The Legal News.

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INSANITY AS A DEFENCE.

In connection with the *Haywern* case, tried recently at Montreal, in which some rather extraordinary views on the subject of insanity as a defence were put prominently forward in a portion of the medical testimony, it may be interesting to refer to a case decided not long ago by the Supreme Court of Alabama, *Braswell* v. *State* (reported in 2 Crim. Law Magazine, 32), in which the observations of the Court, and the authorities cited, serve to elucidate the subject. Judge Stone, who delivered the opinion of the Court, quoted the *dictum* of Chief Justice Gibson in *Cane* v. *Maslu*, 4 Pa. St. 264, that "there may be an unseen ligament pressing upon the mind, drawing it to consequences which it sees, but cannot avoid, and placing it under coercion which, while its results are clearly perceived, it is incapable of resisting," and remarked: "With all respect for the great jurist who uttered this language, we submit if this is not almost or quite the synonym of that highest evidence of murderous intent known to the common law: *a heart totally depraved and fatally bent on mischief.* Well might he add: 'The 'doctrine which acknowledges this mania is 'dangerous in its relations, and can be recog- 'nized only in the clearest cases. It ought to 'be shown to have been habitual, or, at least, 'to have evinced itself in more than a single 'instance.'"

The Court also referred to the case of *McNaghten*, in 1843 (10 Cl. & Fin. 200), which came before the English House of Lords for trial, and their lordships submitted certain questions to the judges, which were answered by Chief Justice Tindal, speaking for all the judges except Mr. Justice Maule. Among the questions were the following:—

1. What is the law respecting alleged crimes committed by persons afflicted with insane delusions on one or more particular subjects or persons? As, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some supposed public benefit.

2. What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, fo example), and insanity is set up as a defence?

3. In what terms ought the question to be left to the jury as to the prisoner's state of mind when the act was committed?

4. If a person under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?

The answer of the judges was as follows:—

"In answer to the first question, assuming that your lordships' inquiries are confined to those persons who labor under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew at the time of committing such a crime that he was acting contrary to law, by which expression we understand your lordships to mean the law of the land.

"As the second and third questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jury ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between

right and wrong; which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused were conscious that the act was one which he ought not to do, and if that act was at the time contrary to the law of the land, he is punishable, and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course, we think, is correct, accompanied with such observations and explanations as the circumstances of each particular case may require.

"The answer to the fourth question must, of course, depend upon the nature of the delusion; but making the same assumption as we did before, namely, that he labors under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of delusion, he supposes another man to be in the act of attempting to take away his life, and he kills the man, as he supposes, in self-defence, he would be exempt from punishment. If his defence was that the deceased had inflicted a serious injury on his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

PUNISHMENT OF INSANE HOMICIDES.

While upon the subject of insanity, we may notice a new system of treating insane homicides which, by a correspondent of the *Kentucky Law Journal*, is said to have been lately applied in France upon a limited scale, but with marked success. "No man can be acquitted of a crime on account of his insanity, unless, through his counsel, he pleads his insanity. This throws upon him and his counsel the responsibility of accepting the issue,—sane or insane. If he be acquitted because of his insanity, he is confined, not in a common penitentiary (for his confinement is not intended for punishment), nor in an insane asylum, subject to be discharged upon the ready certificate of a physician; but he is imprisoned, at all events, for a fixed time, and is subjected to medical treatment, but, under no circumstances, to a doctor's discharge. Nor is he subjected to hard labor nor to the debasing *régime* of a common jail. The period of confinement is scaled according to the nature of the offence charged, but in no case is proposed to extend over the prisoner's whole life. If during the prisoner's life his term of imprisonment should expire, he can be released only after his insanity is positively established by evidence to the satisfaction of a number of inquisitors selected with a view to perfect freedom from the influence of the prisoner and his friends. It is the duty of the attorney for the state to oppose the discharge."

APPOINTMENT.—Mr. Mathieu, Q. C., of Sorel, has been appointed a judge of the Superior Court, in the place of the late judge Olivier.

PAROL CONTRACTS OF INSURANCE.

