The Legal News.

VOL. IV. DECEMBER 10, 1881. No. 50.

CONSOLIDATION OF THE STATUTES.

The Hon. James Cockburn, Q.C., of Ottawa, has been appointed commissioner for the preliminary revision and consolidation of the Dominion Statutory Laws, and Mr. Alex. Ferguson is to act as secretary. It is about twenty-two years since the last consolidation took place, and the advantage of the work now undertaken, if carefully executed, as we have no reason to doubt that it will be, can hardly be over-estimated.

THE GUITEAU CASE.

Mr. George Scoville, the counsel defending Guiteau, is a lawyer of Chicago, and the *Chicago Legal News*, which is well informed, in justice to this gentleman, notices the case as follows:

"Mr. Scoville has been a member of the Chicago Bar for nearly thirty years, and although not an eloquent advocate or criminal lawyer, he has been regarded as a lawyer of marked ability, excellent judgment, sound integrity and untiring industry. The members of the Bar have always considered him an able associate and a dangerous opponent in a case. He has had a long and varied experience at our Bar. Heavy and important interests have been submitted to his care.

"Mr. Scoville has been wealthy, but, like many others in our city, became involved in real estate transactions and lost his property at the time of the panic, and but a few years ago had to pass through the bankruptcy court. He has now, outside of his practice, but very limited means. Word came to Mr. Scoville that our lamented President Garfield, without cause or provocation, had been shot down by Guiteau, the brother of his own wife. He tells a few confidential friends that from the conduct of Guiteau for years he is sure that he was insane, and that he feels it to be his duty, if no one else will undertake the task, to see that the defence of insanity is interposed, and to assist any eminent criminal lawyer that may be obtained to defend Guiteau. With this end in view he hastens to Washington, and after repeated appeals he fails to obtain the aid of a single member of the American Bar. In a strange city, with no fortune at his command, single handed and alone, he undertakes the defence, laying aside technicalities, and placing it mainly on the ground of insanity. The members of the Bar who have watched the course of Mr. Scoville cannot but admire the ability he has displayed, in conducting the defence thus far under the most trying circumstances. He has controlled himself, avoided any exhibition of temper, or doing anything that should injure the prisoner or his cause. His candor has impressed the jury that he himself is honest in urging the plea of insanity. Whatever may be the result of this trial, the members of the Bar will commend the self sacrifice of Mr. Scoville, and his manly independence in standing up and insisting, against the united cry of an injured nation, that the slayer of its beloved President shall have a fair trial, and if found to be insane shall be treated as any other criminal under like circumstances."

QUEEN'S COUNSEL. — The following appointments have been made in the Province of New Brunswick:—Theophilus Desbrisay, Bathurst; William James Gilbert, Shediac; George G. Gilbert, St. John; R. Hutchinson, Richibucto; Benjamin R. Stevenson, St. Andrews; Daniel L. Hanington, Dorchester; Charles H. B. Fisher, Fredericton; Edward L. Wetmore, Fredericton; Pierre A. Landry, Dorchester.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, November 18, 1881.

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

GRANT (plff. below), Appellant, and BEAUDRY, (deft. below), Respondent.

Public Officer—Notice of Suit under C.C. P. 22 —Illegality of Orange Associations—C. S. L. C., c. 10, s. 6.

Notice of action before suit against a public officer, omitting to state where the act complained of was committed, or the residence of the plaintiff's attorneys, is insufficient.

The "Loyal Orange Institution" is an unlawful combination and confederacy, the members being bound by an oath to keep secret the proceedings of the association.

The appeal was from a judgment of the Superior Court, Montreal (Mackay, J.), Oct. 25, 1879, dismissing the action of the appellant brought against the Mayor of Montreal, claiming damages for false arrest. (See 2 Legal News, p. 354, for report of the judgment below.)

In appeal the judgment was unanimously confirmed, not only on the ground of insufficiency of the notice, but on the merits.

The following opinion was by

RAMSAY, J. This is an appeal from a judgment dismissing an action of damages brought against the respondent, Mayor of Montreal, in 1878.

