The Legal News.

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STAMP DUTIES IN MANITOBA.

A letter from Winnipeg complains bitterly of the heavy stamp duties collected on legal proceedings in Manitoba, and says that when the news of the decision of the Supreme Court in *Loranger & Reed* (6 L. N. 209) arrived, to the effect that the imposition of any such stamp tax was indirect taxation on the part of a province, and so under the Confederation Act *ultra vires*, there seemed "to be balm in Gilead and joy in the tents of the lawyers." The question was forthwith raised by refusing to stamp jury notices for the coming assizes. Judge Dubuc, in chambers, decided that the practice of the Court must be adhered to, but it is said that the question will shortly be brought before the full bench.

DEFENCE TO LIBEL SUITS.

In *Farmer* v. *Millman*, the plaintiff, a Hamilton photographer, is suing one Millman and the Hamilton *Tribune*, for damages for libel. The alleged libel is contained in an article in the paper mentioned, charging the plaintiff with having seduced a girl named Bella Payne, who has since died from the effects of her betrayal. The *Tribune*, as one defence to the action, sets up that the article was published by them *bona fide* and in the discharge of their duty as public journalists. To this defence the plaintiff took objection, and moved (Oct. 23) before Chief Justice Wilson at Toronto, to have it struck out, on the ground that it is no answer to the action unless it shows in what way it is in the public interest to publish it. Counsel for the *Tribune* contended that that was a question of fact, and should be left to the trial, or that particulars could be given under the defence, but the plea should not be struck out. The learned judge, however, held that where a newspaper sets up such a defence to an action of libel it should show in what way the subject matter of the article is of public interest. Judgment on the motion was therefore against the *Tribune*, but leave was given to amend on payment of costs.

SALE OF GOOD WILL.

A case came up recently before the Supreme Court of Louisiana (*Bergamini* v. *Bastian*, 16 Rep. 460), in which the question was very much like that decided by our Court of Queen's Bench in *Findlay & McWilliam*, 23 L. C. J. 148, but the Louisiana Court appears to have arrived at a different conclusion. The question was recognized to be a new one in Louisiana, and the Court, therefore, gave unusual care to its decision. The holding was that the sale of a commercial establishment, together with the good will thereof, does not preclude the vendor from the right of opening a similar establishment in the same vicinity within a short time after the sale, in the absence of an express understanding or stipulation to the contrary. The following extract from the opinion of the Court shows the grounds on which the judgment rested:—

"Plaintiff contends that the legal obligation of the vendor to warrant the peaceable possession and enjoyment of the good-will necessarily implies the obligation not to enter into a similar line of business at a short distance from the other, calculated to draw customers from the concern which he had sold and warranted. This construction is resisted by the defendant, who urges that the vendor, under such circumstances, will not be held to have thus contracted not to enter into a similar business, in the absence of an express stipulation to that effect, and that a contract in restraint of trade cannot be presumed and enforced by the courts. The issue thus presented has not yet been the subject of inquiry in our jurisprudence, and it therefore presents a new question, of serious importance to commerce, to the solution of which we have bestowed unusual care, thought, and study. The three cases quoted from our reports do not involve the present issue, but the principles therein settled afford some assistance in our present researches, and throw some light on the subject of this controversy. They settle the principle that good-will can be the subject of a sale in commercial contracts, and that the clause in an act of sale by which the vendor binds himself not to pursue the same trade or business as that which he sells, within a specified time, is not invalid as being in restraint of trade, and can be enforced by the courts. Such was the issue presented, and such was the