We have received a copy of the decision of the Supreme Court of Missouri, in the case of *Baile et al.* v. *St. Joseph Fire and Marine Ins. Co.*, decided at the April Term, 1881. This decision is of great importance, the Court laying down the rule, for the first time, that on an oral contract of insurance the assured may, in equity, recover. A somewhat similar case was determined before by the Supreme Court, (*Henning* v. *United States Ins. Co.*, 47 Mo. 425), which was an action *at law* to recover on a verbal contract of insurance. In that case, the insurance company's charter provided that "the condition of all policies issued by such company shall be written or printed on the face thereof;" and also that "all policies and contracts of insurance, and instruments of guarantee, made by said company shall be subscribed by the president, or president *pro tempore*, and attested by the secretary." The Court, in that case, held that "corporations, where they are not restrained

in any particular manner by their charter, may adopt all reasonable modes in the execution of their business which a natural person may adopt in the exercise of similar powers"; but, relying on the provisions of the charter above quoted, it was held that plaintiff could not recover on a naked verbal agreement. The same case seems somehow to have got into the Federal Court (*Henning* v. *United States Ins. Co.*, 2 Dill. 26), and a ruling entirely different was there made, the Federal Court holding that when the charter was granted to the insurance company, the General Statutes of Missouri then in force declared that all charters thereafter granted should, unless otherwise expressed, be subject to the provisions of the general law respecting corporations, and sec. 8, p. 232, of the Revised Code of 1845 declares that "*parol contracts* may be binding on aggregate corporations, if made by an agent duly authorized by a corporate vote, or under the general regulations of the corporation, and *contracts may be implied* on the part of such corporations from their corporate acts, or those of an agent whose powers are of a general character." The Federal Court therefore held that "the defendant was not released from, but by implication subjected to, this provision of the general law."

The Supreme Court now hold, in the case first above mentioned, that the ruling of the Federal Court was proper, and that the opinion of the Supreme Court in the case of *Henning* v. *United States Ins. Co.*, *supra*, was mainly *obiter*, and that in deciding that case, sec. 8, p. 232, of the Code of 1845, above referred to, had been overlooked, although it has been on the statute book for over 35 years. The Court also draws a distinction between that case and the case now decided, on the ground that the former case was a suit *at law* on an alleged oral and completed agreement, while the latter case was a proceeding *in equity* to compel that to be done which already, upon sufficient consideration, had been agreed should be done; and in that view it was unnecessary for the Court to overrule its decision in the previous case. Sherwood, C. J., delivered the opinion of the Court, in very clear and forcible language. Hugh and Henry, JJ., dissented, so that the conclusion reached was only by a majority of one.—*Southern Law Review.*

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 29, 1881.

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

WINDSOR HOTEL CO. (plffs. below), Appellants, and LEWIS et al. (defts. below), Respondents.

Company—Defects in organization pleaded in answer to action for calls.

The appeal was from a judgment of the Superior Court, Montreal, (Rainville, J.) April 30, 1879, dismissing the appellants' action.

RAMSAY, J. The action in this case is for calls on the shares of a joint stock company held by respondents.

They resist the demand on the following grounds: 1st. That the directors represented that the building would only cost $500,000. 2nd. That the subscription of defendants should not be considered, and that the work should not be commenced, until $400,000 had been subscribed. 3rd. That they had been induced to subscribe for these shares on the false representation, that certain parties were subscribers who were not really subscribers for the amounts opposite their names. 4th. That the first meeting to elect directors was only to be held when $400,000 had been subscribed, and when $40,000 had been paid into one of the chartered banks in Montreal; that the meeting was called on the 9th November, 1875, when $400,000 were not subscribed, and when $40,000 had not been paid in. 5th. That the calls were made by persons not authorized to make such calls. The prayer is that the subscription of defendants may be declared not binding on them; that the calls be declared to have been illegally made, and that the action be dismissed.

