The Legal News.

Vol. VII. OCTOBER 25, 1884. No. 43.

THE BOUNDARY QUESTION.

When an accomplished disputant and a practised writer, like Sir Francis Hincks, fills nearly a column and a half of a daily paper in the endeavour to answer an article on a subject he perfectly understands, without adding a single idea to the controversy, we may surmise two things:—first, that the article requires an answer; second, that there is none to give.

The intention of the writer of these lines is not to play into the hands of those opposed to his views by swelling the amazing mass of literature under which the simple question of the western boundary of Ontario has been obscured. Also, it may save Sir Francis a great deal of unnecessary trouble if he will at once believe that I am constitutionally not very sensitive to banter, and that the antiquated form of sarcasm he has adopted is scarcely calculated to disturb the equanimity of one much more susceptible than I am. What is said may be of some importance in argument, it can scarcely be important who says it, so it matters not whether I am a "legal luminary" or not. The question is, whether I am right. Beyond that question I do not intend to be decoyed. The due north line is a definite pretension, and it is entirely based on the Act of 1774. When Sir Francis Hincks has made up his mind as to what is the title of Ontario to anything west of that line, we shall be glad to have it stated, if possible, in a condensed form, and in technical language. If, on the other hand, the award of Sir Francis and his colleagues can only be justified on the convenience of having a natural boundary, and on its economy by saving the costs of survey, as he seems now to intimate is the case, then we are not at issue on any point in which I take an interest, and I must remain convinced, as I have always been, that the award was as unfair as it was illegal.

R.

STATUS OF COLONIAL QUEEN'S COUNSEL.

The *Law Journal* (London), referring to the opinion given by Sir Henry James (*ante*, p. 321), says:—"The Attorney-General has expressed an opinion in reference to the *Boundary Case* recently heard by the Judicial Committee of the Privy Council, that there is no reason why equal rank should not be given to Her Majesty's Counsel in the Colonies with Her Majesty's Counsel in England in Privy Council cases. In the case in question, Mr. Scoble, Q.C., of the English bar, did, in fact, take a brief as junior to Mr. Mowat, Attorney-General of Ontario. The opinion of Mr. Reeve, the registrar, coincided with that of Sir Henry James, except that he added, 'of course, the English Attorney and Solicitor-General lead everybody.' Why so? If as between Colonial and English Queen's Counsel the senior leads, as between Colonial and English Attorneys-General the senior leads. The office of Attorney-General in England is no more or less an imperial office than the office of Queen's Counsel in England."

The same query suggested itself to us on reading the opinion of the registrar, but we concluded from the words "of course," that Mr. Reeve spoke from information not in our possession. It would certainly look rather singular if the Attorney-General of some very small and insignificant Province (no reference intended to Ontario) took precedence of the Attorney-General of England.

COLONIAL ATTORNEYS' RELIEF BILL.

The Secretary of State for the Colonies has transmitted to the Governor-General of Canada, a copy of the Imperial Act, 47 & 48 Vict. c. 24, entitled "An Act to amend the Colonial Attorneys' Relief Act." The following is the text of the Act:—

CHAPTER XXIV.

An Act to amend the Colonial Attorneys' Relief Act.

[3rd July, 1884.]

Whereas it is expedient to extend the provisions of the Colonial Attorneys' Relief Act as to certain colonies or dependencies:

Be it therefore enacted by the Queen's most

Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Upon application made by the governor or person exercising the functions of governor of any of Her Majesty's colonies or dependencies, and after it has been shown to the satisfaction of Her Majesty's Principal Secretary of State for the Colonies, that the system of jurisprudence, as administered in such colony or dependency, answers to and fulfils the conditions specified in section three of the Colonial Attorneys' Relief Act, and also that the attorneys and solicitors of the superior courts of law or equity in England are admitted as attorneys and solicitors in the superior courts of law and equity of such colony or dependency, on production of their certificates of admission in the English courts, without service in the colony or dependency or examination, except in the laws of the colony or dependency in so far as they differ from the laws of England, Her Majesty may, from time to time, by Order in Council direct the Colonial Attorneys' Relief Act to come into operation as to such colony or dependency, although persons may in certain cases be admitted as attorneys or solicitors in such colony or dependency without possessing all the qualifications for admission or having fulfilled the conditions specified in the said section three, and thereupon, but not otherwise, the provisions of the Colonial Attorneys' Relief Act shall apply to persons duly admitted as attorneys and solicitors in such colony or dependency after service and examination; that is to say, no attorney or solicitor of any such colony or dependency shall be admitted as a solicitor of the Supreme Court in England unless, in addition to the requirements of the Colonial Attorneys' Relief Act, he prove by affidavit that he has served for five years under articles of clerkship to a solicitor or attorney-at-law in such colony or dependency, and passed an examination to test his fitness and capacity, before he was admitted an attorney or solicitor in such colony or dependency, and further that he has since been in actual practice as attorney or solicitor in such colony or dependency for the period of seven years at the least.

2. This Act may be cited as the Colonial Attorneys' Relief Act Amendment Act, 1884.

RINGING OF CHURCH BELLS—WHEN A NUISANCE.

In connection with a question which came before the Recorder's Court at Montreal not long ago, (*ante*, p. 257) it may be well to refer to a case decided last year by the Court of Appeals, St. Louis, Mo.—*Leete et al.*, App. v. *The Pilgrim Congregational Society et al.* The question was when the ringing of church bells will be regarded as a nuisance and restrained by injunction. The opinion of the Court seems to us sound, and may be read with advantage by those who are called upon to decide similar points. Thompson, J., for the Court, said :—

"The question in all cases of this kind is, whether the inconvenience complained of ought in fact to be considered as more than fanciful, more than one of mere delicacy and fastidiousness, as an inconvenience materially interfering with the ordinary physical comfort of human existence, not merely according to elegant or dainty modes or habits of life, but according to plain, sober and simple notions among the people. Applying these principles to the facts of the case, we are clear of doubt that we ought not to enjoin, restrain or in any way interfere with the ringing of these bells for religious worship on Sunday. The quarter-ringing is convenient and pleasurable generally to good people living in the vicinity of the church. This ringing takes place only in the daytime, and mingles with the ordinary sounds of the street. It cannot be greatly disturbing to persons of ordinary habits and temperaments, and an overwhelming preponderance of evidence shows that it is not disturbing to such persons, but pleasurable. The plaintiffs have not produced a single witness, except themselves, who have testified to being seriously annoyed or incommoded by this quarter-ringing in the daytime. We are therefore justified, under the principles already stated, in holding that this ground of their complaint has not been clearly made out, so as to enable them to relief by injunction, until they have established the fact by a verdict and judgment at law, that this particular ringing is a nuisance to them in their dwellings, and accordingly we decline to make any order touching the

quarter-ringing. The same may be said of the striking of the hours in the daytime upon the largest bell. As to the ringing of the large bell by rope and wheel, the evidence satisfies us that this is a very severe and disturbing noise, but this ringing does not appear to have been done habitually. It was not habitually done at the time of the bringing of the suit, and the record affords no ground for the conclusion that the defendants have any purpose of again ringing the large bell in this way. But the striking of the clock at night must, we think, be relegated to the category of useless noises.

"It is not necessary that the hour should be sounded upon a large bell at night. There is no doubt that in the still hours of the night the striking of this bell, particularly at 10, 11 and 12 o'clock, when numerous strokes are delivered, is, in its vicinity, a disturbing noise. No possible sentiment can be ministered to by perpetuating such a noise when people generally are asleep. Because a number of witnesses testified that the striking of the hours at night did not disturb them, it cannot be possible that the law of Missouri is in such a state that one man cannot claim at its hands protection against a useless sound which disturbs his repose because a hundred other men may not in like situation, be disturbed by it. We therefore think that the striking of the hours upon the largest bell between the hours of 9 o'clock p. m. and 7 o'clock a.m., ought to be enjoined.

