The Legal News.

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LARCENY.

An interesting question of criminal law was discussed in the case of *People* v. *Justices*, etc., recently decided by the Supreme Court of New York. A saloon-keeper, who had supplied a customer with twenty-five cents worth of liquor, received from him a $20 gold piece, with directions to go out and change it, and bring back to the customer the change due to him. The saloon-keeper went out, but gambled with the money, and lost it. The Court, following English precedent, already approved by the N. Y. Court of Appeals, held that he could not be convicted of larceny. Judge Davis, in rendering judgment, remarked: "If the question presented by this case were a new one, we should have no hesitation in holding that the conviction was justified by the evidence, for it is clear that there was no intention on the part of the complainant in handing the twenty-dollar gold piece to be changed to part with his property in it, but that he simply parted with possession for the specific purpose of having it changed so as to enable him to pay to the appellant twenty-five cents out of the change; and that the appellant having it for a specific purpose and without property, his possession was in law the possession of the owner of the coin, and his subsequent act in gambling it away was such a conversion as ought, and in our opinion does, constitute the crime of larceny. But the case is precisely parallel in all its features to that of *Reg.* v. *Thomas*, 9 C. & P. 741. In that case the prisoner took a sovereign to go out and get it changed, but never returned either with it or the change. Coleridge, J., held that the prosecutor having permitted the sovereign to be taken away for change could never have expected to receive back that specific coin; he had therefore divested himself at the time of the entire possession of the sovereign, consequently there was not a sufficient trespass to constitute larceny." After remarking that the judge evidently overlooked *Ann Atkinson's* case, Cas. Cro. Law, 247, the court continued: "But we are not at liberty to follow our own opinion of this case because the Court of Appeals have distinctly recognized the case of *Reg.* v. *Thomas* as sound law. In *Hildebrand* v. *People*, 56 N. Y. 394; S. C., 16 Am. Rep. 435, the facts were these: The prosecutor handed to the prisoner a fifty-dollar bill to take out ten cents in payment for a glass of soda. The prisoner put down a few coppers upon the counter, and when asked for the change he took the prosecutor by the neck and shoved him out of doors and kept the money. The question was whether larceny could be predicated upon those facts. The Court of Appeals affirming the decision of this court held that the prisoner was rightfully convicted. The prisoner relied upon the case of *Reg.* v. *Thomas*, and after reciting the facts in that case the court proceeded to distinguish it from the one then at bar by stating that in the *Thomas* case 'all control, power and possession was parted with, and the prisoner was intrusted with the money and was not expected to return it. Here, as we have seen, the prosecutor retained the control, and legally the possession and property. The line of distinction is a narrow one, but it is substantial and sufficiently well defined.'

* * * The distinction in the cases is so extremely 'narrow' that we should have felt entirely justified in disregarding it, but for the fact that the Court of Appeals, in *Hildebrand* v. *People*, gave its sanction to the case of *Reg.* v. *Thomas*, and declared it to be sound law, thereby holding in effect that a conviction of larceny could not be sustained in a case like this." The *Albany Law Journal* says the New York case is supported by *Reg.* v. *McKale*, 11 Cox's C. C. 32, and refers also to *State* v. *Anderson*, 25 Minn. 66; S. C. 33 Am. Rep. 455, where A. offering a $5 bill to pay forty cents ferriage, received and kept the $4.60 in change, but refused to deliver the five-dollar bill; *held*, larceny.

THE LATE LORD JUSTICE HOLKER.

A fatality would seem to attend the office of Lord Justice of Appeal, the decease of Sir John Holker, reported by cable, adding another to the long list of those who have passed away from this tribunal within a few years, including Lord Justices Turner, Knight Bruce, Rolt, Giffard, James, Thesiger, and Lush. Sir John Holker's appointment to the bench is quite recent, and was noticed at p. 51 of this volume. He was attorney general under the last Conservative Government, and was generally admitted to be a very able lawyer.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, May 19, 1882.

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

THAYER et al., plffs. in error v. THE QUEEN, deft. in error.

Writ of error—On what questions it may be allowed —Conspiracy to defraud.

The plaintiffs in error had been convicted on an indictment for conspiracy to defraud.