There is no undertaking in the prospectus that the building will only cost $500,000. It is only given as the estimated cost of the building. It appears that one of the defendants assisted in the verification of the fact that the $400,000 were subscribed before the first meeting. In addition to this they have both paid calls. This seems at all events to throw the *onus* of proof on them that the $400,000 were not paid. On the contrary their evidence goes to show that there were $400,000 subscribed. We need not then examine what the legal consequences would be if the fact had been established that $400,000 had not

been paid, and particularly whether it would have relieved one who had participated in the irregularity from paying his calls.

There is no evidence of any special warranty that certain persons would hold the shares. All that the defendants could claim was that $400,000 had not been subscribed. I may add that no special representations appear to have been made. The objection to the deposit seems to embrace two subjects of complaint—firstly, that there had never been at the time of holding the first meeting $40,000 actually paid up, inasmuch as $4,000 was a loan by the Merchants' Bank to the company on the collateral security of the joint note of Messrs. Gibb and Phillips; secondly, that there never had been at any time $40,000 paid up on the stock at the rate of 10 per cent., and that of the money paid up, portions had been expended properly or improperly by the provisional directors.

With regard to the pretended loan of $4,000 to the company, I think that it is perfectly established that no such loan took place; that Messrs. Phillips and Gibb obtained the money on their own responsibility; and that it was paid over to the credit of the company. The writing of the word "loan" on the company's pass-book was either an error, or a memorandum; but it certainly did not constitute a title to recover back from the company the amount if the note had not been paid. As a fact the note was paid, and by the parties giving it, within a few days, showing the perfect fairness of the transaction.

The second point turns on the words of the statute. I don't think the statute requires anything more than that $40,000 shall be paid on account of stock, and that this shall be deposited in a chartered bank. It is not required that the money so paid shall be a tenth of each share. Again, I do not think it was necessary that the whole $40,000 should remain there until the meeting for the election of directors. The provisional directors were entitled to spend what was necessary for the "management of the affairs of the company," and I do not think that even if they exceeded their powers and expended some of the money in what was not strictly necessary, it would give a shareholder the right to refuse to pay calls, more particularly where the acts of the provisional directors were adopted by the company, as in this case.

The 5th and last objection appears to me to be only another way of testing respondent's pretensions.

The judgment is as follows:

"Considering that the appellant, the Windsor Hotel Company, has proved the material allegations of its declaration, and namely that the respondents have jointly subscribed for 50 shares in the capital stock of the said company of $100 per share, and that they are indebted to the said company for seven calls of ten dollars each on the said 50 shares, to wit, for the 4th, 5th, 6th, 7th, 8th, 9th and 10th calls on said stock, said calls amounting to $3,500;

"And considering that the said defendants have not proved the material allegations of their pleas, and that the said respondents having as shareholders paid the three first calls on the said 50 shares of the capital stock of the said company, part of which were paid after the organization of the said company, cannot now avail themselves of any of the pretended irregularities complained of by their said pleas;

"And considering that there is error in the judgment rendered on the 30th April, 1879, by the Superior Court sitting at Montreal;

"This Court doth reverse the said judgment of the 30th April, 1879;

"And proceeding to render the judgment which the said Superior Court should have rendered, doth condemn the said respondents jointly and severally to pay to the appellant the said sum of $3,500, with interest on $500 from 22nd May, 1876; on $500 from 21st July, 1876; on $500 from 21st September, 1876; on $500 from 21st November, 1876; on $500 from 22nd January, 1877; on $500 from 21st March, 1877, and on $500 from 21st May, 1877, until paid; and doth further condemn the said respondents to pay to the appellants the costs incurred as well in the Court below as on the present appeal."

Judgment reversed.

Abbott, Tait, Wotherspoon & Abbotts for appellants.

Edw. Carter, Q. C., for respondent.

SUPERIOR COURT.

MONTREAL, Oct. 11, 1881.

Before TORRANCE, J.

LA BANQUE D'HOCHELAGA v. THE MONTREAL, PORTLAND & BOSTON RAILWAY CO., and THE CONNECTICUT & PASSUMPSIC RAILWAY CO., opposants.

Execution—Seizure of Railway.

