes de la section 68 de l'acte de faillite, les dits Stirling, McCall & Co. pourraient seuls et à l'exclusion de tous autres, prétendre à tout bénéfice et avantage pouvant résulter de l'annulation du paiement fait par le dit failli à la défenderesse comme susdit, si telle annulation était prononcée en la présente cause;

"Considérant que la demande en nullité de paiement telle qu'exercée par la présente action n'est recevable que jusqu'à concurrence de l'intérêt certain et déterminé de la partie pour l'avantage de laquelle elle est faite;

"Considérant que bien qu'il soit allégué par la dite action que les dits Stirling, McCall & Cie. sont créanciers du dit failli Rémi Champagne, le chiffre de leur créance n'est cependant mentionné ni établi nulle part dans la procédure;

"Considérant en conséquence que la dite action n'allègue et ne démontre aucun intérêt appréciable et suffisant pour faire la base d'une condamnation quelconque;

"Renvoie la dite action," &c.

In review, the above judgment was reversed for the following reasons:—

"Considering that there is error in the said judgment in dismissing the plaintiff's action for the reasons therein mentioned, and considering that the plaintiff *es-qualité* was and is entitled to judgment in his favor as in and by his said action is prayed, doth, revising said judgment, reverse the same, and proceeding to render the judgment that ought to have been rendered in the premises;

"Considering that the present action is brought by the plaintiff in his quality of assignee duly appointed under the provisions of the Insolvent Act of 1875 to the insolvent estate and effects of Rémi Champagne, of the parish of St. Philippe, in the district of Montreal, trader, to recover back a sum of $320 and interest from the defendant, who is alleged to have been paid the same by the said insolvent in violation of 134th section of the said Insolvent Act of 1875;

"Considering that the said action, although so brought by the said plaintiff *es-qualité*, is instituted for the benefit of Stirling, McCall & Company in the plaintiff's declaration mentioned, under an order of a judge issued under section 68 of the said Insolvent Act;

"Considering that the interest of Stirling, McCall & Co. is not in issue, and that the said plaintiff in his said quality has authority under the said 68th section and under the said order of the judge to bring the said action in manner and form as the same has been brought;

"Considering that the said payment was illegal, null and void and the defendants, at the time they took it, knew that the said Rémi Champagne was insolvent and admit as much in their pleas;

"Considering that under the operation of the said Insolvent act and of the Judge's order permitting the assignee to sue in this case, the defendants have no other defence to the action than they would have had if all the creditors, instead of renouncing their rights in favor of the said Stirling, McCall & Co., had sued in the name of the assignee for their joint benefit;

"Doth adjudge and condemn the defendants to pay and satisfy," &c.

In appeal, the judgment in revision was reversed, and the judgment of the Superior Court *en première instance* was restored, the reasons being recorded as follows:—

"Considering that the action is brought by plaintiff in his capacity of official assignee, for the benefit of Stirling, McCall & Co., and that in effect the said firm of Stirling, McCall & Co., is the real *dominus litis*, the name of the assignee being used in compliance with a formality of law;

"Considering that the appellant received the sum of $320 from the insolvent Champagne, on a conservatory process, to wit, by *capias*, and that there is no fraud in so receiving the said sum, but on the contrary that the said process was beneficial to the creditors of the said assignee;

"And considering, therefore, that the said firm had no greater right or claim to the said sum than the said appellant;

"Considering that the said firm has not proved the amount of its claim against the estate of the insolvent Champagne, and consequently has not shown any right to any par-

ticular part or share of the sum sought to be recovered, to wit $320;

"And considering that there is error in the judgment rendered by the Superior Court sitting as a Court of Review at Montreal on the 9th of July, 1879;

"Doth reverse and annul the same, and proceeding to render the judgment which the said court ought to have rendered, doth confirm the judgment rendered by the Superior Court at Montreal on the 21st of December, 1878, and doth condemn the said respondent to pay to the appellants the costs as well in the Court of Review as in the Court here." (Dorion, C. J. and Cross, J. dissenting.)