"This decree will be reversed and the cause will be remanded to the circuit court, with directions to enter a decree that its direction or authority be perpetually enjoined from ringing the bells between the hours of 9 o'clock p. m. and 7 o'clock a. m., so as to disturb the sleep or rest of the plaintiffs or either of them in their respective dwelling houses. In the ordinary course of proceedings the circuit court will not become again possessed of the cause for the purpose of entering and enforcing the decree which we have ordered until the October term. In the meantime the season of the year is upon us when the windows of sleeping rooms in dwelling houses must be kept open, and when the plaintiffs will accordingly suffer the greatest measure of injury from the striking of this bell at night which they suffer at any period of the year. To obviate this we shall enter a restraining order in this court suspending the striking of the bell at night within the hours named until such time as the circuit court shall have again become possessors of the case. It is ordered accordingly. All the judges concur."

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, Oct. 8, 1884.

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

SCOTT (deft. below), Appellant, and THE BANK OF QUEBEC (plff. below), Respondent.

Promissory note—Relation of parties thereto to third party—Novation.

The contract expressed on the face of a negotiable instrument cannot be varied without an express agreement. Knowledge that the parties to a note occupy between themselves a relation different from that expressed on the face of the note, is not sufficient to alter their relations to a third party having such knowledge.

Giving notes for a previous debt does not operate novation, unless the intention be evident.

RAMSAY, J. This is an action by respondent against the maker of a promissory note for $650, at four months, payable to the order of James Shortis, and endorsed by Shortis over to the Bank.

The defendant pleads first that this note was made by him for the accommodation of Shortis—that he never had any value for it, and that Shortis promised him, the defendant, that he would pay it, and that he, defendant, would not be troubled about it. That on the 30th March, 1880, the plaintiff knew this fact. That on the last named day Shortis was indebted to the bank for sundry notes drawn by different parties and endorsed by Shortis, and discounted for his use, to the amount of $39,015, and among them the note now sued upon. That being aware of the agreement between Scott and Shortis, and that Shortis was the person really liable on the note, the Bank, without the knowledge or consent of defendant, took four pro-

missory notes for the payment of this sum of $39,015, payable in six, twelve, eighteen, and twenty-four months from the said date. That the bank further took an hypothec for the payment of this sum of $39,015, and by this means diminished the property of Shortis so as to render him insolvent, and that, therefore, Shortis could not validly grant any preference over his other creditors. Wherefore he concludes for the dismissal of the action.

By a second plea defendant sets up the same matter and alleges that the transactions of the 30th March, 1880, operated a novation of the debt, and further, that the note was returned to Shortis, whose endorsement was effaced, as appears by the note.

By a third plea defendant pleads payment.

The two questions substantially before us are:—first, whether knowledge that the parties to a note occupy between themselves a different relation than that expressed on the face of the note, is sufficient to alter the relations of these parties towards a third party having such knowledge?

Second. Whether the transaction of the 30th March, 1880, created a novation of the debt?

With regard to the former of these questions it appears to be well-settled law in England, that knowledge coming to a third party after he has accepted the note is nothing, and that to modify the contract as expressed on the face of the note, between the parties and the payee, it is necessary there should be an express agreement. The principle is this, the contract expressed by the instrument binds, and carries with it all its incidents, unless it be set aside by something else. So if A. and B. bind themselves to C. as principal and surety, it is of no importance whether C. was aware of an equity existing between A. and B. or not. In this case no special agreement is alleged, but simply that the Bank knew, on the 30th March, 1880, how matters stood between Shortis and defendant. In the case of *Clarke et al. & Wilson*, an action on a joint and several promissory note, where the plea was that defendant made the note for the accommodation of one T. Scott, and that he had no value, and that of all this the plaintiffs had knowledge, Lord Abinger said: "The plea should have set out some contract that was binding on the plaintiff. All that he states is, that he waited six months before he commenced his action." (3 M. & W. 210.) In the case of *Manley & Boycott*, Lord Campbell, C.J., lays down emphatically the doctrine that there must be a special agreement and that mere knowledge is neither here nor there. (2 E. & B., p. 54.)

And in the case of *Strong & The Northamptonshire Banking Company*, 17 C. B. 201, a rule was refused defendant on the suggestion that defendant was only an accommodation promissor of a note, and that the party who got value for the note, got delay from the plaintiff knowing the circumstances. C. J. Jervis said: "You clearly cannot, at law, vary the contract which appears upon the face of the note;" and then, "I speak with reference to the action upon the written contract."