adjudication made, in the cases of *Wintz* v. *Vogt*, 3 La. Ann. 16, and *Verges* v. *Forshee*, 9 id. 294. The decision in the case of the *Succession of Jean Journé*, 21 id. 391, defined the meaning in law of the term 'good-will,' and re-affirmed the doctrine that it was a legal subject of trade, and bargain and sale. The term has been defined by several authors whose definitions, although varied in terms, all approximate to the same meaning. The following definition by Judge Story commends itself for its clearness and vast comprehension: 'Good-will is the advantage or benefit which is acquired by an establishment, beyond the mere value of the capital, stock, funds, or other property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers, on account of its local position or common celebrity or reputation for skill or affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices.' By the French authorities it is known as '*achalandage*.' A careful examination of the authorities under both systems has disclosed to our minds the fact, that on the point which we are now discussing there is no material difference between the decisions of the civil law and of the common law courts. The shade of difference between the two lines of authorities is on the question of the binding effect of contracts under which a party stipulates not to pursue a particular line of business, on which point the common-law authorities have a tendency to discountenance such contracts as in restraint of trade, and as tending to foster dangerous monopolies, while the civil-law authorities seem to tend toward the binding effect of all such contracts or stipulations. But on the proposition which we maintain in this opinion, that the vendor of an establishment, with the good-will, does not preclude himself from resuming business in the same line, in the same place or vicinity, and a short time after the sale, in the absence of an express understanding or stipulation to that effect, we find ample support from decisions and respectable authorities under both systems. *Cruttwell* v. *Lye*, 17 Ves. 335; *Bassett* v. *Percival*, 5 Allen, 345."

In the case of *Findlay & McWilliam*, cited above, the grounds of action were somewhat stronger. The retiring partner not only opened a similar business in the immediate vicinity, but he sent circulars to the customers of the firm of which he had been a member, with the object of creating the impression that he had succeeded to the firm's business. Our court held, and it seems to us very reasonably held, that the sale of the good-will implied the obligation on the part of the vendor to make no undue competition with the vendee, and that the acts of the vendor in seeking to convey to the public the impression that he was the successor to the business were in violation of good faith.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, October 17, 1883.

Befor. LORANGER, J.

In re Hon. J. A. MOUSSEAU, Petitioner.

Quebec Elections Act—Recount of votes.

Where the deputy returning officer has omitted to make a statement of the votes given to each candidate (under sect. 193 of 38 Vict. cap. 7), it is the duty of the returning officer to ascertain by reference to the documents the total number of votes for each candidate at the poll in question, and if the returning officer has failed to do so, a recount may be ordered by the Judge.

PER CURIAM. Il s'agit du recompte des suffrages donnés dans l'élection tenue dans le district électoral de Jacques-Cartier le 26 septembre dernier. Il appert par la requête que le 13 octobre courant, l'officier aurait procédé à l'ouverture des boîtes de scrutin, conformément à la section 200 de l'Acte Electoral de Québec, mais il n'aurait pu constater le nombre exact des votes enregistrés, attendu que quelques boîtes du scrutin ne contenaient pas les relevés voulus par la loi, tandis que les relevés trouvés dans certaines autres boîtes étaient irréguliers et incomplets, et n'indiquaient pas d'une manière exacte l'état de la votation. Il en serait résulté que la majorité du requérant, qui, s'il faut en croire les allégations de la requête, aurait été de plus de cent voix, suivant tous les rapports connus, aurait été réduite par le certificat de l'officier-rapporteur au chiffre de 42 votes.

Le requérant se plaint, en outre, que l'officier aurait négligé, pour s'enquérir du nombre exact des votes donnés, de consulter les documents et pièces justificatives qui se trouvaient dans les boîtes, n'ayant tenu compte, dans son addition, que des relevés qu'il avait trouvés dans les boîtes, tout incomplets qu'ils fussent. On lui reproche de n'avoir pas suppléé aux relevés manquant par la vérification des listes d'électeurs et des cahiers de votation et les autres documents qui, aux termes des sections 201 et 202, étaient suffisants pour le mettre en mesure de donner un état exact de la votation. Le requérant, se trouvant ainsi privé de la majorité réelle qu'il prétend avoir obtenue, demande le recompte des votes ; sa requête est accompagnée de l'affidavit de son agent.

On s'objecte à ce recompte, et comme moyen d'opposition, on invoque les termes mêmes du statut (42-43 Vic., ch. 15) qui autorise le recompte en matière d'élection, lequel n'aurait lieu suivant l'opposant que dans les deux cas suivants, savoir : *lorsqu'en comptant les suffrages, le sous-officier-rapporteur aurait improprement compté ou écarté quelques bulletins de votation, ou lorsqu'il a mal additionné les votes.* Or, dit l'opposant, le requérant ne se plaint ni de l'une ni de l'autre de ces erreurs ou irrégularités ; sa plainte se bornerait au fait que l'officier-rapporteur n'a pas fait un rapport définitif des votes enregistrés, attendu qu'il manquait des relevés du sous-officier-rapporteur, et que pour faire son addition, il n'a tenu compte que des relevés qu'il a trouvés dans les boîtes, sans s'enquérir aux autres sources d'informations qu'il avait en sa possession.