The declaration sets out the existence of an Orange Association, called the Loyal Orange Institution, in Montreal; that appellant was a member of this association; that the association determined "to meet as a body on the 12th of July, 1878, at their ordinary place of meeting, in the morning, and then and there to form in procession, with marshals or officers, decorated with the insignia or distinctive marks of office, to direct the march of members so formed in procession, from the place of meeting to a church chosen for the worship of the said members, in the said city of Montreal, and there to participate in religious offices consonant with the form of worship and the object of the meeting of the said members"; that it became known to the members of this association that evil-disposed persons would meet in large number, with the avowed object of committing a breach of the peace, by assaulting, beating, and otherwise ill-treating, and perhaps murdering, the said plaintiff and his said fellow-members, with the object of preventing this procession; that the appellant and his associates applied to the authorities for protection, and specially to defendant, who was then Mayor of the city of Montreal, and a Justice of the Peace, "and that the said defendant refused to adopt any means of protection as requested to do;" but, on the contrary, that he connived at the proceedings of the persons who threatened appellant and his associates, and organized a body of men, five hundred in number, as special constables, falsely pretending that it was for the purpose of keeping the peace; that on the 12th of July the respondent assembled these special constables with the avowed object of preventing the plaintiff and his fellow-members from going in procession to church; that the special constables so assembled on the 12th of July threatened and put in jeopardy the lives of the appellant and of his associates, and he, the said appellant, was, by command of the said respondent, arrested and prevented from going to church with his fellow-members. That the appellant, in order to justify his proceedings, obtained one Murphy to make complaint before a magistrate that the Orange Association was an unlawful society; that appellant was a member of it, and that the Association had met that day with the intention of marching through certain public streets, thereby provoking to a breach of the peace; that on this complaint a warrant was granted, and the appellant arrested, as aforesaid. The declaration then relates that to avoid further imprisonment appellant was obliged to give bail; that owing to the influence of respondent he was committed for trial, and had to renew his bail, and finally that he was indicted and tried, owing to the machinations of respondent. Finally, that he was acquitted. That by all these proceedings respondent "has maliciously caused to plaintiff considerable damages," which he estimates at $10,000, and appellant further alleges that he has given respondent notice of this action.

It will be at once apparent that this is not an ordinary action for false imprisonment, but that the respondent is charged with acts of non-feasance, as well as with mal-feasance, in the discharge of his duties as Mayor of Montreal and as a Justice of the Peace, and that the false arrest is only an incident of this wrong-doing. He is accused of having not only improperly refused his authority to protect appellant, but having exercised it to oppress and even imprison appellant, and cause him to be unjustly indicted.

There is no doubt in my mind that such an action will lie. (See the case of Kennett, Lord Mayor of London in 1780, 5 C. & P. 282; and *Rex* v. *Pinney*, 3 B. & Ad. 953; also *Reg.* v. *Neale*, 9 C. & P. 43.) And I can only express astonishment that having brought such an action, and persisted in it, appellant should now maintain that respondent is not entitled to notice as a person fulfilling a public duty or function. The whole burthen of appellant's complaint is that respondent did not do his duty as Mayor, but unlawfully and maliciously, as Mayor, caused him to be prosecuted and arrested.

I would here make one other general remark on this case: that it is evidently one of those actions in which malice and want of probable cause must be combined before the defendant can be condemned. He might be acting beyond the scope of his jurisdiction, and unless he did so knowingly he must be absolved, so far as the action complains of the legal proceedings; this was decided in 1786 in the case of *Johnstone & Sutton* (1 T. R. 545) Lords Mansfield and Loughborough distinguished cases of trespass and manifest wrong-doing from arrest on process. They then went on to say: "A man, from a malicious motive, may take up a prosecution for real guilt, or he may, from circumstances which he really believes, proceed upon apparent guilt; and in neither case is he liable to this kind of action." (See also, in 1833, *Mitchell & Jenkins*, 5 B. & Ad. p. 588; and, in 1839, *Porter* v. *Weston*, 5 Bing. N. C. 715.) The law, as laid down in the case of *Reg.* v. *Neale*, appears to me to recognize the same principle in so far as regards that portion of the action which is based on the alleged short-comings of the Mayor.