Held (following Corp. Co. Drummond & South-Eastern Railway Co.,) that the railway of an incorporated company may be seized and sold, in execution of a judgment in favor of a mortgage creditor.

PER CURIAM. The railway of the defendants was taken in execution by the Bank, and the opposants, who were large bondholders holding a mortgage on the road seized, opposed the sale on the ground that the railroad could not by law be taken in execution. The question here was the same question which had been raised and decided in Corporation Co. Drummond and The South-Eastern Railway Company, 3 Legal News, 2, and 24 L. C. J. 276. The plaintiff demurred to the opposition, and the Court here, following the decision referred to, would maintain the demurrer and dismiss the opposition, on the ground that the railway could be taken in execution.

Demurrer maintained.

Lonergan, for opposants.

Beique & McGoun, for La Banque d'Hochelaga.

SUPERIOR COURT.

MONTREAL, Sept. 27, 1881.

Before MACKAY, J.

In re MULHOLLAND & BAKER, insolvents, HENRY MULHOLLAND, petitioner for discharge, and FAIR *es qualité*, contesting.

Petition for discharge after year—Dividend—Explanation of deficit.

MACKAY, J. Henry Mulholland, one of the bankrupts, petitioned in 1878 for discharge after the year. His creditors have ordered the assignee to oppose, who does so.

The petitioner alleges that he has given all notices and fulfilled all the requirements of the law, and "is now entitled to a discharge."

Upon his petition a day was fixed by himself for proof and hearing, but nothing has been offered by him but proof of notices, and certificate by the assignee of conformity of date 4th November, 1878, more than a month before the date of the petition, which is of 16th December, 1878. The assignee, on the 17th of that month (December), filed a contestation, which at that time, in the then condition of the bankruptcy law, was very likely to be fatal to the petition. It stated that bankrupt's estate had not paid and could not pay 50 cents in the dollar.

I see no answer to that contestation; after it was filed there was supreme quietness until September, 1881. In the interval the legislature changed that requirement of fifty cents dividend, putting the law back to what it had been in respect of dividend required, and making it read to require only thirty-three cents of dividend. As regards dividend, petitioners like the one before us have now to prove dividend of thirty-three cents, or render an account of the deficit. Mulholland must be allowed the advantage of the last legislation, which he must, in common with many others, have hailed with some thankfulness. It was doubtless in consequence of it that in this September he inscribed his petition case for proof and hearing.

The opposition of the assignee for the creditors has some of its force taken from it by the change of the law since it was filed. It stands now as resisting the bankrupt because his estate cannot pay thirty-three cents in the dollar. The law for the petitioner now reads that he must show that his estate will realize thirty-three cents in the dollar or render an account for the deficit; when it appears that the estate has not paid or will not realize thirty-three cents, and account is not rendered in a satisfactory manner for the deficit, the Judge may, in his discretion, suspend or refuse the discharge. The English Act of 1869 in like manner required a dividend to be of ten shillings in the pound. Roche & Hazlitt say that this was done to make the bankruptcy proceedings and Court less of a whitewashing machinery. The bankrupt, under the English law, has to prove, and to account satisfactorily for deficit where his estate does not pay ten shillings in the pound. The bankrupt has to account just after that manner here. At the *enquête* he refused to go into proof of anything beyond what was of record. Yet he insists that he is "entitled to discharge." The assignee insists upon the very contrary, and with much force, according to all that usually occurs in such cases. Petitioner had a burden of proof upon him, and does not go into any of some things material. And I see by the paper filed by himself, that he owed debts exceeding four hundred and twenty thousand dollars. He shows no account or reason for the immense loss to his creditors of two hundred and eighty thousand dollars. He will not do it, being put upon notice, as it were, by the contestation and the law's reading. One of

his creditors loses $4,000 by the bankruptcy, another $8,000, another $10,000, one bank $40,000, another $18,000, another $71,000. Surely such creditors are entitled to explanations. These not being made, the petition must be rejected.

Girouard & Wurtele for petitioner.
Bethune & Bethune for contestants.

CIRCUIT COURT.