RAMSAY, J. This case comes before us on a writ of error. It nowhere appears what errors are complained of. It seems to have entirely escaped attention that since the 32 & 33 Vic., cap. 29, sec. 80, "no writ of error shall be allowed in any criminal case unless it be founded on some question of law which could not have been reserved, or which the Judge presiding at the trial refused to reserve for the consideration of the Court having jurisdiction in such cases." We have nothing to show that the learned Judge sitting on the Crown case refused to reserve the alleged errors, and certainly they were subject to reservation. It is possible that we may have to make some rules to regularize proceedings in error, which are assuming an importance they formerly had not in our practice.

The errors insisted on at the argument were:—1st, That the false pretences are not set up. 2nd, that the overt acts only disclose a civil trespass, and consequently that they cannot support an indictment for conspiracy. The argument as to the first point is that on the indictment for obtaining money or goods by false pretences, the pretences must be set up, and that as the form of indictment for conspiracy sets up false pretences they should also be particularly set forth. The indictment for conspiracy differs essentially from that for obtaining by false pretences. The offence of conspiracy is complete by the combination and agreement, although no step be taken in execution of the conspiration. The indictment, therefore, is complete without stating any overt act. But it is urged that the overt acts being laid, they must disclose an offence. It seems to me that this proposition is untenable. The gist of the offence is the combination to defraud, and if that combination exists, it may be evidenced by acts each of which is innocent when taken by itself. This is a question for the jury and cannot come up in error. I am to quash the proceedings in error.

His Honor remarked in conclusion, that Mr. Justice Monk took no part in this judgment, as he sat in the Court below. This was decided in *Reg.* v. *Dougall*.

DORION, C. J., observed that it was also so decided in *Defoy & Reg.* Article 1158 of the Code of Procedure declares that any judge who sat in the Court below at the rendering of the judgment appealed from is incompetent to sit in appeal or error upon the same.

Conviction affirmed.

Carter, *Q.C.*, for plaintiffs in error.

Kerr, *Q.C.*, for the Crown.

SUPERIOR COURT.

MONTREAL, April 29, 1882.

Before JOHNSON, J.

THE BANK OF MONTREAL, Petr., HOPKINS, Respdt. and SIMPSON, Respdt.

Gift by contract of marriage—Acceptance.

PER CURIAM. This is a reference made by the Bank under the 25th section of the Banking Act of 1871, to ascertain from this court which of the two respondents, who both claim a transmission of some stock, is entitled to get it.

Mr. Hopkins is executor of the will of the late Margaret Rowand Mackay, and Mr. Simpson is tutor to the property of the children born of her marriage of the late Hon. James Mackay. The marriage took place in 1859—after the execution of a written contract between the parties—at what was then the Red River settlement (now Manitoba), and by this contract the wife's property was to remain her separate estate under her own personal control, as if no marriage existed, and to secure her money—(consisting of about £11,000 bequeathed to her by her father and her sister),—to her children after her death, she created a trust of the principal, now represented by these shares, in such manner that her surviving children should be entitled to it in equal shares, at her death, as their own absolute property. There were three children born of the marriage. The shares now in question were acquired with her money, and stood in her name until they were transmitted to the name of Mr. Hopkins as the sole

surviving executor of her will, whereby she bequeathed all her estate to her husband and her children, share and share alike. The only point is whether the children were vested with this property by the marriage contract, so as to prevent the operation of the will, subsequently made, to their prejudice. I see the parties have expressly admitted that at the time of the marriage contract, the laws of England were in force in the R.R. Settlement; but as they have not admitted what is the law of England, and as I cannot take judicial cognizance of it without proof, I am thrown back on the rule that in the absence of such proof the Court must presume the laws of another country to be the same as its own. Articles 819 and 823 directly apply. Art. 821 contains the exception, and applies to gifts *inter vivos*, requiring acceptance in those cases only. The settlement upon the children by the contract of marriage vested the property in them, without any form of acceptance, and as long as the money is the same (which is admitted) it can make no difference whether Sir George Simpson bought the shares as her attorney or as her trustee. It is the same property, and it belongs to the children, and could not afterwards be given by will or otherwise to the husband; and by Art. 1823 the donor was prevented from revoking her gift. The order, therefore, is in favor of Simpson who, by the statute, has to pay the costs of the Bank's petition.