Judgment reversed.

Lacoste, Globensky & Bisaillon, for Appellant.

Bethune & Bethune, for Respondent.

COURT OF REVIEW.

MONTREAL, March 31, 1881.

JOHNSON, RAINVILLE, PAPINEAU, JJ.

[From S.C., Montreal.

LEROUX v. HUDON COTTON CO.

Damages—Negligence—Personal Injuries.

The appeal was from a judgment rendered by the Superior Court, Torrance, J., Jan. 31, 1881, condemning the defendants to pay $500 damages.

The action was brought for the recovery of damages suffered by plaintiff, in consequence of an empty barrel, thrown from an upper window of the defendants' cotton factory, falling upon him. (See 4 Legal News, p. 46, for report of the case before the Superior Court.)

RAINVILLE, J., who rendered the judgment in Review, remarked that the defendants were clearly responsible under the circumstances of the case. As to the amount of damages awarded, the Court below had allowed $500, which was only $200 more than the defendants had tendered. In view of certain recent decisions of the Supreme Court it would not be prudent to disturb the award of the Judge *a quo*.

Judgment confirmed.

E. U. Piché, for plaintiff.

Beique & Co., for defendants.

COURT OF REVIEW.

MONTREAL, March 31, 1881.

JOHNSON, TORRANCE, JETTE, JJ.

[From S.C., Montreal.

DARLING es qual. v. MCINTYRE et al.

Unpaid vendor—Right to take back goods sold and delivered to insolvent (but immediately returned by him) within thirty days before insolvency.

The plaintiff was the assignee of one James Hynes, and defendants were wholesale dry goods merchants at Montreal. The action was instituted under the Insolvent Act of 1875, ss. 132, 133, 134, 135, to recover goods alleged to have been delivered, transferred, and conveyed to defendants by James Hynes within thirty days before insolvency, and with a view of giving a fraudulent preference over his other creditors. Darling alleged the value of these goods to be $523.31.

McIntyre & Co. pleaded that on or about the 15th March, 1880, James Hynes bought and ordered from defendants the goods mentioned and detailed on the first and second pages of plaintiff's account; that these goods were shipped by the Grand Trunk Railway Company to Hynes, at Prescott, on the 16th and 17th March, and arrived at Prescott on the 19th March; that Hynes refused to receive these goods, and returned them to defendant on the 20th March, and thereby the sale was cancelled; that defendants as the unpaid vendors had a right to have the sale cancelled and the goods returned to them, and that the consent of Hynes to this was not a fraudulent preference, inasmuch as he had never appropriated or taken possession of the goods; that as to the goods mentioned in the third page of the account ($154.67), McIntyre & Co. admitted that these goods were sent on the 22nd March, 1880, and received by them; but they said the value was only $97.65, and offered to confess judgment for so much, and asked that plaintiff's action be dismissed as to the surplus.

The proof established that the goods that were shipped on the 16th and 18th March arrived at Prescott on the 19th March, and that Hynes declared that he would not take delivery of them; that these goods were brought to Hynes' store without his knowledge, by one of the public carters of Prescott, who had carted for Hynes for years, and who was in the habit when any package was at the station for Hynes, to take them, whether he had been instructed to do so or not; that his clerks took them in and opened the packages, and took out the goods, but did not mix them with the other

goods, but kept them separate; that when Hynes found that the goods had been taken out of the cases he said he would not keep them, and refused to allow his clerks to mix them with his stock or to break in on the lots, but ordered them to be kept separate, and that they should be returned to McIntyre & Co. The goods were then put back into their cases, and the next day, 20th March, returned to the railway, addressed to McIntyre & Co., at Montreal, and were delivered to them on the 24th March. Hines was put into insolvency on the 27th March.