Now, before proceeding to examine the evidence, there is one fact which strikes one forcibly on reading the declaration, and it is that, by the very acts of which appellant now complains, respondent secured him the protection that he so urgently and directly required at his hands, and preserved him from being assaulted, beaten, ill-treated, and possibly murdered. Of course, this does not completely repel the idea of the existence of malignity in Mr. Beaudry's mind. It is possible he may not have desired the immediate slaughter of Mr. Grant, but rather that he should be preserved as a subject for his malice. Such refinement will not, however, be readily presumed; and when a Court perceives that a man in the position of Mayor of a municipality so exercises his functions that a beneficial result is attained—a result specially beneficial to the complainant—it will be slow to arrive at the conclusion that malice is the main-spring of his actions. It has also been urged that the Mayor should have taken active proceedings against those who threatened the Orangemen. I fancy there never has been a doubt that those who threatened the Orangemen formed an unlawful assembly; but the reason why the Mayor did not attempt to arrest them or disperse them by force is fully explained by the appellant's own witnesses, and particularly by Mr. Paradis, the Chief of Police, who, in answer to the question, "If twelve men are going to attack six, is it against the six or the twelve you would take precaution?" says, "If we can persuade the six not to expose themselves, we do so, *but there is no comparison between an affair of five or six and an affair of thousands.*"

Turning to the evidence of appellant for special proof of this malice, we find it totally wanting. Nay, more, it seems to me that appellant has exercised some ingenuity in establishing that no such malice existed. It is impossible for any candid person to read the evidence without arriving at the conclusion that the Mayor was actuated by no other motive than that to which he swears when he says, p. 51, "I declare that I acted as Mayor, to the best of my abilities, in maintaining the peace, to prevent bloodshed." This is fully borne out by the evidence of Alderman Mercer, by Abraham Mackey, and, I think, by another witness, who prove the perfect fairness of the *Witness* report of what took place between the Mayor and the appellant on the 12th. By that report, it appears that after the Mayor had been most peremptorily and, I may say, almost authoritatively, assured that the Orange Association was illegal, he implored appellant to abandon the procession, and finally told him of the proceedings to which recourse would be had, namely, his arrest, if he persisted.

There is only one point on which it appears to me appellant's strictures are founded, namely as to the formation of the body of special constables. The magistrates acted very properly, under the circumstances, in refusing to swear in as a special constable any member of a secret association. To say the least, it is unfortunate that they had not exercised their discretion so as to prevent so large a number of Irish Roman Catholics from being sworn in, considering the occasion. I may also add that it is not usual to swear in a body of special constables drawn from the class to which these people seem to belong — an unknown throng in the street. Special constables are generally selected from among people whose position in society compensates, in some measure, for the lack of long training and discipline. The evil of failing to

observe this rule was apparent from the beginning, and several well-established breaches of the peace lead to the conclusion, that it is well that the safety of the town was not alone confided to this organization. It is proper, however, to observe that Mr. Beaudry did not interfere directly in the selection of the special constables. One other point deserves notice. Appellant insists in his evidence on the fact that Mr. Beaudry tried to prevent the Government sending a military force to aid in keeping the peace. But when we come to examine this it turns out that Mr. Beaudry wished the Government to send the regular troops under its command, and he disapproved of sending militia, most of whom, he feared, were Orangemen. This was not an unnatural apprehension, and some little facts to which he refers show that it was not altogether groundless. Perhaps, if Mr. Beaudry had been examined on the question, he might have told us that a mixed force would have given him still graver cause of apprehension.

There being no malice established by the witnesses, I think the cause of action fails, unless we can deduce malice as a necessary conclusion from the evident illegality of the Mayor's acts.

Now, how does this stand? The Mayor was obliged to act under the circumstances in the performance of his duty. This obligation arises from the nature of his office, and his authority to take proceedings and to swear in special constables, or to take any other necessary means to preserve the peace, is not dependent either on a vote of the City Council or on any particular statute. His obligation and his authority result from the common law. He was not only in the Commission of the Peace, but as Mayor of the city of Montreal he was a Magistrate. Preparing to perform his duty, he took counsel of no less than four advocates of the highest standing, and all through he acted with, if not *under*, the sanction of counsel. Of course bad advice does not become good because it comes from counsel, but it is to be observed that what the Mayor has to establish is not that his act was legal, but that he had probable cause for doing it. The opinion of counsel has always been of great weight in judging as to the probability of the cause.

Another presumption as to the existence of probable cause arises from the fact that the grand jury found bills on the information. This is not conclusive, but it goes strongly against the action, unless it can be shown that the Grand Jury were improperly influenced, which is alleged, but is not proved.