Ritchie & Ritchie for Petitioner.
Bethune & Bethune for Hopkins.
Ritchie & Ritchie for Simpson.

SUPERIOR COURT.

MONTREAL, April 15, 1882.

Before JOHNSON, J.

LARIN v. KERR.

Contract—Sale—Time for delivery.

PER CURIAM. This is an action for damages for non-execution of the following contract:—"Montreal, October 26, 1880. I agree to deliver 50 tons first-class merchantable hay, at $13 per ton, to Mr. Charles Larin, on his yard, delivered as required, till the 1st of May, 1881." The plaintiff declares upon this that the defendant was often required to deliver; but he never got more than 23 and one-third tons, which he paid for; and that on the 23rd May he protested, and required delivery of the rest. Then he says that at the stipulated time of delivery (1st May, 1881), hay was worth $16 a ton, so that he lost the chance of making $3 a ton, and he sues for that difference on the 26 tons not delivered, making, with the cost of his protest, $84, which of itself would not give jurisdiction to this court; but he adds to his demand, besides damages for non-execution of the contract, a prayer that it may be set aside as to the balance: *i. e.*, that he may have the benefit of it to the extent of giving him damages, and be relieved from the rest.

The defendant pleads to the merits, and he says that he offered hay, as it was required, before the 1st May, and the plaintiff refused to receive it, or to pay for it, when it was offered. And he further pleads that the plaintiff has suffered no loss.

Now what is the meaning of this contract? I think it means that the defendant's obligation extended only to the 1st May. The rule is stated in Benjamin on Sales, p. 480, to be that the Court seeks only to discover what the parties really intended; and if time appear, on a fair consideration of the language and the circumstances, to be of the essence of the contract, stipulations in regard to it will be held to be conditions precedent. It appears to me that the defendant here, undertaking to deliver when required, within a certain time, and at a certain price, must be held to have contemplated being able to buy below that price, (so as to make a profit,) up to that time, and no longer. Therefore the demand made by the plaintiff on the 23rd was made too late. Besides this, in order to prove his damages, the plaintiff was bound to show the increased price of hay at the time of the breach, which was the 1st of May; and he only shows the price on the 23rd. Though I have doubts of the jurisdiction, I dismiss the case on its merits—as both parties have gone to proof.

Longpré & Cie. for plaintiff.
Kerr, Carter & McGibbon for defendant.

SUPERIOR COURT.

MONTREAL, May 15, 1882.

Before MACKAY, J.

DENIS dit VERRONEAU v. THEORET.

Slander—Publication.

PER CURIAM. The plaintiff sues for $500 damages for slander. It appears that the defen-

dant frequently in the house of the Lalonde family, speaking of plaintiff, called her a *putain*. This was in the intimacy of the family, and occurred, perhaps, in 1879—witnesses say in 1879 and 1880. In August, 1880, defendant was prohibited visiting the Lalondes. In May, 1881, Azilda Lalonde, aged 21, informed plaintiff of what had occurred, and in August, 1881, this action is instituted. It seems that the Lalondes kept secret the fact of defendant's having spoken of the plaintiff as he did. Mr. and Mrs. Lalodne swear to never having reported it. Azilda mischievously told plaintiff; before the institution of this suit nobody but the Lalondes and plaintiff had heard anything about it.

That the speeches and slander attributed to defendant were performed there is proof by three witnesses. I find that plaintiff's action is not prescribed.

The defendant denies the fact of the speaking, and says that but for plaintiff's suit' the public would never have heard of it, and he says that the plaintiff has suffered no damage, and he brings up many witnesses to prove plaintiff's reputation and character perfectly good, and so he pleaded. Had plaintiff right to sue, under the circumstances? I find that she had. A maiden marriageable girl of good character has right to complain of such slander; the slander was most serious; and I find that plaintiff was justifiable in suing in the Superior Court. I will not say that she ought to have sued only in a lower court, for under a hundred dollars. It is in vain for defendant to say that even if he did speak as the Lalondes say, there was no publication and no damage; I find that there was communication, to three persons; had there been only to two, or to one, that would have sufficed. "If damage is to be presumed from a publication to many, some damage may be presumed from a publication to a single individual, especially as that individual may afterwards publish the slander indefinitely." (P. 44 Starkie, 3rd Edn.) No. 122, p. 96, 1 Grellet-Dumazeau: "Cette communication (speaking of slander) en quelque lieu qu'elle soit faite, quelque soit le nombre des personnes qui la reçoivent, engendre une responsabilité légale," &c.