The judgment was in these words :—

"Considérant qu'aux termes de l'Article 1543 du Code Civil du Bas Canada, le vendeur non-payé a droit d'exercer l'action en résolution de vente ;

"Considérant que le dit James Hynes à qui les marchandises en question avaient été vendues, les a reçues dans son magasin, sans les déballer ni les développer ;

"Considérant qu'il est prouvé qu'il les a mises à part et ne les a pas exposées en vente, mais au contraire, a donné ordre à ses commis de ne pas les vendre ;

"Considérant que le dit James Hynes a renvoyé les dites marchandises aux dits défendeurs immédiatement après leur réception et que, par ce fait, la vente a été résolue d'un commun consentement, ce que les parties avaient alors le droit de faire ; maintient le plaidoyer des défendeurs," &c.

TORRANCE, J. The intention of the vendee to take possession is a material fact. *James* v. *Griffin*, 2 M. & W. 623. So in *Whitehead* v. *Anderson*, 9 M. & W. 529, Parke, B., said the question is *quo animo* the act is done. In the present case, the judge has found that the insolvent, whose clerks received the goods, did not accept them. On the contrary, being apprehensive of insolvency, he kept them separate and returned them to the vendor. The Court has held, on the facts stated by the witnesses before it, that the intention of the insolvent was against acceptance, and the construction put upon the acts of the insolvent by the Court was a most reasonable one, and entirely uncontradicted. As to the goods for which the defendants have confessed judgment, the only value put upon them is sixty-three cents in the dollar on the original cost. On the whole, the conclusion of the Court here is that the judgment is correct.*

T. P. Butler for plaintiff.

L. N. Benjamin for defendants.

CIRCUIT COURT.

MONTREAL, March 21, 1881.

Before JETTE, J.

PATENAUDE et al. v. MCCULLOCH.

Practice—Tax on filing pleas.

The defendant (in an action under $25) moved for a rule against the Clerk of the Court, who refused to receive a plea to the merits without a stamp of 30 cents, although the defendant had already paid 30 cents on filing an *exception à la forme.*

Held, that in actions of $60 and under, the tariff requires the payment of one fee only on the filing of pleas to the action, and where such fee has been paid on the filing of an exception *à la forme*, or other preliminary plea, no further fee is exigible on the pleas to the merits subsequently filed.—*Thibault* v. *Coderre*, 15 L.C.J. 330, followed.

Motion granted.

J. G. D'Amour, for defendant moving.

J. L. Archambault, for clerk of Court.

RECENT DECISIONS AT QUEBEC.

Superintendent of Public Instruction, Authority of—Mandamus.—La maison d'école de l'arrondissement No. 1 de la paroisse de St. Jean île d'Orleans, étant devenu vieille et insuffisante, les commissaires décidèrent de la rebâtir au même endroitet passèrent, le 31 Janvier, 1877, une résolution à cet effet. Plus tard, ils adoptèrent une nouvelle résolution tendant à acheter le vieux presbytère pour y établir la maison d'école. Ces procédures furent désapprouvées par le surintendant, et le 23 Janvier, 1879, les commissaires adoptent une nouvelle résolution autorisant le président et le secrétaire à acheter une autre maison, ce qui fut fait.

Appel de cette procédure fut interjeté devant le surintendant, qui par sa sentence du 19 Mars, 1879, cassa la résolution du 23 Janvier, et ordonna la construction d'une maison d'école

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* *Vide* Benjamin on Sales, 2nd Ed., p. 402-3, 708-9, 711; *Henderson* v. *Tremblay*, 21 L.C.J. 24; *In re Hatchette & Gooderham*, 21 L.C.J. 165.

sur l'ancien emplacement, etc. Les commissaires ayant refusé d'exécuter cette sentence, il fut émané un bref de mandamus.

Jugé (renversant le jugement de la cour inférieure): 1. Que le surintendant de l'instruction publique avait par la loi, le droit d'ordonner aux intimés de construire la maison d'école sur l'emplacement par lui désigné.

