The Legal News.

Vol. VIII. MAY 9, 1885. No. 19.

The beauties of the elective system are well illustrated in the failure of Mr. Justice Cooley to obtain re-election to the supreme bench of his own state. Mr. Cooley has attained international fame as one of the ablest writers of his generation. He has, moreover, occupied with credit a seat upon the supreme bench of Michigan for twenty years past; yet being compelled to seek re-election, he has been defeated by a man unknown beyond the limits of the state. This defeat, though humiliating to the country, will not, we are happy to learn, work to the disadvantage of the learned author. The *Central Law Journal* says: "He will be able as a chamber counsellor to take, in a single fee, as much as the State of Michigan paid him for two years of toil upon her bench of last resort. He will have, and will no doubt improve, the opportunity of devoting the leisure of his ripe years to the literature of the law; and we may expect from this circumstance results as beneficial to American jurisprudence as those which flowed from the narrow policy of the former Constitution of New York, which retired Chancellor Kent from the bench at the age of sixty."

A singular case of undue influence has been mooted in Kansas. At a recent trial, when the jury retired for deliberation, one of the number proposed to open their deliberations with prayer, and thereupon proceeded to pray "long and loud." What the tenor of the appeal was, whether it was impartial or favorable to either side, does not appear. The verdict, however, was against the defendant, and now his lawyer moves to set it aside on the ground of "undue influence exercised by one of the jurymen by means of public prayer in the jury room." The counsel, in his brief before the Kansas Supreme Court, admits that there can be no legal objection to a private petition to the throne of grace earnestly offered by a conscientious juror with the motive of freeing his own mind from prejudice and passion." But "a public prayer in such a place" presents a different case, since "one long practised in the wielding of this subtle influence can play upon the feelings and judgment of his weaker brother. And the more gifted in prayer is the leader the more powerful will be his influence."

Rigid Sabbatarian notions still prevail in some parts of New England. In a late case (*Barker* v. *City of Worcester*), a man who had sustained injuries by an obstruction in the highway, and who sued for damages, was met by the plea, "You were travelling on the Lord's Day, and under the statute you have no right to recover." It appeared that the plaintiff had been making a social call at the house of a friend, and was returning home when he slipped on an accumulation of ice, and broke his leg. The judge at the trial ruled that the plaintiff was "travelling" on the Lord's Day in violation of the statute, and was, therefore, not entitled to recover. The Supreme Judicial Court of Massachusetts, however, has corrected this peculiar ruling, and holds that a person who walks out on a Sunday, and calls at the house of a friend, is not "travelling," and is not precluded from the ordinary remedy of those who are injured by the carelessness of other people.

It is not often you find a person making so frank an admission of the arts by which he achieved success as a "Successful Solicitor" makes in a treatise put forth in England under the title, "How I became a Successful Solicitor." The writer states that the method adopted was that of self-effacement and obedience to the County Court judge before whom he practised. "The whole secret of my success," he says, "consisted in perceiving that it was the judge's desire to rule with undivided sway and above all competition in his domain; and by allowing him to be from the beginning to the end everybody in the case, and by effacing myself as much as possible, I obtained that indulgence and favour which procured me a large practice." The writer concludes his instructive article in the following manner: "It was by means of

the tact with which I conducted, or rather *carefully neglected to conduct*, these little cases through, and humoured the great man whilst dispensing his infallible judgments in that place, that I became a successful solicitor." There is nothing new under the sun, nor is this method of success novel. Just some such successful gentleman had Juvenal in his eye when he wrote :

—— Rides ? Majore cachinno
Concutitur : flet, si lacrimas adspexit amici :
Nec dolet. Igniculum brumae si tempore poscas,
Accipit endromidem : si dixeris, aestuo ! sudat.

Shakspeare has translated this in *Hamlet :*

Ham.—Your bonnet to its right use, 'tis for the head.
Osr.—I thank your lordship, 'tis very hot.
Ham.—No, believe me, 'tis very cold ; the wind is northerly.
Osr.—It is indifferent cold, my lord, indeed.
Ham.—But yet, methinks, it is very sultry and hot for my complexion.
Osr.—Exceedingly, my lord ; it is very sultry, as it were : I can't tell how.

A "Successful Solicitor" has also read Terence to some purpose :—

Est genus hominum, qui esse primos se omnium rerum volunt,
Nec sunt : hos consector.
Quidquid dicunt, laudo : id rursum si negant, laudo id quoque :
Negat quis ? nego : ait ? aio : postremo, imperavi egomet mihi
Omnia assentari : is quaestus nunc est multo uberrimus.

THE CASE OF MR. DE SOUZA.

To the Editor of the LEGAL NEWS :

SIR,—Owing to the unfairness of most of the reports of my case in the Ontario press, I am constrained, in the interest of the public, to appeal to your columns.

The Law Society of Upper Canada in the year 1882, for reasons which, in compassion to that body, I will now pass by, made an ordinance to exclude English barristers from practising in that province. Before taking this serious step they appointed a committee who enquired and reported (1) that it was in their power, and (2) that it was expedient.

When I arrived in Ontario I straightway applied to the Treasurer and other Benchers of the Society, who confronted me with this ordinance, and informed me that whatever right I might have formerly enjoyed, was now abolished. Thus the deviation from precedent originated not with me but with the Law Society.