Finding that plaintiff is entitled to reparation, and that her action is not barred in any way, I condemn the defendant in fifty dollars damages, with interest from to-day, and costs of the Superior Court as in an action for $250, the damages amount being by me moderated in consideration of no special damages proved, of defendant's plea admitting plaintiff's good character, and also of the large costs of this Court, all of which defendant must pay.

St. Pierre & Scallon for plaintiff.
T. & C. C. de Lorimier for defendant.

THE EARLY JURIDICAL HISTORY OF FRANCE.

[Continued from p. 160.]

Charles VII. conceived the idea of digesting the several customs into one general code for all France, and to this end, by the 125th article of the ordinance of 1453 (2), usually called the ordinance of *Montils le Tour*, he directed the several customs and usages of each Jurisdiction to be written, but nothing further was done, until the year 1495, when the custom of Ponthieu was reduced to writing under Charles VIII. His successor, Louis XI, is represented, by the Historian, Philip de Commines, and by Dumoulin, to have been very desirous of having "*one custom, one weight, and one measure, throughout his Kingdom, and that every Law should be fairly enregistered in the French language*," (3) yet it does not appear that any of the customs were compiled during his administration of the Government, but in the reigns of the succeeding monarchs, particularly Louis XII, Francis I. and Henry II, many were finished, and the whole, comprehending sixty collections of general customs in force in the several Provinces, and about three hundred local customs, in force in the different Cities and Bailiwicks of the Kingdom, were completed under Charles the IX, after the expiration of the century from the commencement of the design. (4)

In the execution of the edict of Charles VII, the States General of each Province, consisting of the deputies of the nobles, the ecclesiastics, and the representatives of the commons, were convoked by the royal letters patent, issued for that purpose. By them, when assembled, an order was directed to all the Judges and other Royal Law Officers of the Province, requiring them to transmit to the States General reports

(2) Ordonnances de Néron, Vol. 1, p. 43.
(3) Dict. de Jurispr. vol. 3, p. 47. Fleury, p. 68.
(4) Fleury's Hist. du Droit Français, p. 69. Repert. verbo "Coutumes," vol. 16, p. 390.

of all the customs and usages practised in their respective Jurisdictions, from time immemorial. These reports were referred to a special committee of the States General, by whom they were reduced to abstract maxims, arranged in order, and so returned to the States General, by whom they were examined, confronted with the original reports, discussed and accepted or rejected.(1) Those which were accepted, being confirmed by the King, enregistered and published in the Sovereign Court of the Jurisdiction to which they related,(2) became the Law of that Jurisdiction, binding upon its inhabitants, but in no way affecting the rights or prerogatives of the Crown,(3) and subject, at all times, to any alteration which the King might think proper to make by a royal ordinance.(4)

The redaction of the Custom of Paris was among the first. In 1510 Louis the XII published a general edict, in which, after reciting that a fixed rule in the administration of Justice was absolutely necessary for the happiness of a state, absolutely necessary for the existence of Government, and that no Government could exist without it; and declaring himself to be well acquainted with the great vexations, delays and expenses to which his subjects had been, and yet were obliged to submit, in consequence of the confusion, obscurity and uncertainty which pervaded the customs of the different provinces and Bailiwicks of his Kingdom; he commanded the whole to be collected in the manner directed by his predecessors, Charles the VII, (5) and by a royal commission of the same date, Thibault Baillet, President, François de Morvillier, Counsellor, and Roger Barme, Attorney-General, in the Parliament of Paris, were authorized to call together the Counts, Barons, Chastelans, Seigneurs, Prelates, Abbots, Chapters, King's Officers, Advocates, and Attornies of the city, prevoté and vicomté of Paris, with a certain number of respectable citizens, and to lay before them the Custom of Paris, as it had then been reduced to writing, in an assembly of the three estates, (which had been previously held for that purpose) for such alterations as this new assembly of officers and citizens, upon discussion, should find requisite.(1) This was, accordingly, done, and some changes were made; and His Majesty having declared, in the edict above mentioned, that he sanctioned and approved whatever his commissioners and the three estates of any Province should mutually, agree and certify to be the customs of that Province,(2) the whole, as it then stood, was enregistered and published in the Parliament and Chatelet of Paris, as the edict required, and thereupon, became the Law of the Prevoté and Vicomté of Paris.(3) In this state it remained until the year 1580, when, in an assembly of the three estates, in which the celebrated Christopher De Thou, first President of the Parliament of Paris, by virtue of Letters Patent, issued for that purpose by Henry III. presided, it was reformed and amended, with all the formalities which were used at the original redaction; but it received no improvement or alteration of any kind after that period, and the several articles, as they were then corrected, continue, to this day, to be the text of the Custom of Paris.