It may perhaps be said that the equity rule allows more latitude. In the case of *Hollier & Eyre* (9 C. & K. 1) Lord Cottenham said, that it was clear that between themselves certain grantors bore the relation of principal and surety, but that they were all principals as regards the grantees by the deed, that the question whether one of the grantors between himself and the grantees was a principal or only a surety for the payments of the annuity by another must be ascertained by the terms of the instruments themselves, and that no extraneous evidence was admissible for the purpose of establishing this, "and upon that," he said, "I think there is no room for doubt." He then went on to explain that in equity there might be relief given if knowledge were established and with it a course of dealing which raised an equity in favour of the party.

I am not prepared to say how far the rules of equity, as understood in England, go, or to what institutions of our law they correspond; but we may fairly presume, I think, that law alone with us covers the whole legal field which law and equity together embrace in England. At all events, it is not difficult for us fully to deal with the case indicated as an exception by Lord Cottenham. We take it to mean that the acts of the parties to an instrument may be of so formal and decided

a character that they establish a new contract. This is perfectly in accordance with our law, and we call it novation. Or, there may be evidence of a contract from the beginning modifying the contract on the face of the note; of which I shall give an instance later. Or, it may be, that the dealings of some of the parties are so injurious to the interests of another as to give him an equitable right to get rid of his obligation, although I cannot at this moment suggest an example as likely to arise in dealing with bills of exchange and promissory notes.

Admitting, then, all Lord Cottenham said, to be good law here, how can it help defendant? He had to show that knowingly the bank intended to alter the legal relations of the defendant and Shortis, as regards it, and to treat Shortis as principal, and Scott as surety. He has endeavoured to prove, by Shortis' evidence, that Mr. Wotherspoon knew that between Shortis and Scott, it was agreed, that Shortis was to pay the note, and again by the testimony of Rickaby that Wotherspoon must have known it.

Let us suppose for an instant that this is good evidence, which probably it was not, as its object was to contradict the written instrument, and it only establishes knowledge without any implied expression of consent to alter the conditions of the parties to the note towards the bank. The next step of the evidence on which defendant relies, is that the contract itself implies an intention to vary the original deed. On the contrary, the transaction of the 30th March, 1880, was precisely such a dealing as the Bank had a right to have with the endorser without in any way disturbing its relations with the drawer. That is to say, the Bank treated the parties as they represented themselves, so there is no presumption from that of the intention to make a new contract. Now, have Shortis and the Bank, by anything they have done, damnified the defendant? It seems to us they have not. The injury suggested by appellant is that Scott's recourse against Shortis was stopped by the transaction of the 30th March. This is not tenable. It must be admitted that Scott's legal position compelled him to look after his note without notice. Now suppose he was ignorant of, and non-consenting to, the transaction between Shortis and the Bank, he could have compelled Shortis to pay, and Shortis' dealing with the Bank would have been no answer to defendant in Shortis' mouth. His obligation to defendant, if the story be true, is to relieve him of the note, and no operation short of that would answer Scott's action.

If the story be not true, Scott has, of course, no reason to complain of the bargain. It should be remembered that the effect, on the obligation of the surety, of discharging the principal does not rest on any equitable consideration. It arises *ex natura rei*. The principal goes, and the accessory disappears simultaneously, or, as the code puts it (1929 C. C.) "Suretyship is the act by which a person engages to fulfil the obligation of another, in case of its non-fulfilment by the latter."

The case of *The Liquidators of Overend, Gurney & Co.* and *The Liquidators of the Oriental Financial Corporation* (L. R. 7 H. of L. 348), is an instance of bills of exchange being received on special conditions in writing, which altered the contract as it appeared on the instruments. This case then falls within one of the categories I have drawn from Lord Cottenham's judgment in *Hollier & Eyre*, and in no way applies to the present case. As we think Shortis was not the principal on this contract, it is not necessary for us to enter upon the question as to what constitutes a discharge of the principal.