L'opposant prétend que la requête et l'affidavit ne couvrent aucun des cas prévus par le statut, et conséquemment que le juge est sans juridiction à connaître des matières énoncées dans la dite requête, lesquelles, suivant lui, pourraient tout au plus faire le sujet d'une pétition d'élection.

S'il faut en croire l'opposant et l'interprétation qu'il donne au statut, il n'y aurait de sujets à révision par le juge que le compte et l'état de votation certifié par le sous-officier-rapporteur ; celui de l'officier-rapporteur échapperait à sa juridiction.

La lettre de la loi, si on ne consulte que la version française, semble donner raison à l'opposant. Mais en lisant la version anglaise, on trouve que les cas de révision y sont exprimés différemment, et l'officier-rapporteur y est désigné comme un des officiers dont le rapport est sujet à révision. En effet, ces deux officiers ont des devoirs et des attributions différentes à remplir, mais le concours des deux est nécessaire pour la constatation définitive et finale du nombre des votes enregistrés, ainsi que je le démontrerai dans un instant. Quel est l'objet du recompte et que veut la loi qui l'autorise, si ce n'est de réparer, au moyen d'une investigation scrupuleuse et minutieuse, faite sous l'autorité du juge, les erreurs ou les irrégularités ccmmises par les officiers chargés du dépouillement du scrutin après la votation ? Que l'erreur soit le fait du sous-officier-rapporteur ou de l'officier-rapporteur lui-même, peu importe : l'objet que se propose la loi, c'est que le vote soit constaté d'une manière certaine et sommairement, au moyen des bulletins, relevés et de tous les autres documents qui ont servi à l'élection et que le sous-officier-rapporteur est obligé de déposer dans la boîte du scrutin.

Deux opérations sont nécessaires après la votation pour constater l'état des votes, et en cas d'insuffisance de l'une ou de l'autre, la loi en autorise une troisième, c'est celle du recompte par le juge. Les deux premières sont du ressort du sous-officier-rapporteur et de l'officier-rapporteur. Le sous-officier-rapporteur fait, immédiatement après la votation, le dépouillement du scrutin, et compte, en s'aidant des bulletins eux-mêmes, le nombre des suffrages donnés à chaque candidat, écartant les bulletins qui ne sont pas conformes à la loi ; fait un état de la votation et des bulletins écartés, et met le tout sous enveloppes ou dans des paquets scellés et distincts.

Le sous-officier-rapporteur prépare, en outre, un relevé indiquant le nombre des bulletins admis, des suffrages donnés à chaque candidat, des bulletins écartés, maculés et remis, et de ceux qui n'ont pas été employés, qu'il renvoie ; puis, après avoir pris une copie de ce relevé, il place l'original dans la boîte avec la liste des électeurs, au bas de laquelle il est obligé de certifier le nombre total des électeurs qui ont voté, le cahier de votation, les bulletins qui n'auraient pas servi, ainsi que toutes les autres pièces qui ont été employées ou requises à l'élection ; puis cette boîte est ensuite fermée à clef et scellée et remise à l'officier-rapporteur.

Le relevé doit être accompagné du serment du sous-officier-rapporteur et du greffier de l'élection, constatant que les formalités voulues par la loi ont été remplies.

Cette opération terminée, commence le rôle de l'officier-rapporteur; il doit faire la vérification de l'état du sous-officier-rapporteur, vérification qui sert de base au rapport officiel ou au certificat d'élection qu'il est obligé de donner.

Cette vérification se fait au moyen des relevés du sous officier-rapporteur et des autres documents et pièces justificatives contenus dans la boîte, à l'exception des bulletins eux-mêmes, qu'il n'a pas le droit d'examiner; puis il délivre un certificat constatant l'état définitif de la votation.