Various attempts were made by succeeding Monarchs, particularly Francis the I, Henry the IV and Louis the XIV, to renew the great design of Charles the VII for the Government of France by one general and uniform code of Laws, but never with success. The customs were too deeply rooted in the pride and prejudices of the inhabitants of the districts in which they obtained, to be eradicated, and they prevailed, though the evils arising from such a discordant mass of Laws were most sensibly felt and frequently deplored;—"Our numerous customs," says an animated writer on the Law of France, "Obscure and susceptible of any interpretation, form a vast and eternal Labyrinth, in which the peace, the happiness, the lives and fortunes of our citizens, the very character and honor of Jurisprudence, are lost forever.(4)

(1) Fleury, Hist. du Droit Français, p. 70.

(2) Loyseau des Seigneuries, ch. 3, sec. 11, Ferrière, pet. Com. vol. 1, p. 5.

(3) Bacquet, Droit de Justice, ch. 10, No. 8, Droit d'Aubaine, ch. 29, No. 2, Droits de Francs Fiefs. ch. 11, No. 5, Som. seule, Brodeau sur Paris. Tronçon sur Paris, art 75. Galland, Traité de Franc aleu, ch. 8. Ferrière Gd. Com. vol. 1, p. 9. sec. 10, D'Aguesseau, vol. 7, p. 302 and 363, and vol. 8, p. 152 and 153, Case of Rex and the Duke and Duchess de Vanquinon, decided 5th August, 1762, and reported in Ferrière, D.D. verbo "Coutumes," vol. 1, p. 424, edit. of 1771, and in the Dict. des Domaines, Vol. 2, p. 479.

(4) Brodeau sur Louet, letter D. ch. 25; Ferrière, D.D. vol. 1, p. 542, verbo "Droits Coutumiers."

(5) Intr. to Ferrière, Gd. Com. vol. 1, p. 51.

(1) Intr. to Ferrière, Gd. Com. vol. 1, p. 33.

(2) Ibid. Gd. Com. vol. 1, p, 52.

(3) Vide Edict of 1510, in Introduction to Ferrière, Grand Comm. vol. 1, p 52, and the conclusion of the procès-verbal of the Redaction of the Custom of Paris, ibid. p. 50.

(4) Prost. de Royer, Dictr. de Jurisp. vol. 3, p. 37. Vide also the Preamble to the Ordinance of 1731.

The supreme legislative authority was, originally, vested in the assemblies of the Champ de Mars,(1) and, by them, it was exercised until the year 921, when the last of the capitulars was enacted, under Charles the *simple*.(2)

During the disorders which followed, the Sovereign and the great Vassals were influenced by motives, which, though extremely different, produced the same effect in the conduct of both, and equally prevented all acts of general Legislation. The weakness of the crown compelled the King carefully to abstain from every attempt to render a Law general throughout the Kingdom; such a step would have alarmed the Seigneurs—have been considered as an encroachment upon the independence of their Jurisdictions, and have led to consequences which might have proved fatal to the little remains of power which he yet retained. On the other hand, the Seigneurs as carefully avoided the enacting of general Laws, because the execution of them must have vested in the King, and must have enlarged that paramount power which was the object of all their fears. The general assemblies, or States General of the nation, thus lost or voluntarily relinquished their legislative authority, which, abandoned by them, was assumed by the Crown.(3)

The first of the royal ordinances which can be taken for an act of Legislation, extending to the whole kingdom, was published in the year 1190, by Philip Augustus, and is entitled *Edit touchant la mouvance des fiefs entre divers Héritiers*. (4) Previous to this period they contained regulations, whose authority did not extend beyond the limits of the royal domain, so that no addition whatever was made to the statute law of France during the long period of 269 years, which elapsed between the date of the last capitular, in the year 921, and the publication of this edict. (5)