The second plea need hardly be alluded to. We have already shown that there is no novation express or implied established. Giving notes for a previous debt implies no novation. *Noad & Lampson*, 10 L. C. R. 29. In other words the intention to operate novation must be evident. (1171 C. C.)

A small point has been put forward as to an erasure of the endorsation. The circumstances are satisfactorily explained, and any presumption that might have existed disappeared. (1181 C. C.) We do not think the renewal of the endorsation has anything to do with the matter, except in so far as it serves to fortify Mr. Wotherspoon's evidence as to the circumstance of effacing the endorsation. It seems to us that the second en-

dorsation was made by Shortis, and this disposes entirely of his pretension that he was to get back these notes.

We therefore think the judgment of the Court below was right, and this appeal must be dismissed with costs.

Judgment confirmed.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 23, 1884.

Before DORION, C.J., MONK, RAMSAY, TESSIER and BABY, JJ.

C. M. ACER, Petitioner, and THE EXCHANGE BANK OF CANADA, Respondent; also C. M. ACER et al. Petitioners, and THE EXCHANGE BANK OF CANADA, Respondent.

Bank in liquidation—45 Vic. (Can.) cap. 23—Contributory.

It is not necessary that ordinary debtors (not ... shareholders) of a bank in liquidation be settled on a list of contributories before actions are instituted against them by the liquidators.

In these two cases the respondent, plaintiff in the Court below, sued the petitioners, defendants in the Court below, who were alleged to be debtors of the Bank.

The declarations alleged the insolvency of the Exchange Bank and its liquidation under the Statute of Canada, 45 Vict. cap. 23, the indebtedness of the petitioners, with conclusions accordingly. The petitioners pleaded dilatory exceptions on the ground that if true as alleged in the declaration, they were "contributories" under the Statute, and before any suit could be taken against them they must be settled on the list of contributories to the Bank as provided in the Act. Admissions were filed that the petitioners were not settled on any list of contributories.

After argument Mr. Justice Loranger dismissed the exceptions. Hence the present petitions for leave to appeal from these judgments.

It was urged that according to the tenor of the Statute all the proceedings for or on behalf of the Bank were entirely under the supervision of the Court.

Sec. 5 was quoted, defining a contributory to be a "person liable to contribute to the "assets of a company under this Act."

Secs. 32, 35, 37, 41 and 71 were cited to show that the use of the word contributory referred to any debtor of the Bank and did not simply mean a shareholder.

Secs. 47, 51, 52 and 54 were also cited to show the extended meaning of the word, and that these referred to contributories who were more than shareholders or who might be indebted for amounts *exclusive of calls.*

Finally, sec. 76 was quoted to show that if a shareholder only was a contributory, then ordinary debtors might purchase claims against the bank and use them as an offset.

The COURT unanimously decided that a contributory was a stockholder, and that an ordinary debtor did not come within the meaning of the term.

Petitions for leave to appeal rejected.

Hall for Petitioner.

Greenshields for Respondent.

COURT OF REVIEW.

MONTREAL, Sept. 24, 1884.

Before TORRANCE, PAPINEAU, GILL, JJ.

ROSS et vir v. SWEENEY et al.

Executor—Removal from office—Inscription in Review.

Where a testamentary executor has been removed from office by a final judgment of the Supreme Court, he will not, subsequent to such judgment, be permitted to inscribe in Review, from a judgment dismissing an action brought by him in his quality of executor.

The female plaintiff sued in her quality of testamentary executrix, and her action was dismissed on the 4th August, 1884. She immediately inscribed in Review, namely, on the 13th August, against the judgment. She was already defendant in an action taken by Dame Jessie Ross et vir to deprive her of this office. This suit was successful in the Superior Court on the 10th December, 1881, by judgment which was confirmed by the Court of Queen's Bench on the 21st December, 1883, and by the Supreme Court on the 23rd June, 1884.

W. H. Kerr, Q.C., for defendant, now moved that the inscription be struck, on the ground that the female plaintiff had been deprived of her office of testamentary executrix by the

said judgments: *Kerby & Ross et al.*, 18 L. C. Jurist, 148.