Toutefois ce dernier rapport n'est pas final; en cas d'erreur, il y a appel au juge, qui reprend à son tour les états de compte de l'officier-rapporteur et du sous-officier-rapporteur, et rectifie finalement le tout par le recompte des bulletins restés sous enveloppe, dont seul il brise le sceau lui-même, en présence des parties.

Voilà le rouage tel que le donne le statut quant à ce qui concerne l'état des votes et la vérification qui doit en être faite pour en constater exactement le nombre.

Avant la passation de l'acte du recompte, la loi exigeait comme elle l'exige encore aujourd'hui, deux rapports sur l'état de la votation: celui du sous-officier-rapporteur et celui de l'officier-rapporteur, avec cette différence qu'alors, le rapport de l'officier-rapporteur était final, et sauf les cas de privilèges du ressort de la chambre d'Assemblée législative, ce rapport ne pouvait être contesté que par voie de pétition d'élection. Ces deux rapports sont encore de rigueur, et quelle serait l'utilité de la loi du recompte, si elle ne doit s'appliquer qu'à l'un d'eux, savoir celui du sous-officier-rapporteur? A quoi servirait la révision de ce dernier rapport, si celui de l'officier-rapporteur doit rester intact et définitif? On s'exposerait à avoir deux rapports distincts, l'un fait par le juge corrigeant l'état de votation tel que fait à la clôture du poll, et celui de l'officier-rapporteur, fait quelques jours après, et ne s'accordant ni l'un ni l'autre; et dans ce cas, lequel des deux devrait être accepté comme définitif? On voit de suite qu'un pareil système mènerait à l'absurde, et combien il importe, dans l'espèce, d'écarter la lettre de la loi pour en chercher l'esprit et en faire une application sûre et raisonnable. Je suis donc d'opinion que le juge a le droit de reviser non-seulement le rapport du sous-officier-rapporteur, mais aussi celui de l'officier-rapporteur.

Voyons maintenant si, dans le cas actuel, il y a lieu à la révision du rapport de l'officier-rapporteur.

Ce rapport est basé uniquement sur les relevés que cet officier a trouvés dans les boîtes du scrutin; quelques-uns de ces relevés, d'après les allégations de la requête, sont incomplets et irréguliers; dans certains bureaux de votation, les relevés manquaient complètement.

L'officier-rapporteur, s'en tenant à la lettre de la loi (section 200), a constaté le nombre des votes d'après les relevés qu'il a trouvés, sans s'enquérir aux autres sources d'informations qu'il avait sous la main, pour remplir les lacunes et suppléer aux relevés manquant. On prétend qu'en agissant ainsi, il s'est tenu dans la stricte limite de ses devoirs, et qu'il ne pouvait agir autrement sans enfreindre la loi.

Suivant cet officier, et telle a été la prétention de l'adversaire du requérant à l'audience, l'officier-rapporteur ne doit prendre en considération, pour faire son rapport, que les relevés qu'il trouve dans la boîte; de sorte que s'il ne s'en trouvait aucun, il ne ferait aucun rapport, et comme conséquence, il n'y aurait pas de certificat d'élection. En vain lui objecte-t-on que les sections 201 et suivantes lui donnent le pouvoir de consulter les listes qui ont servi à la votation et portent un certificat attesté sous serment de l'état de la votation à la clôture du poll et des votes enregistrés pour chaque candidat, ainsi que le cahier de votation et tous les documents qui ont servi à la votation et que le sous-officier-rapporteur est tenu de déposer dans la boîte du scrutin; il répond que l'exercice de ce pouvoir est limité au seul cas où les boîtes, ou l'une d'elles, manquerait ou serait perdue. Cette interprétation me parait erronée, et son application en serait trop dangereuse pour qu'elle rende le véritable esprit de la loi.