The first acts of general legislation were published by the Kings of France with great reserve and precaution. They assembled a Council, composed of the great officers of the Crown and of certain of the Bishops and Seigneurs, which is generally supposed to have been no other than the King's Council of that day, the Court of the Palace, which was afterwards made sedentary and called the Parliament of Paris.(1) With them they deliberated—with their advice and consent they legislated—and by them the ordinances were signed, as well as by the Sovereign himself.(2) But, in a later period, and by succeeding monarchs, these were considered as unnecessary formalities, and rejected. They then enacted laws in their own names, and alone—the style of persuasion, which was used in the earlier edicts, was changed for the imperative declaration of an absolute Legislator, "*voulons, commandons et ordonnons, car tel est notre plaisir*," and for the deliberative voice of the council, was substituted the practice of verifying and enregistering the royal ordinances in the Parliaments or Sovereign Courts of those jurisdictions to which the King thought proper to extend them; a practice which was continued without deviation until it became a fundamental maxim in French jurisprudence, recognized equally by the Prince and by the People, that no Law could be published in any other manner, and that no ordinance could have any effect, or bind the inhabitants of any particular jurisdiction, before it was verified and enregistered by the King's order, in the Sovereign tribunal of that Jurisdiction.(3) Under the sanction of this maxim the Parliaments of France, at various times, refused to verify and enregister particular ordinances which they conceived to be oppressive to the subject, or subversive of the constitution, with a spirit and constancy which reflected the highest honor on their members, but bore no proportion to the power which they opposed. In some instances of their opposition, the King voluntarily abandoned the obnoxious Law; in others, the Parliament, on their part, thought it most prudent to submit, and obeyed the royal commands, contenting themselves with an entry, purporting that the enregistry was made by compul-

(1) Robertson's Charles V. vol. 1, p. 166.
(2) Robertson's ibid, vol. 1, p. 367.
(3) Robertson's Charles V. vol. 1, p. 167 and 168.
(4) Conférence de Guenois Chronologique, p. 2.
(5) Robertson's Charles V. vol. 1, p. 368 and 167.

(1) Maximes de Droit Public Français, vol. 4, p. 186.

(2) Miraumont des Jurisdictions de l'enclos de Palais, p. 61, Coquille, Instit. du Dr. Français, cap. 1. Maximes du Droit Pub. Français, vol. 4, p. 184.

(3) Rocheflavin des Parlemens de France, lib. 13, cap. 17, No. 3, p. 702. Papon, troisième note, tit. de la clause "car ainsi nous plait," p. 334 and 336. Pasquier, Recherches de la France, lib. cap. 4. Loyseau des Seigneuries, cap. 3, No. 11. Des offices, lib. 4, cap. 5, No. 67. Coquille Inst. au Droit Français, cap. 1. Hericourt, Lois Ecclesiastiques, p. 108, cap. 16, sec. 10. Maximes du Dr. Pub. Français, vol. 4, p. 57.

sion "*ex iterativo et expresso mandato Regis.*" (1) But, whenever instances have occurred in which the Parliaments have inflexibly refused to enregister an ordinance which the king had determined to carry into execution, the plenitude of the royal power has afforded a remedy for their refusal. Upon such occasions, the king repaired, in person, to the Parliament and held a "*lit de justice.*" He took possession of that seat, which he was supposed at all times to occupy, and commanded the ordinance to be read, verified and registered in his presence, for, being the Sovereign and personally present, the Parliament was held then to have no authority, according to the principle, *adveniente principe, cessat Magistratus*, a principle which the constitution of France seems to have recognized, and which most effectually defeated every effort of her parliaments to limit and control the Crown in the exercise of a supreme legislative authority. (2)

"*Ordonnance*" is a generic term, comprehending, *in its most extensive* application, every rule of conduct prescribed by the Sovereign to his subjects *in person*, as the Royal Edicts, Declarations, and *Arrêts du Roi en son Conseil*, or by his authority, as the by-laws of corporations and the Arrêts of his superior or Sovereign Courts.(3)