Passing from this to the merits of the advice on which the Mayor acted, it is hardly possible to say that it was unsustainable. And here I must stop to allude to a reference made to my charge to the Grand Jury at the Term of the Court of Queen's Bench held in September, 1878. It will be found, on examination, that I never expressed the opinion that the Orange Order was an illegal association. Those who know its organization might draw this conclusion from my exposition of the Statute, but it was impossible for me then to state whether it was illegal or not, as I did not know the details of its organization. What I then said, to avoid misconception, I shall repeat.

"Having read to you the statute, and having explained in less technical language its general import, the Court trusts you will have little or no difficulty in discriminating whether any case presented to you, appears to fall fairly within the scope of the law or not. You will observe that it is not your duty to decide on the merits of the law, or whether it may be exceptionally or unduly severe. Neither are you to arrive at any conclusion unfavorable to the accused, or the reverse from any preconceived opinion as to the nature of an Orange Lodge, or the objects of an Orange Society. Before sending any one here for trial, it is your duty to have reasonable *prima facie* proof that an Orange Lodge is illegal under the Act, and that the accused is a member of it." (See 1 Legal News, p. 479.)

On referring to the interpretation of our act as given by me on the occasion referred to, I see nothing to alter, and if I do not repeat textually what I then said, it is because I think I can make the matter more clear if I apply that interpretation to the points raised in the discussion before this Court.

Our ordinance of the 2nd Vic. is borrowed from three Acts of the reign of George III.—37, cap. 123; 39, cap. 79; and 52, cap. 164. Though borrowed from these Statutes, there are differences, on which it is not necessary to enlarge. The words of our Statute are perfectly clear, and they extend to every society or

association whatever, "the members whereof shall, according to the rules thereof, or to any provision or any agreement for that purpose, be required to keep secret the acts or proceedings of such society or association." It is impossible to deny, and it is not denied, that these words cover every association bound to secresy by an engagement purporting to be an oath, or otherwise. But it is sought to limit their scope in practice by invoking the preamble. But the preamble does not, as was pretended, limit the enactments following; it gives the reasons, two in number, for these enactments. It says, in effect, that there are seditious and traitorous combinations, *and* there are societies and associations of a new and dangerous character, "inconsistent with the public tranquility, and with the existence of regular government," therefore all secret societies are forbidden. This is not such an unreasonable conclusion as to entitle us to say that the legislative will was other than the words of the law import. So far as cases on the English Statutes can be authority, they seem to uphold the view now taken. (See *R.* v. *Lovelass*, 6 C. & P. 596, and *R.* v. *Dixon*, 6 C. & P. 601.)

We next come to the question of whether the Orange Association comes within the terms of the law. Its members are sworn, and they are therefore under the most formal engagement to obey its rules, and one of these rules, No. 15, makes secresy a distinctive part of the organization. It seems to me to be unnecessary to pursue the enquiry further. It is no answer for the violation of a direct prohibition of the law to say, "Our motives were good; we are really organized in support of the government."

Having arrived at this conclusion, our duty ceases. We have no special mission to point out to our fellow-subjects the expediency or inexpediency of this or that line of conduct; we have only to tell them of its legality. We have not to warn them of the absurdity of a contest, on the real merits of which both parties are thoroughly agreed. The one are Jacobites by their sympathies, the other are Orangemen; but it is more than likely both would fight to the death against a despotic form of Government. This is a truth which will be fully recognized some day or other, but in the meantime I notice it without the slightest hope of its being accepted, for we are much more guided by our feelings than by our reason. But the feeling as to the color of a ribbon or a flower is only a prejudice, a vulgar prejudice, not really entertained by anyone of education. Some people in a higher position may affect to sympathise with such follies, but in reality they only laugh in their sleeve at such of their dupes as believe in them.

I had almost overlooked the question of notice. I think it must be clear that under the action as drawn Mr. Beaudry was entitled to notice. I also think the notice insufficient. It did not specify the grounds of the action. At most it only alluded to one, the false imprisonment, and that most imperfectly.

I would confirm the judgment of the Court below, for the reason given, and on the merits, as believing the arrest of the appellant and all the proceedings of which he had any cause to complain were carried on without malice and with sufficient cause.