En déclarant que l'officier-rapporteur devra se procurer de toute personne les ayant en sa possession les listes, relevés et certificats requis par le statut, la loi suppose nécessairement le cas où ces documents ont disparu; mais quand cet officier les a en sa possession et les trouve dans la boîte même du scrutin, quel prétexte

plausible peut-il avoir de ne pas les consulter ? Quand le statut parle de la boîte qui contient les bulletins et documents d'élection, cela s'entend non-seulement du contenant, mais aussi du contenu. Pour comprendre ce qu'il y aurait de dangereux dans la pratique du système adopté par l'officier-rapporteur, il suffirait de supposer le cas où le sous officier-rapporteur, soit par mégarde, soit volontairement, aurait mis son relevé dans l'enveloppe scellée qui contient les bulletins de vote ; dans ce cas l'officier-rapporteur, qui n'a pas le droit de briser le sceau de cette enveloppe, serait, quoique muni de tous les autres renseignements, dans l'impossibilité de faire son rapport ; et à cela on ajoute que le juge lui-même n'aurait pas le droit quand il a devant lui tous les documents de la votation, y compris les bulletins eux-mêmes, de briser le sceau qui les tient au secret, attendu que l'officier-rapporteur n'aurait pu faire son rapport ! On voit de suite à quel état de choses cela nous conduirait, et il suffit d'énoncer la prétention de l'officier-rapporteur pour démontrer qu'elle est erronée et contraire à l'intention du statut.

Je suis, sur le tout, d'opinion que l'officier-rapporteur s'est mépris sur le véritable sens de la loi et dans l'interprétation qu'il en a faite ; il n'a pas fait l'addition des votes que le statut exige et son rapport est insuffisant. Jugeant qu'il est, comme le sous officier-rapporteur, soumis à la juridiction du juge, pour les fins de l'acte qui permet le recompte, j'ordonne que le dépouillement du scrutin ait lieu et que le recompte des votes se fasse.

Recount ordered.

Lacoste & Co. for Petitioner.
Mercier & Co. for J. A. Descarries.

COURT OF REVIEW.

MONTREAL, October 31, 1883.

Before TORRANCE, JETTÉ & MATHIEU, JJ.

BEAUCHEMIN v. LA CORPORATION DE LA VILLE DE ST. JEAN.

Corporation—Defective sidewalk—Costs.

A municipal corporation is responsible for the condition of the sidewalks and streets, without proof that it had notice of the defects which led to the accident.

TORRANCE, J. The action here was to recover damages suffered by plaintiff from the defective condition of the sidewalks of defendant. The City was condemned to pay $60 with costs as in an action over $100. The defendant in review complained that there was no proof of the pavement being defective before the accident, and no proof that they had ever been notified of any accident, and therefore they were not liable.

This question was decided against the City of Quebec in appeal in the case of *Kelly* v. *The City of Quebec*, 10 R. Légale, 605.

Another point brought into review was the condemnation to costs beyond the $60, amount of principal condemnation. This was usual and in the discretion of the Court.

Judgment confirmed.

Pagnuelo & Co., for plaintiff.
Robidoux & Co., for defendant.

COURT OF REVIEW.

MONTREAL, Oct. 31, 1883.

Before TORRANCE, JETTÉ & MATHIEU, JJ.

ARPIN v. ROY et al.

Insolvent Act of 1875, *Section* 61—*Claim incorrectly described in statement of liabilities.*

The insolvent, in the statement of his affairs, described a note made in December as having been made in June. Held, that he was not discharged from the claim by his discharge in insolvency.

TORRANCE, J. The action was on a note made by Roy, and indorsed by the other defendant Dubois. Roy pleaded his discharge in insolvency. Dubois pleaded that he was discharged by the negligence of Arpin in not claiming against Roy in insolvency, and that Arpin had given Roy delay which had discharged Dubois. The Court below found for plaintiff on all these pleas. The point of chief importance was whether the discharge in insolvency had affected the claim of plaintiff. By section 61 of the Insolvent Act, Roy, in order to have the advantage of the Act, had to specify the note in the statement of his affairs. He mentioned a note made in June and this was made in December. The Court said it was insufficient. The case of *Duhamel & Payette*, 1 Legal News, 162, and *Bank of N. America* v. *Copeland*, 4 Legal News, 154, are in point. I see no error.

JETTÉ, J., dissented.

Judgment confirmed.

Lorrain, for plaintiff.
Geoffrion & Co., for defendant.

COURT OF REVIEW.

MONTREAL, October 31, 1883.