MONTREAL, Sept. 30, 1881.

Before JOHNSON, J.

LA COMPAGNIE DU CHEMIN DE PEAGE DE LA POINTE CLAIRE v. VALOIS.

Corporation—Defects in organization—Action for calls.

Defects in the organization of a company incorporated by letters patent cannot be set up by a shareholder in defence of an action for unpaid calls.

PER CURIAM. The plaintiffs sue as a corporation under the 33 Vic., c. 32, which was amended by the 36 Vic., c. 26 (Quebec) to recover $40, being for three instalments of $10 each, and interest upon $100, the amount of his share.

The defendant pleads by exception in substance that the plaintiffs have no corporate existence. That is, as I understand these statutes, he pleads that there are no letters patent, because if the letters patent have been duly issued, the statute says expressly in sec. 7 that "after certain formalities have been observed, and on the report of the Commissioner of Public Works, the Lieut.-Governor in Council may grant to the petitioners by letters patent, under the great seal, a charter constituting them a body politic and corporate for the objects set forth in their petition. In point of fact what was contended by the defendant's counsel was not that there was no corporate power; but that there was deficient organization, in that no directors had been appointed, and that the capital had not been completely or properly subscribed.

Neither the first position, nor the one subsequently taken up are sustained by law. The cases cited, viz., *La Compagnie de Navigation Union* v. *Rascony* (20 L. C. Jurist, 206), and the case of the *Union Building Society* v. *Russel*, and *Moran*, opposant, (8 L. C. Rep. 276), are directly in point to the full extent of both grounds taken in the present case. If the argument of the defendant's counsel means anything—and I admit it was a very able and ingenious one, and meant a great deal—it meant that this corporation was non-existent for the purposes of this suit against the defendant. Now, there are many cases and authorities that might be referred to, but I had a case which I decided in December, 1877, which went fully into the subject—the case of the *Windsor Hotel Company* v. *Murphy*. I have before me the full notes of my judgment there (1 Legal News, p. 74), and a reference to them now enables me to point out precisely the grounds and authorities upon which I decide the present case, and I therefore give judgment for plaintiffs in the present case for the amount demanded. I see that in a case decided yesterday in the Court of Appeal (*The Windsor Hotel Co.* v. *Lewis*, *ante*, p. 331), a similar case to the one I decided, and which had been dismissed in the Court below, the judgment has been reversed, and what I held in *Windsor Hotel Co.* v. *Murphy* was upheld.

CIRCUIT COURT.

MONTREAL, Sept. 30, 1881.

Before JOHNSON, J.

CORPORATION OF THE VILLAGE OF STE. ROSE v. DUBOIS.

Municipal front road—Repairs—M. C. 397.

Where a person, who already has a front road on his farm, voluntarily opens another road to the public through his land, such road will be considered a municipal front road under M.C. 397.

PER CURIAM. This is an action of a sort well known, and of constant occurrence under the Municipal Code. The Corporation, under articles 397 *et seq.* of the Code, sue to recover the sum expended in repairing a road, together with 20 per cent on the amount, under art. 398, after notice to the proprietor or occupant by the inspector.

The plea is that this was not a public road and the defendant is not bound to keep it in repair. That he is not proprietor of the adjacent land, and that the road is not a front road. That the plaintiffs had no authority to do the repairs necessary to a road of this description.

The facts are these. The defendant's predecessor was proprietor of a large farm or *terre* at one end of which he was bound to maintain a *chemin de front*, and he opened the present road for the purpose of getting to the station of the

railway, and undertook to keep it in repair, and the defendant purchased a piece of the land adjoining this new road, and which had been subdivided into lots as a speculation. The resolutions of the Council, and the notices required by law in such cases, and the performance and cost of the work of repairing are proved. The question is whether the Municipal Code, in the provisions applicable to these actions generally, applies in the present case, or is to be restricted to the cost of repairs done to *chemins de front* in its first sense, *i.e.*, front roads of farm. The point is a very important one, no doubt; and the defendant relies on art. 825, which says:—"No one is bound to keep in repair on one and the same parcel of land, in a depth of thirty arpents, more than one front road governed by the provisions of this chapter."