R. Laflamme, Q.C., e contrà, said he had to inscribe within eight days, and his client was heir for one-half.

The COURT was of opinion that the inscription should be struck.

Motion granted.

Laflamme, Huntington, Laflamme & Richard for plaintiff.

Kerr, Carter & Goldstein for defendants.

COUR DE CIRCUIT.

Montréal, 16 octobre 1884.

Coram JOHNSON, J.

GOLDIE et al. v. BISAILLON.

Saisie-revendication—Vente de la chose d'autrui —Vente à terme avec rétention du droit de propriété—Bail.

JUGÉ:— *Qu'une personne qui vend un meuble et retient son droit de propriété jusqu'au parfait paiement des billets promissoires représentant le prix de la vente, ne peut saisir revendiquer ce meuble entre les mains d'un tiers de bonne foi, lorsqu'il a été vendu à ce dernier par l'acheteur avant l'échéance des billets.*

Il en serait autrement, et le propriétaire pourrait saisir revendiquer son meuble, si ce dernier eut été perdu ou volé, par exemple, si le propriétaire l'eût loué avec stipulation que le locataire deviendrait propriétaire en remplissant les conditions du bail, et que le locataire l'eût vendu.

PER CURIAM. The plaintiff sold a safe to one Leveillée, taking promissory notes in payment which are not yet due; and stipulating with the purchaser that the right of property in the thing sold was to remain with the vendor until the notes were paid. The safe was delivered to Leveillée and before the maturity of the first note he sold to the defendant in whose hands the plaintiff now revendicates this safe and calls the first purchaser, Leveillée, into the case. The defendant pleads, 1st, that the action is premature, Leveillée not being divested of his right of property until the first note was due and unpaid. 2nd, that Leveillée was in possession and had a right to sell to him, and that he was in good faith when he bought, and being neither leased, nor lost, nor stolen, he had a right to buy in ignorance, as he was, of the stipulations between plaintiff and Leveillée.

Leveillée, *mis en cause*, pleads very much the same thing, and adds that the plaintiff could have no right to proceed even against him without offering back the notes, which he does not do; and having suspended the exercise of his right, whatever it was, during the pendency of the notes, he, Leveillé, is not *déchu de ses droits*. The defendant relies on art. 1488 and 1489; and the court is with him. I think that a sale of the property of another is valid, it is an ordinary commercial transaction, and where there is good faith in the purchaser, and where the thing has not been lost or stolen.

The case of *Bertrand* v. *Gaudreau*, 12 Rev. Lég., p. 154, was cited by plaintiff. It was different from this. The judge there evidently decided that Malouin could not sell the horse because it did not belong to him. There had been a lease of which the conditions when fulfilled were to constitute the lessee owner: The learned judge on that particular point, however, (although every other incidental question was most carefully examined, and supported by numerous authorities) only cited the article 1487, and said 'Malouin a vendu ce cheval qui ne lui appartenait pas, conséquemment il a vendu la chose d'autrui, et par l'art. 1487 la vente de la chose qui n'appartient pas au vendeur est nulle. The article cited says *not* that the sale of the property of another is null in all cases, but expressly excepts the cases mentioned in the three succeeding articles, which are, 1st, art. 1488: "La vente est valide s'il s'agit d'une affaire commerciale, *ou si le vendeur devient ensuite propriétaire de la chose.*" Art. 1489: "Si une chose perdue ou volée est achetée de bonne foi dans une foire, marché, ou à une vente publique, ou d'un commerçant trafiquant en semblables matières, le propriétaire ne peut la revendiquer sans rembourser à l'acheteur le prix qu'il en a payé." There is a case not cited at the bar which leaves me in no doubt about the decision I ought to give in this. It is the case of *Brown* v. *Lemieux* in appeal (Rev. Lég., vol. 3, p. 361); the decision there is stated in the breviate thus: "Que le vendeur non payé, qui n'a pas vendu

sans jour et sans terme, n'a que l'action en résolution et non l'action en revendication, encore, qu'il se soit réservé son droit de propriété jusqu'à parfait paiement et le droit de reprendre la chose, même sans procédés judiciaires." I think, moreover, that the case of *Bertrand* v. *Gaudreau* is distinguishable from this on another ground, which is cited in the case of *Brown* v. *Lemieux;* and it is this. Troplong, Priv. et Hyp. No. 184, says: "Si le vendeur n'avait pas accordé de terme; s'il n'avait livré la chose qu'à titre précaire, à *titre de bail*, par exemple, alors il pouvait garder la chose *jure pignoris*, ou la reprendre comme lui appartenant encore. This was evidently the case in *Bertrand* v. *Gaudreau*, therefore I do not disagree with that case.