Before TORRANCE, RAINVILLE & MATHIEU, JJ.

In re PILON, Petitioner, & FOUCAULT, contesting.

Insolvent Act of 1875, *Section* 56—*Failure of Insolvent to keep books of account showing his receipts and disbursements.*

TORRANCE, J. The petitioner Pilon was an insolvent, and, applying for his discharge, was opposed by Foucault. The opposition was successful on the ground that the petitioner had not kept proper books of account showing his receipts and disbursements, as required by the Insolvent Act, 1875, S. 56. The judgment of the Court in the District of Terrebonne was correct and should be confirmed.

Judgment confirmed.

Pagnuelo & Co., for petitioner.
Prevost & Co., for contestant.

COURT OF QUEEN'S BENCH.

MONTREAL, October 31, 1883.

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

THE CONSOLIDATED BANK OF CANADA, Appellant, & MOAT, Respondent.

Insolvent Act of 1875, *Section* 88—*Interest-bearing debt.*

The creditor of a hypothecary debt bearing interest due by one of the partners, is entitled to be paid interest in full up to date of collocation out of the private estate of the partner, before the creditors of the firm are entitled to rank against the private estate.

RAMSAY, J. The respondent, creditor of a partner of an insolvent firm, was collocated on the private estate for his debt and interest on it.

The question to be decided turns on the interpretation to be given to sect. 88 of the Insolvent Act, 1875. It is contended by appellant, that the *claims* which are to be paid *in full*, do not include interest due on an hypothecary debt. The argument is this: this disposition of the law is taken from an English statute, under which it has been held that the claim does not include interest, and it is offered as a legal proposition, that when an institution is borrowed from a foreign legislation, it is presumed to be taken accompanied by the jurisprudence in such foreign country at the time the legislation is introduced. We are also referred to section 80 of our Act of 1875, to show that interest generally does not form part of the claim in insolvency. It is further said, as the reason of the thing, that interest ceases because the debtor has surrendered the thing, and consequently that interest can no longer run for what he has not got. And finally, that the idea of the insolvent act is, that so far as distribution is concerned—or rather ranking—the whole thing is petrified at the moment of a valid assignment.

The law may be very good, and the reason given for it the reverse. It may be good law to say that under our positive law insolvency puts an end to interest, and to give as a reason for it, that it is because the insolvent has surrendered his estate is clearly untenable whether we look at it technically, or from the point of equity. Technically, there is no surrender to the creditor. It is made to a legal person who administers for the benefit of the creditors, it is true, but finally, for the profit of the debtor himself, for he gets the residue, if any there be. The abstract proposition, that insolvency puts an end to interest, was in reality abandoned when appellant admitted that the debtor would be liable for interest before he could get back the residue. If he continues liable for the interest it had not ceased to run. Equitably, it seems to me the argument is no better. Why it should be less fair to claim the interest of the debt bearing interest than the principal, it is difficult to say.

It may, however, be absolute law.

The words "subject to rebate of interest" in section 80, appear to me to have no application to the question before us. They appear to me to refer only to debts *due and not actually payable.* The creditor cannot claim on them for prospective interest, although forming part of the obligation. But without creating any confusion, they may be applied to debts payable and to debts not payable. Both stand on the same footing.

Sec. 88 is not borrowed from the English act, at all events, so far as this Province is concerned, but from cap. 4 of the Sts. of Canada of 1859,

continued in cap. 65, C. S. L. C., sec. 6, and incorporated in C. C., art. 1899. In all this casting and re-casting of the statute law there is not a word to show that the privilege of the creditor of the private estate of a partner over the assets of the private estate is limited to a portion of the debt. The section of the Act in the Consolidated Statutes is in these words: "The net proceeds of the separate estate of each partner shall be apportioned in the first instance to pay the creditors of his separate estate," and it is only the balance which goes to swell the proceeds of the partnership estate, if necessary for the payment of creditors."