2. Que la réponse des commissaires (alors en possession du dit emplacement), qu'ils étaient dans l'impossibilité de se conformer à la dite sentence, parce qu'ils n'avaient pas de titres à cette propriété, etc., et qu'ils étaient exposés à être troublés par la fabrique, n'était pas admissible, et qu'ils n'avaient aucun intérêt à la soulever.—*Delisle & Les Commissaires d'école de St. Jean*, (Q.B.) 6 Q.L.R. 322.

Ship—Collision.—Where two vessels at sea, sailing, one on the starboard and the other on the port tack, came into collision, the latter was held to be in fault for not keeping out of the way, as directed by the 12th article of the sailing rules, which says: "When two sailing vessels are crossing so as to involve the risk of collision, then, if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side; except in the case in which the ship with the wind on the port side is close hauled and the other ship free, in which case the latter ship shall keep out of the way."—*The Princess Royal* (Vice-Admiralty Court), 6 Q.B. 342.

Usufruct—Movables.—*Jugé*, que l'usufruit et jouisance des meubles meublants, et des choses qui, sans se consommer de suite, se détériorent peu à peu par l'usage, détenus à titre d'usufruit, ne peuvent être saisis et vendus par les créanciers de l'usufruitier.—*Bertrand* v. *Pepin dit Lachance* (C C.), jugement par Stuart, J.—6 Q.L.R. 352.

Married woman sued as widow.—*Jugé*, que quand une femme est poursuivie comme veuve, et que par exception à la forme, elle établit qu'avant l'institution de l'action elle était remariée, l'action doit être déboutée, et qu'une réponse spéciale alléguant "que la dette a été contractée par la défenderesse pendant son veuvage, qu'elle est séparée de biens avec son nouvel époux," sera déboutée sur une réplique en droit.—*Dynes* v. *Falardeau* (C.C.), jugement par Caron, J.—6 Q.L.R. 348.

Salary of public officer—Attachment.—In the case of an attachment of the salary of a public officer under the provisions of the Statute, 38 Vict. c. 12, there being no one upon whom an order binding as a judgment can be made, the Court will simply declare that the seizable part of defendant's salary, so long as he continues to be employed as a public officer, may be paid to the plaintiff until his debt be discharged. Meredith, C.J., said: "In ordinary cases it might be difficult to do anything beyond merely continuing the *saisie-arrêt*, because a judgment ordering a *tiers saisi* to pay to the seizing creditor would have the effect of transferring the debt seized, but that effect could not be produced under the present *saisie-arrêt*, there being no one upon whom an order binding as a judgment could be made. The Crown plainly could not be bound, and the *tiers saisi*, it is equally plain, cannot be bound, as he owes nothing personally. All that we can do, in a case such as the present, is to declare that, under the Statute, the seizable part of the salary of the defendant shall be payable in a particular way, whereas in ordinary cases a judgment such as that just mentioned, which in effect would be merely permissive, could hardly be rendered." In conclusion, the Chief Justice remarked: "I shall add merely that the Statute will probably require amendment, so as to provide for the case of several seizures of the same salary, in which case ruinous costs would be avoided, if the division of the seizable portion of the salary were (at least where there is no contestation) left to the head of the department from which the salary is payable; and as the continuance of the salary is altogether in the discretion of the Government, it does not seem to me that there could be any serious objection to the course proposed.—*Burke* v. *Colfer*, & Hon. E. T. Paquet, T.S. (S.C.) Opinion by Meredith, C.J.—6 Q.L R. 349.

Right of action—Jurisdiction.—Poursuite prise à Québec sur un billet promissoire portant avoir été consenti à Québec, quoique de fait, il ait été signé à Ste. Luce, (Rimouski.) *Jugé*, que le défendeur en signant le billet et le transmettant de Ste. Luce à Québec aux demandeurs, a accepté la jurisdiction mentionnée sur le dit billet, et que l'action a originée à Québec.—*Thibaudeau* v. *Danjou*, (S.C.), jugement par Caron, J.—6 Q.L.R. 351.