Here, however, there certainly was a sale; and the stipulation as to the right of property remaining in the vendor, gave him no right to revendicate even as against the purchaser, much less as against a subsequent purchaser. For these reasons the action of the plaintiff is dismissed with costs.

A. N. St. Jean, avocat des demandeurs.

J. C. Lacoste, avocat du défendeur.

De Lorimier, conseil pour le défendeur.

(J. J. B.)

CANADA GAZETTE NOTICES.

The Scottish Imperial Insurance Company gives notice that it has ceased to transact business in Canada.

Messrs. William Cooper and F. B. Mathews, of Montreal, have been appointed liquidators of the Colonial Building and Investment Association.

A general meeting of shareholders of the Federal Bank of Canada is to be held at Toronto, Nov. 20, to consider a proposition to reduce the capital stock of the Bank.

The liquidators of the Exchange Bank of Canada give notice that claims are to be filed on or before December 1st, 1884. Claims are to be made up to the 22nd November, 1883, the date of the commencement of the winding up.

GENERAL NOTES.

The *Chicago Legal News*, referring to a recent case in Ontario, asks whether it is not a contempt of Court for any one to advertise as an attorney after he has been disbarred.

In consequence of the unauthorized publication of private state papers, it is said that Sir William V. Harcourt will introduce a bill making the betrayal of government papers a penal offence, alike for the person who sells and for the person who publishes them.

Chief Justice: "Mr. Williams, we think you ought to accredit this court with some knowledge of the law, and not occupy so much time in discussing elementary propositions." Mr. Williams: "May it please your Honors, I did so accredit the court below, and did avoid, therefore, the discussion of elementary principles, and for that reason I have been obliged to take this appeal."

The New York Court of Appeals has decided, in the case of *Murphy* v. *Orr*, that whoever drives horses along the streets of a city is bound to anticipate that travellers on foot may be at the crossing, and must take reasonable care not to injure them. He is negligent whenever he fails to look out for them, or when he sees and does not, so far as in his power, avoid them; and it is sufficient to show that if the driver had looked he would have seen the person injured in season to avoid him.

A man wants a piece of his neighbour's land to improve the approaches to his house, but the owner objects to sell, except under conditions. In the meantime a public body acquires the land compulsorily, but does not want the whole of it, and sells the surplus portion to the original owner's neighbour, who turns it to his desired purpose, free of all restrictions. Has the involuntary seller any remedy against the second buyer? None whatever, says Mr. Justice Chitty, in deciding such a case at Camberwell, where the School Board had been the purchasers under compulsion. Good law, doubtless, but rather hard, notwithstanding. The law calls this "damnum absque injuriâ." The suffering party generally thinks the first syllable sufficient.—*English Paper*.

Of the viceroys of India the first, Lord Canning, was English; the second, Lord Elgin, Scotch; the third, Lord Laurence, Irish; the fourth, Lord Mayo, Irish also; the fifth, sixth and seventh, Lords Northbrook, Lytton and Ripon, were English. The appointment of Lord Dufferin re-establishes an Irishman on the viceregal throne. For some time it has been a common joke in London "that our only general," Wolseley, and "our only ambassador," Dufferin, were both Irish. This viceroyalty of India, it is stated, has been through Lord Dufferin's whole career, his point of aspiration. It is a mistake to suppose that money is to be made, as in the days of Clive and Hastings, or saved out of the salary of $125,000 a year in the office, but it permits the husbanding of private fortune, and Lord Dufferin's finances need repair.—*Ex.*