Again, even if the section were borrowed from an English Statute, I think it would be overstating the rule to say that we must take its English jurisprudence with it. English jurisprudence on a statute exactly corresponding to ours, is certainly some authority, but I don't think it would be declaratory of the intention of the legislature. The authorities cited in Clarke, (p. 10) only go the length of saying, that a re-enactment of the same words is supposed to imply that the legislature is satisfied with the interpretation; but really this goes little further than to say that the re-enactmen of the same words does not destroy the jurisprudence on the former statute or specially authorize a new departure. I can hardly fancy, at all events under our views of jurisprudence, that it will be maintained that the re-enactment of a statute in the same words would fasten an evidently erroneous interpretation of words on the world, adopted by one or two judgments, which do not indicate a general acquiescence in a doctrine. Lastly, if a *dictum* of the sort were binding, I don't know where it is to be found with regard to this clause. The appellant, when stating the point in immediate connection with his authorities, involuntarily recedes from the position that could alone save his position. He states the doctrine correctly when he says, that interest is not allowed "where creditor is competing with creditor." But this is obviously not applicable when the competition is between privileged and non-privileged creditor. This is fully explained in 1 Bedarride, p. 128, the authority cited by appellant. This writer says that interest "*courant en faveur de tous*' is not reckoned because it would be uselessly to swell the amounts and keep the accounts open. But he expressly says it does not apply to privileged and hypothecary claims. Renouard and Pardessus are not less explicit. Here the creditors are not even competing. It is the mass of the partnership estate which claims the balance after paying the creditors of the private estate in full. We are all to reject the appeal.

There are two other cases involving precisely the same question, in which the judgments appealed from are confirmed and the appeals dismissed with costs.

In the case of the Consolidated Bank & Moat there is a cross appeal. The Court below held that the cross-appellant, though entitled to interest, had charged compound interest, and a portion of his claim ($1,416.66) was disallowed. At the argument it was stated that the payments had been charged first to the reduction of interest, and that this was the legal mode of imputation. Of course, it was not denied, that if the fact was as stated the appellant must succeed. We have looked into the matter and find that the cross-appellant is correct, and therefore the judgment of the Court below must be so far reformed, and the cross appellant must have the costs of his cross appeal.

Robertson, Ritchie & Fleet, for Consolidated Bank.

Laflamme, Q.C., counsel.

Abbott, Tait & Abbotts, for Moat.

COURT OF QUEEN'S BENCH.

MONTREAL, Oct. 31, 1883.

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

HOWLEY v. THE STANDARD INSURANCE COMPANY.

Procedure—Bailiff's return—Exception to the form.

The truth of the bailiff's return of service of summons may be contested by exception à la forme, the conclusions of which pray for permission to contest.

The bailiff who served the writ and declaration in this cause certified that the service had been made by speaking to, and leaving a true and certified copy thereof, for said Company, "defendants, with a grown and reasonable "person in care at their principal place of busi- "ness in Montreal."

The defendants filed an *exception à la forme*, alleging in substance that their head office was

at Hamilton, in the Province of Ontario, and that before the date of the alleged service, the defendants had ceased doing business in Montreal, and had not at the time of said alleged service, any office in Montreal where, or any agent there upon whom, service could be made; that the return was false, and they prayed to be allowed to contest the truth thereof, and that it might be declared false, &c.

The plaintiff filed an answer in law, in which he alleged that the exception was unfounded and illegal, because the truth of the return could only be contested by improbation, or by motion if the court so ordered, and not by *exception à la forme*.

The Superior Court (Loranger, J.) dismissed the exception with costs, the *Considérant* of the judgment being:

"Que la vérité du rapport de signification en "cette cause ne peut être contestée par voie "d'exception à la forme, mais doit l'être soit "par inscription de faux ou par requête sur per-"mission du tribunal."

Tait, Q. C., moved for leave to appeal from this interlocutory judgment, and cited C. C. P. articles 116, 119, 79, and 159; *Hudon* v. *Solman*, 12 L. C. J. 120; *McMillan* v. *Buchanan*, 17 L. C. J. 13; *Brosseau* v. *Alves*, 17 L. C. J. 228; 2 Doutre P. C. 36, Nos, 74 & 75.

Morris, contra, relied on Arts. 79 and 159 C. C. P., and also contended that the two cases last above cited supported the judgment.

The COURT intimated that it was against the judgment, and suggested that the plaintiff would save costs by desisting therefrom; as the appeal would have to be allowed.