The judgment of the Court is recorded as follows:—

The Court, &c....

"Considering that the first plea of respondent (defendant in the court below) is well founded, and that the plaintiff hath not proved any notice of action before suit other than that of the 19th October, 1878, which is insufficient, and not such notice as is required by law;

"Considering that the said defendant, acting in his capacity as mayor of the city of Montreal and a Justice of the Peace, in good faith and with probable cause, is not liable in damages as claimed by the action in this cause;

"Considering that the said defendant, at all the times mentioned in the declaration in this cause filed, acted in good faith and with probable cause;

"Considering further that it appears by the evidence adduced in this cause that the Loyal Orange Institution, in the said declaration mentioned, is an unlawful combination and confederacy, inasmuch as it is proved that the members of the said association, according to the rules thereof, are required to keep secret the acts or proceedings of such association, and are bound so to do by an oath or agreement not authorized or required by law;

"Considering that the said plaintiff admits that on the occasion referred to, he acted as a

member of such institution, and that he was in fact a member thereof;

"And considering that there is no error in the judgment appealed from, to wit: in the judgment rendered by the Superior Court sitting at Montreal on the 25th October, 1879, doth confirm the said judgment with costs of this appeal in favor of respondent.

"Mr. Justice Monk, being doubtful as to the illegality of the said association, concurs in the judgment of the Court on the other grounds."

Judgment confirmed.

Doutre & Joseph for appellant.

Roy, Q. C., for respondent.

Carter, Q.C., counsel for respondent.

COURT OF REVIEW.

MONTREAL, November 30, 1881.

(From S. C., Montreal.

JOHNSON, MACKAY, RAINVILLE, JJ.

CHESTER *et al.* v. GALT *es qual.*, and CUNNINGHAM *et vir*, opposants.

Substitution—Debt of substitute.

Bank stock was left to trustees, the revenue to be paid to M. C. during her life, at her death the capital to be divided among her children. Held, that the property could not be taken in execution by judgment creditors of the children during M. C.'s life.

The plaintiffs having a judgment against the defendants, minors, have seized some shares of bank stock as their property.

Mary Cunningham opposes, and claims that the stock cannot be sold or seized, because it is substituted by the will of the late Robert Cunningham; that she has the use of it in her lifetime as *grevée de substitution*, and that the substitution is in favor of such of her children born and to be born as shall be in life at the time of her death; that it is quite uncertain now to whom the stock will have to go at that time, &c.

R. Cunningham's will is of 1864, and he died shortly afterwards. By his will he left his estate, subject to divers trusts and legacies, to two gentlemen with power to execute his will, and their office to continue till perfect execution of it, but they renounced the trust and executorship, and at that time there was not power in the Courts or Judges to name others as executors, but the execution fell to be performed by the heirs at law. The original devise to the two named executors was "desiring that they shall invest the same in the purchase of real estate or bank or other stocks as in their judgment may be most advantageous, and pay the net annual revenue unto my sister, Mary Cunningham, during her life quarterly or half yearly, and at her death divide the capital of my estate between her children born and to be born, share and share alike, to whom I give and bequeath the same, &c." After testator's death the opposant got her husband appointed tutor to the substitution said to be contained in the will, and the bank stock seized is standing in his name. In December, 1879, plaintiffs notified the bank to transfer the shares to defendant as tutor. Later the plaintiffs seized the stock as property of the minors their debtors; hence the opposition, which has been held in the Superior Court well founded: that court has given *main levée* of the seizure, as a consequence.

The plaintiffs inscribe in review. The Judge in the Superior Court held the will of R. Cunningham to involve a substitution, and that as the first-named trustees and executors had renounced, Mary Cunningham was to be held owner of the bank stock in question, but *à charge de rendre* at her death to her children, in other words the Judge held that there was a substitution in favor of such children as would be living at Mary Cunningham's death, that the children at present had not the property, and so it had been seized improperly as theirs, &c.