It is proved in the case that Rivet and Giguère, the *auteurs* of the defendant, made a regular agreement with the municipality to keep this road in repair, and thereby and on that condition got leave to open it, and it is now contended for the defendant, who purchased from them, that in this deed from Rivet he made no agreement to keep the road in question in repair, and the plaintiffs in the case have never registered the undertaking of Rivet et al., and therefore Dubois, the defendant, who has registered his title without this charge, is free. But it is impossible to hold that the public authority is bound to register its title to the public streets and roads, in whatever way they may have become public property. The formalities once complied with, the public right is vested, and third parties must acquire subject to that right.

The subject is complicated; but I will state as shortly as I can what I consider to be the state of the law. Article 765 states what is a front road: that is, as regards farms and lands of the inhabitants. But if a man, having an extensive farm and a front road to maintain, chooses besides to lay out the back part of his land into lots, and open a road, and undertake to maintain it, there are abundant provisions in this code which give the municipal bodies authority to compel him to keep it in repair, and in his default to do so, to recover the cost of having it done. It is part of Article 765, that "roads in village municipalities are front roads, unless otherwise ordered by the Council." Art. 749 lays it down that "land or passages used as roads by the mere permission of the owner are municipal roads," etc. Under Art. 376 "the road inspector is bound to superintend the repairs of local or county municipal roads;" and Art. 397 says that "the road inspector may, without being authorized by the Council, perform or cause to be performed the works required on any municipal front road," etc; and Art. 399 *et seq.* give the right of action for the cost and the 20 per cent. By Art. 403, "in every such action the evidence of the road inspector, if uncontradicted, is sufficient to prove, 1st, the formalities of notice, etc.; 2nd, the execution and the cost of the works, and, 3rd, that the defendant is the person liable for the same.

All this has been done in this case; and besides all this, there is the agreement of the party to keep up the road; and there would seem to remain only the question or the delusion that because a proprietor is only bound to keep up one front road for his farm, he cannot also give to the public another road through it which he may be bound to keep up by law, besides his own undertaking to do it, and which road when it is once made, is subject to the same rules as to the recovery of the cost of repairs, as the road in front of the farm, which in all cases he is bound to maintain. I must, therefore, give judgment for the plaintiffs for the amount demanded, with costs.

CIRCUIT COURT.

MONTREAL, Sept. 30, 1881.

Before JOHNSON, J.

CHENIER v. CORPORATION OF ST. CLET.

Municipal Corporation—Keeping up fences—Prescription.

The prescription under M. C. 1045 *does not apply to an action against a municipal corporation, under M. C.* 793, *for not keeping up fences.*

PER CURIAM. This is another case under the Municipal Code; but here the action is against a municipal corporation for a penalty and damages under art. 793, for not keeping up the fences on a municipal road or *chemin de descente*, which they were bound by *procès verbal* to do.

I feel no difficulty in holding the corporation liable. The only points raised are that the road is not in the corporation of St. Clet, but in that of Ste. Marthe; that the action is prescribed by six months; and thirdly, that the penalty and

the damage cannot be asked by the same action. The first point was explained by the witnesses against the defendants' pretentions; and moreover, these parish municipalities did not exist in 1853, when the *procès verbal* was made. The prescription does not lie. Art. 1045 is what creates the prescription contended for; but it only applies to penalties enacted by by-laws; and art. 1051 expressly says that art. 1045 is not to apply to penalties recoverable under the Code itself; and further that they are recoverable in the same manner as penalties. The case cited as authority is no authority at all, but a mistake. Judgment for plaintiff. Penalty $5 and $10 damages; and costs as in action brought.

DECISIONS AT QUEBEC.

Will — Substitution—Registration. Jugé.—1. Qu'une disposition testamentaire par laquelle la testatrice déclare qu'elle entend que tous ses enfants partage ses biens avec égalité, mais qu'ils n'en auront que l'usufruit leur vie durant à titre d'alimens sans qu'il puisse être saisi, et que la propriété des dits biens est léguée aux héritiers respectifs de ses dits enfans, ne crée pas un legs d'usufruit et un legs de nue-propriété, mais comporte une substitution fidéi-commissaire en faveur des héritiers des enfants de la testatrice.