The judgment was accordingly desisted from.

Motion granted as to costs.

Abbott, Tait & Abbotts for defendant moving.
J. L. Morris for plaintiff.

GENERAL NOTES.

The refusal of Lord Coleridge to visit Canada after he had led the Canadians to suppose that he would do so, has naturally caused a considerable amount of disappointment in that colony. All the arrangements for the reception of his Lordship had been made by the Bar of Ontario, the time for his visit to Toronto had been fixed by Lord-Coleridge himself, and everything was in readiness for what we doubt not would have been a brilliant reception. To throw aside a definite engagement with the Bench and the Bar of—what a writer in a Canadian journal not inaccurately describes as "the noblest province of the British Empire," is unfortunate to say the least.—London *Law Times*.

The Chicago Legal News says: "We have watched the course of the Lord Chief Justice since he has been in this country, very closely, and we have not been able to say that he has made any mistake except this one. This was certainly a mistake as the result has shown. He was invited to a complimentary dinner, which for reasons best known to himself he declined, and suggested to the committee that Sir James Hannen and Lord Justice Bowen would be glad to accept the complimentary dinner which was to be prepared for the Lord Chief Justice of England."

In accordance with a suggestion made to us by correspondents in Nebraska, we give below the pronunciation of such American names of reporters and legal authors as seem to be liable to mispronunciation:—Angell, Ain'jell; Bigelow, Big'el-o (g hard; Bispham, Bisp'ham; Bouvier, Boo-veer'; Brevard, Bre-vard'; Cheves, Chev'ess; Coldwell, Cald-well'; Deady, Dee'dy; Denio, De-ny'o; Dessaussure, Des'saus-sure; Devereux, Deve'r-o; Dillon, Dil'lon; Duvall, Du-vall'; Ewell, Yew'el; Gill, Gillman, G hard; Gilmer, Gilpin, G hard; Hening, Hen'ing, Houck, Howk; Houston, Hows'ton; Keyes, Kize; Lea, Lee; Leigh, Lee; Littell, Lit-tell'; McLean, Mac-lane; Minot, My'nott; Rapalje, Rap' al-jay; Schouler, Skool'er; Taney, Taw'ney; Wythe, With (th as in thong); Yeates, Yates.—*Soule and Bugbee's Legal Bibliography.*

Some curious ceremonies, says an English journal, are still kept up in the Tower of London. That of locking up the tower of nights is the most ancient, and the most stately. A few minutes before the clock strikes eleven, the porter, with an attendant, appears before the main guard-house, carrying a lantern, and calls out, "Escort Keys." The guard, supplied always from the Queen's Household Troops, then turns out and escorts "Keys" to the outer gate, called the "Spur," each sentry challenging as they pass his post, "Who goes there?" "Keys." After the gates are securely locked and barred, the procession returns, the sentries exacting the same explanation as before. When they come in front of the main guard-house the sentry stationed there gives a loud stamp on the ground with his foot and demands, "Who goes there?" "Keys." "Whose keys?" "Queen Victoria's keys." "Pass, Queen Victoria's keys and all's well." The porter then calls out, "God bless Queen Victoria!" to which the main guard responds, "Amen." The guard then presents arms, the officer kisses the hilt of his sword, and the keys are deposited in the lieutenant's lodging. After this all ingress and egress is impossible.

Not many years ago there lived in the city of Montgomery, Alabama, a young man whom we will call Smith. He had not long resided in the city before he betook himself to the study of law, and to that end borrowed a straight back chair and space to put it, in the office of one of the prominent law firms in that city. One day the senior member of the firm requested Smith to look up for him some authorities on the question of ejectment. Smith undertook his task with great alacrity, and felt highly flattered that his instructor should have intrusted to him so important a matter. The first volumes in which he began to make his search were the old English Reports. He had searched through almost the entire series of Reports without finding any authorities. And in almost every case he encountered, *Rex* figured as one of the parties. The search was long and arduous, however, before he lost his patience with *Rex*. Finally he could stand it no longer, and impatiently exclaimed "Governor, who is this man Rex? He is the most interminable litigant I ever heard of, and he must have lived to be two or three hundred years old."—*Alabama Law Journal.*