MACKAY, J., dissenting. Though agreeing that the children upon whom the seizure had been practised were and are not owners nor seized at present of the bank stock in question, he held that the will did not contain a substitution; that what Mary Cunningham was to get (mere annual interest) she was not charged to *rendre*, but might waste if she pleased, that what was proposed for the children they were not appointed to get from her, but from the testator's succession represented by his heirs, upon whom all duty of executing the will has devolved, for want of other executors. He held that the will did not constitute Mary Cunningham a *légataire en usufruit;* if she had been so constituted she would have right to possession of that given to her *en usufruit* on the conditions of the old law at that time in force before our Civil Code, but the testator here meant her not to have possession, but has appointed executors to pay her out of what they have, annually, the interest. Though the

first named have disclaimed, the property is not in suspense, but it is in the heirs of the testator, and upon them is the office of executing testator's will.

JOHNSON, J. The question arising in the present case is one of unusual nicety and importance. We have had it before us for two terms, and during the present term we had the advantage of another hearing. It is impossible, as far as I am aware, for any discussion, however extensive and profound, or for any terms, however careful, to define permanently and to the exclusion of plausible criticism, what disposition of property is, or is not *to be called* a substitution. Every one acquainted with the subject knows this much; and every one who has written upon it shows, perhaps unconsciously, by the immense efforts at precision and finality, that such is the case.

The question arises here in the case of the will of R. Cunningham leaving to his sister Mary Cunningham (Mrs. Gilbert) the life enjoyment of his property, which is directed to be invested by his trustees and executors to pay the interest to her during her life, and after her death to divide the principal between her children. This estate, or some portion of it, being invested in bank shares, they have been seized for a debt due by the minors. Now, by whatever name we call it, this is a disposition of property which gives the usufruct to one, and the *nue propriété* subsequently to the others; but is it for all that a mere usufruct that is given? I think not. Is there not here the *charge de rendre* which is the great test of the *nature* of the disposition, whatever may be its name? These trustees are obliged to *rendre* to the children at Mrs. Cunningham's decease. I call that, for want of a better name, a *substitution fidei commissaire*, and that is what the learned judge below called it, I believe.

However this may be, there is one thing certain. It would be impossible to sell these shares in satisfaction of the children's debt without diminishing *pro tanto* the income and the right of the *usufruitière* or *grevée*, whichever verbal casuists may prefer to call her. This opposition then, which substantially means this and no more, ought, in my opinion, to be maintained. What the plaintiffs want is to sell these shares, *which may never belong to these children.* The opposition says the minors are not the sole proprietors; the opposant has a right of property too, and so she has. It has been said that this will being made before the Code, there was no power to change the trustees. The only parties who might have an interest in raising that question are not before us. The trustees are not even parties to this case, and those who are parties do not raise the point. The judgment is against the tutor to the minors; and the shares stand in the bank in the name of the substitution. Therefore the taking in execution in itself appears irregular.

The main point, however, and that on which the case turns, is this: If you do not hold this to be a substitution, then it is impossible to find a proprietor—and the law says you *must* find a proprietor; but who are they? the children? They may never get it. The opposant? Her right is denied. It is hardly too much to say that the modern law of France—or at least the policy of that law is the very reverse of ours. There the law discourages substitutions; here our Code not only does not repress, but directly encourages an interpretation favorable to substitutions. Therefore, it is a case for the application of the article of the Code. Article 928 says even though the term *usufruit* be used (which is a much stronger case than the present one), the intention is to be considered rather than the ordinary acceptation of particular words. In one word, we must do justice and right, unless in so doing we violate not only the letter but the spirit of the law, which surely we are not doing in maintaining the rights of the opposant, under this will.

It may be observed that the idea of an opposition *afin de charge*, being the right course in the present case appears to be practically impossible, implying, as it does, an adjudication of bank shares subject to the dividends being payable to somebody else.

Judgment confirmed.

L. H. Davidson, for plaintiff.

Lacoste, Globensky & Bisaillon, for opposant.

TRESPASS.