In a narrower sense, it signifies all laws which emanate from the King directly, and those only;(4) but, in its most limited import, it is confined to such general laws as are enacted by the Sovereign in person, and are rather codes of regulations respecting one or more branches of Jurisprudence, than provisions for particular objects, and this is its proper signification.(5)

In this sense the ordinance of John the I. of March 1356;(6) one of Charles the VII of July 1438, usually called the pragmatic sanction; (7) another of Charles VII of October 1446;(8) another of the same monarch, of April 1453, usually called the ordinance of *Monil les Tours*,(9) the ordinance of Louis the XII, of March 1498; (1) that of Francis the I of October 1535, commonly called the ordinance of *Yz sur Tille*;(2) another of the same monarch of June 1536, usually called the edict of Cremieux;(3) another of the same monarch, of the month of August 1539, commonly called the ordinance of *Villars Cotterets*;(4) one of Charles the IX, of January 1560, commonly called the ordinance of Orleans; (5) another of the same Monarch of January 1563, commonly called the ordinance of Rousillon;(6) another of the same Monarch, of February 1566, commonly called the ordinance of Moulins; (7) one of Henry the III. of May 1579, commonly called the ordinance of Blois; (8) the celebrated edict of April 1598, commonly called the edict of Nantes,(9) and that of Louis the XIII of January 1629, better known by the names of Code Michaud and Code Marillac,(10) are the principal ordinances enacted before the erection of the Sovereign Council of Quebec.(11)

The ordinance of January 1629, which is one of the most extensive, and best digested, was enregistered in a "*Lit de Justice*," held in the Parliament of Paris, on the 15th January, 1629. It was compiled by Michel de Marillac, then keeper of the seals, by order of Cardinal de Richelieu, and was, at first, received with great approbation, which it well merits. But on the death of the Marechal de Marillac, who was brought to the scaffold by the Cardinal, the seals were taken from his brother, Michel, who was imprisoned, and died of a broken heart in the Castle of Chateaudrin in 1632.

The disgrace of Michel de Marillac affected the credit of the Ordinance of which he was known to be the author. It fell into general disrepute, and, certainly, for a period, was not cited in the Parliament of Paris. There were, however, even during that period, some Juris-

(1) Maximes du Droit Public Français, vol. 4, p. 240 et seq.

(2) Rocheflavin, p. 928 & 629. Pasquier's Recherches, vol. 2, p. 576, 577, and vol. 1, p. 61, Réport. "Lit de Justice," vol. 35, p. 629.

(3) Bornier's Preface, p. 2, Couchot, prat. Univ. vol. 1, p. 4.

(4) Couchot, prat. Univ. vol. 1, p. 4.

(5) Bornier's Preface, p. 3, Hericourt, Lois Ecclésiastiques, cap. 16, sec. 5, p. 108.

(6) Néron, vol. 1, p. 2.

(7) Quenois Chronologie, p. 7.

(8) Néron, vol. 1, p. 17.

(9) Néron, vol. 1, p. 24.

(1) Néron, vol. 1, p. 56.

(2) Néron, vol. 1, p. 93.

(3) Néron, vol. 1, p. 152.

(4) Néron, vol. 1, p. 158.

(5) Néron, vol. 1, p. 368.

(6) Néron, vol. 1, p. 424.

(7) Néron, vol. 1, p. 444.

(8) Néron, vol. 1, p. 508.

(9) Néron, vol. 2, p. 921.

(10) Néron, vol. 1, p. 782. Répert. verbo, Code Michaud.

(11) Vide Dict. de Jurisp. vol. 3, p. 39, Répert. verbo "Ordonnance," vol. 43, p. 470. Denizart, verbo "Ordonnances."

dictions which continued to receive it, and in which it was quoted and admitted to be Law, particularly the Parliament of Dijon, and by some writers it is asserted, that it was finally received as such in all.(1) But by others this is denied, and the Ordinance is by them said to have become obsolete. *Non mihi licet tantas componere lites.*

Much of the Ecclesiastical Law of France, as it stood at the erection of the Sovereign Council of Quebec, is contained in the Ordinances which have been enumerated. They relate, in general, to the Government of the Church as well as of the State, and to the Jurisprudence and practice of Courts, Ecclesiastical as well as Civil. There are, however, others which wholly concern the Church, some enacted upon the representations of the States General—some upon the representations of the Clergy—and some upon the mere motion of the Sovereign.(2) But the principal Ordinance, on this head, is that of Charles the Seventh, of July 1438,(3) called the Pragmatic Sanction.