2. Que cette substitution, n'ayant pas été enregistrée, est sans effet envers les tiers, et l'appelante peut invoquer l'absence de cet enregistrement à l'encontre des intimés.

3. Qu'avant la promulgation du Code Civil, la douairière pouvait prendre son douaire subsidiairement sur les biens substitués à défaut d'autres biens libres de son mari, et que, dans l'espèce, l'appelante pouvait réclamer son douaire sur les biens dont son mari était grevé, privativement aux intimés, lors même que la substitution eut été valablement publiée ou enregistrée.

4. Que les intimés n'avaient point pris la qualité d'héritiers du grevé, et qu'ils ne pouvaient rien réclamer dans la propriété des biens qu'il possédait à ce titre, sans être ses héritiers.—*Morasse* v. *Baby*, (Q B.), 7 Q. L. R. 162.

RECENT ENGLISH DECISIONS.

Criminal Evidence—Confession procured by inducements held out by police officer.—Previously to being given in charge the prisoner was taken into a room where the prosecutor and an inspector of police were. The prosecutor then said to the prisoner, "He (meaning the police inspector) tells me you are making housebreaking implements; if that is so you had better tell the truth, it may be better for you." The prisoner then made admissions which contributed materially to his conviction upon an indictment for larceny. *Held*, upon the authority of decided cases, that these admissions were inadmissible after the inducement held out in the words "it may be better for you." [The cases referred to sustaining this decision were these: Regina v. Baldrey, 2 Den. C. C. 450; Reg. v. Garner, 1 id. 329: Reg. v. Kingston, 4 Car. & P. 387; Reg. v. Walkley, 6 id. 175; Reg. v. Thomas, 6 id. 353; Reg. v. Sheppard, 7 id. 579; Reg. v. Jervis, L. R. 1 C. C. R. 97; Rex. v. Bate, 11 Cox C.C. 686; Reg. v. Doherty, 13 id. 23; Reg. v. Zeigert, 10 id. 555; Reg. v. Reeve, L. R., 1 C. C. R. 362.] Crown Cas. Res., May 21, 1881. *Regina* v. *Fennell.* Opinion by Lord Coleridge, C. J. 44 L. T. Rep. (N. S.) 687.

Fraud—Misrepresentations of agent—Rescission of contract.—The defendant's son, acting for the defendant, and with the defendant's authority, represented that certain sheep which he sold to the plaintiff were all right. The defendant had fraudulently concealed from his son that the sheep had the rot, and fraudulently gave the son authority to sell them for the best price, intending that the son should represent that they were sound. *Held*, that the defendant was liable in an action to recover damages for fraudulent misrepresentation. Where a principal purposely employs an agent ignorant of the truth, in order that such agent may innocently make a false statement believing it to be true, and may so deceive the party with whom he is dealing, the representation by the agent becomes a misrepresentation by the principal so as to vitiate the contract. Judgment of Common Pleas Division affirmed. National Exchange Company v. Drew, 2 Macq. 145; Cornfoot v. Fowke, 6 M. & W. commented on. Ct. of App., Jan. 15, 1881. *Ludgater* v. *Love.* Opinions by Brett, L. J. and Lord Ch. Selborne. 44 L. T., Rep. (N.S.) 694.

GENERAL NOTES.

In the case of *Poulin* v. *Falardeau*, p. 317, read Sect. 125 for Sect. 135. On page 320, 2nd column, for "Payment" read Pagnuelo.

The decease of two members of the bar has to be chronicled this week. Mr. J. H. Filion, of Ste. Scholastique, died at the age of 51. Mr. E. G. Penny, the well-known journalist, who died on the 11th inst., was also an advocate,—a student, we believe, of the late Adolphus M. Hart,—but never relinquished his vocation of journalist to practice at the bar.