A case of trespass that will answer to accompany *De May* v. *Roberts*, *ante*, 23, is *Newell* v. *Whitcher*, 53 Vt. 589. The plaintiff, a blind girl, gave lessons in music, one day in each week, to the defendant's daughters, and lodged at his

house over night. A private lodging-room was assigned her by the defendant and his wife. On one occasion at midnight the defendant stealthily came into the room where the plaintiff was sleeping, sat down upon her bed, leaned over her person, and made repeated solicitations to her for sexual intimacy, which she repelled. *Held*, that the plaintiff's right to her private sleeping-room, during the night, was exclusive; and that trespass, *quare clausum*, will lie against the defendant. Sitting on her bed, leaning over her person, etc., under the circumstances, was an assault. The court said: "We think that her right to her private sleeping-room during the night, under the circumstances of this case, was as ample and exclusive against the inmates of the house as if the entry had been made into her private dwelling-house through the outer door. Her right of quiet occupancy and privacy was absolute and exclusive; and the entry by stealth in the night into such apartments without license or justifiable cause was a trespass; and, if with felonious intent, was a crime. *State* v. *Clark*, 42 Vt. 630. The approach to her person in the manner her testimony tends to prove —sitting on the bed and bed-clothes that covered her person, and leaning over her with the proffer of criminal sexual intercourse, so near as to excite the fear and apprehension of force in the execution of his felonious purpose—was an *assault*. The whole act and motive was unlawful, sinister and wicked. The act of stealing stealthily into the bed-room of a virtuous woman at midnight to seek gratification of criminal lust is sufficiently dishonorable and base in purpose and in act; but especially so when the intended victim is a poor blind girl, under the protecting care of the very man who would violate every injunction of hospitality that he might dishonor and ruin at his own hearthstone this unfortunate child who had the right to appeal to him to defend her from such an outrage. *Alexander* v. *Blodgett*, 44 Vt. 476." In the last case cited the court held that indecent exposure and advance in the sight of the woman constituted an assault.—*Alb. L. J.*

RECENT DECISIONS AT QUEBEC.

Payment, Indication of.—Jugé, que l'indication de paiement à quelqu'un qui n'est pas créancier du stipulant, et dans l'intérêt de ce dernier, ne l'empêche pas de retirer la somme due et d'en donner quittance valable, quoique l'indication ait été antérieurement acceptée par un *negotiorum gestor* pour l'indiqué.—*Lajoie* v. *Desaulniers*, 7 Q.L.R. 272.

Affidavit — Capias ad respondendum — Saisie-arrêt.—An affidavit for a *capias ad respondendum*, under C. C. P. 798, in which, as to the alleged secreting, the deponent swears: "Qu'il est informé d'une manière croyable, a toute raison de croire, et croit vraiment en sa conscience, etc.," and gives the names of his informants, held good.

Reference made to *Brooke* v. *Dallimore*, and *Griffith* v. *McGovern*, in which affidavits for *saisie-arrêt* before judgment, under C. C. P. 834, in the same form as to the secreting, were held good by the Court of Appeals.—*Croteau* v. *Demers*, 7 Q. L. R. 277.

Practice—Writ of Execution.—Where the sale of real estate, under a writ *de terris*, has not taken place, in consequence of the sickness, on the day of sale, of the officer charged with the execution of the writ, the plaintiff is not entitled to a *venditioni exponas*, under C. C. P. 664, so as to have the property sold after two advertisements.—*Gosselin* v. *Naulin*, 7 Q. L. R. 283.

GENERAL NOTES.

The Rev. Mr. Hinman, for many years a missionary among the Dakota Indians, has sued Bishop Hare for libel consisting in a pamphlet charging Mr. Hinman as being regarded in the Indian country as a man of abandoned character, and that the house-mother of one of the bishop's boarding schools reported to him that Mr. Hinman, while visiting her school, had scandalized her elder girls by beckoning to them in a suspicious way from his window in the twilight, and that he had abashed a pretty half-breed young woman, her assistant, by saying to her "——, I love you; won't you walk with me to-night; I want to talk with you." Mothers, it was charged, had refused to send their girls to the Santee boarding school, on the ground that they were tampered with by the missionary. Another lady had informed the bishop that "to her great alarm he seized her firmly around the waist, and though she struggled to get from him, kissed her several times, and refused to let her go." Probably the missionary—to adapt the expression of Rufus Choate about the amorous hay-makers—was only "seeking to mitigate the austerities" of proselyting. On a recent motion for a commission to examine witnesses, Judge Porter said: "The plaintiff had the legal right to bring his action in this State, but his reasons for doing so are not very manifest. Whatever they may be, I am quite sure from what was disclosed upon the motion, the trial will not be likely to increase the amount of contributions to convert the Indians to Christianity, or to increase the respect of the Indians for some of its professors. Perhaps it was thought the further away from the Indians the trial should be had, the better it would be for their faith."