During the schism of Avignon, when from the year 1378 to the year 1417,(4) the Christian world saw with astonishment and disgust, two co-existent Popes, each claiming an equal right to the Papal Throne, and supporting their respective pretensions by the full exercise of the papal power, the Gallican Church rejected all foreign authority, and governed herself principally, by those parts of the Canon Law which had been observed previous to the publication of the new Decretals. In the great Assembly of the Church which was afterwards held at Constance, in the year 1414(5), the superiority of the Œcumenick Councils over the Pope was acknowledged and formally declared, and in consequence of this declaration and of an agreement which took place between the Council held at Basle in the year 1437, and the Sovereign and States General of France convened at Bourges, in the same year, the Pragmatic Sanction was enacted.(1) But as this Edict materially affected the Papal jurisdiction it necessarily created many differences between the Courts of France and Rome, which, becoming subjects of negotiation, were terminated in the year 1516, (2) by the Concordat, a treaty concluded between Francis the First and Pope Leo the Tenth, at Boulogne, and enregistered in the Parliament of Paris, but enregistered in opposition to the opinion of that respectable body, and in their own expression "*du très exprés commandement du Roi, réitéré plusieurs fois.*"(3)

The encroachments of the See of Rome have, in fact, ever been opposed by France,(4) and the liberties of the Gallican Church, in opposition to the exorbitant pretensions of the Holy Pontiff, have, at all times, been asserted, and at all times, supported by the King, the Clergy and the People.(5) These liberties which comprehend not only the privileges and immunities conceded by the Concordat, but all the Ancient Canons adopted by the Gallican Church for its own government, with all its ancient usages, are recognized in the celebrated declaration of the Church of France, made on the 19th of March, 1682, by the Archbishops, Bishops, and Deputies of the Clergy assembled at Paris, by the King's order, are confirmed by the Royal Edict of the same month, and are founded upon two maxims of very great extent, viz: That the papal and all other ecclesiastical power, is purely spiritual, and does not extend, directly or indirectly, to anything temporal,(6) and that, in spiritual concerns, the authority of the Pope being inferior to that of the Councils, he is restrained by the Canons, and cannot by any new constitution, infringe them, or set aside any usage or custom of the Church of any State, recognized by the Municipal Law of that State to be valid.(7)

[To be continued.]

(1) Journal d. Aud. vol. 4, p. 486, Dict. de Jurisp. vol. 3, p. 44, Dénizart, verbo "Parentis," No. 25. L. C. Dénizart, vol. 4, p. 586, case of the Princess of Carignant, an. 1748, L. C. Dénizart, vol. 9, p. 761. Répert. 8 vo. vol. 11, p. 431 to 434. Encyc. Méthod. de Jurisp., vol. 2, p. 692. L. C. Dénizart, vol. 1, p. 184, Sec. 4, No. 3.

(2) Hericourt, Lois Eccles. Introd. p. 12 & 13.

(3) Guenois' Chronologie, p. 7.

(4) Millot's History of France, part 2, p. 153 and 217.

(5) Dict. Canon, verbo "Constance."

(1) Fleury's Inst. au Droit Canon, Cap. 1, vol. 1, p. 20.

(2) Fleury's Instit. au Droit Canon, vol. 1 p. 22.

(3) Hericourt, Lois Ecclesiastiques, Introd. p. 9, 10 and 11.

(4) Fleury's Instit. au Droit Canon, vol. 2, p. 220.

(5) Vide the Declaration of the Clergy of France of 1682, and the Royal Edict thereon in Neron, vol. 2, p. 172.

(6) Pothier, 4to vol. 6, p. 306.

(7) Hericourt, Lois Ecclés. intro, p. 13, vol. 1, p. 112. Répert. verbo "Libertés de l'Eglise Gallicane." Dict. de Droit, verbo "Libertés de l'Eglise Gallicane." Lacombe, Recueil de Jurisp. Canon. verbo "Libertés de l'Eglise Gallicane." Fleury's Inst. au Droit Canon, vol. 2, p. 220 and seq. Preuves des Libertés de l'Eglise Gallicane, by Pithon.