Examining for myself into the question I found that the Society had erred in their estimate of their powers, and that the ordinance passed with so much affectation of pomp was ineffectual and void. It is sufficient merely to add that my view has since been confirmed by the recent statute of this year.

But, under such circumstances, I determined to disregard the Law Society and proceed upon the right which I possessed under the ancient statutes, and which has never been taken away.* The Benchers then offered privately to make an exception in my favour; but I declined the insidious proposal, the acceptance of which would have stultified me and also ratified the ordinance, which they could no longer support.

And yet it was these very Benchers who deliberately, in my hearing and in open court, instructed counsel to assert that I was attempting an unnecessary deviation from usage; and that they had never endeavoured to make rules to exclude me ! A trace of this statement appears in the resolutions of the judges, although the contrary fact was given in proof, and was common knowledge in the profession during three years past.

I went into the Court of Appeal on the 18th of March, in the form suggested by that very Court on the 3rd. I claimed to move, as of counsel for A. B., in a pending case, the court having acceded to the principle of the *Serjeants' Case*, that my right would be in issue. But on the 18th, to the surprise of all men, they declared that they were bound by the decision of the lower court, which on the former occasion they had not only disclaimed as of binding force, but had even admitted that they could not take cognizance of it. I pointed out that the resolution in question was not a matter of appeal, that they could not take notice of the reports in the newspapers, that it was impossible that my right, depending on a statute, could be conclusively decided by one court; that they, too, were bound to discuss it, in duty to themselves who had taken the objection, as well as to the suitor who had instructed me, and was entitled to

* See argument in U. C. Law Journal, 15 Feb., 1882.

have justice, and on the broad ground of the independence of the Bar. They persisted in refusal and desired me to be seated; I asked them to record their decision, but they declined, and again ordered me to resume my seat.

On the 20th of April I rose in the same Court, as of counsel for C. D., on the ground that, there being nothing in the nature of a recorded decision against my right in that Court, I was compelled to act when instructed by a suitor, that the personal hostility of the judges could not exempt me from a clear duty, and that the original suggestion of the Court followed as yet by no discussion, justified me in this course. Again they refused: "You are attempting," they said, "to argue; but we *will not hear any argument.**

I was of counsel next day for E. F., and justified my re-appearance by the same reasons of duty, there being nothing of record to disqualify me. My client was entitled to have his case heard, and he had chosen to retain my services. The judges grew intemperate, ordered me to sit down, asked me if I *called myself a gentleman*, and threatened to turn me out.

When, on the 22nd of April, I again claimed to move on behalf of G. H., the very first question put by the Court showed the propriety and correctness of my conduct. "Are you," they asked, "a member of the Bar of Ontario; are you a member of the Law Society?" "I am not," I replied, "a member of the Law Society; but my right *depends on a statute which does not require that of me.*" † Having deliberately invited this issue they brought into prominence their own inconsistency of referring to the decision of a court which at the outset they had admitted to be in its nature incognizable. This issue, then, they declined to try. Whether the Court be of appeal or of origin, is not to the purpose; it is included in the expression of the statute, "H.M. *courts* of law and equity." The judges again threatened me with violence from which I had expected that my gown, at least, would have protected me. My duty would not suffer me to obey their commands to be seated; and so, for the first time perhaps that such an outrage has occurred, they ordered the Sheriff to turn me out by force.

I am not unmindful of the significance of the fact that on the morning of my third reappearance, one of the Benchers of the Law Society—he who had been most conspicuous even to indecency in obstructing my claim—was closeted for a long time with the judges before they took their seats.

LOUIS DE SOUZA.

* Report in *Globe*, 21st Apr.
† R.S.O. ch. 139.

SUPREME COURT OF CANADA.

OTTAWA, Feb. 16. 1885.

Coram RITCHIE, C. J., STRONG, FOURNIER, HENRY and TASCHEREAU, JJ.

BURLAND (plff. below), Appellant, and MOFFATT (deft. below), Respondent.

Assignee under voluntary assignment—Status.

HELD, (*reversing the judgment of the Court of Queen's Bench, Montreal, 7 L.N.* 182) *that an assignee holding property under a voluntary assignment made to him by an insolvent for the benefit of his creditors* (*parties to the deed of assignment*), *is not entitled to plead in his own name in reference to such property. Such an assignment merely entitles him to represent the assignor and to exercise the assignor's actions, and not those pertaining to the creditors alone.*

The unanimous judgment of the Court reversed that pronounced by the Court of Queen's Bench, Montreal.

TASCHEREAU, J. This is an appeal from a judgment dismissing an action in revendication by which Burland, the appellant, claims certain machinery, which he contends the respondent Moffatt, detains illegally. Burland, in his declaration, alleges that he bought this machinery, by deed of the 12th May, 1881, from the Canada Paper Company, who had themselves bought it from Gebhardt & Co., by deed of the 27th April, 1880.

Moffatt answered this action by a plea alleging that he detains the said machinery under a voluntary assignment, of the 13th June, 1881, by the said Gebhardt & Co., of the whole of their estate, to him, Moffatt, for the benefit of their creditors; and that when Gebhardt & Co. sold it to the Canada Paper Company they were insolvent or embar-

rassed, the said sale having been collusively concerted in order to give to the said Company a fraudulent and illegal preference in fraud of the other creditors of the said Gebhardt & Co. The conclusions of this plea are that the said sale by Gebhardt & Co. to the Canada Paper Company, and the sale by the Canada Paper Company to the plaintiff, be declared to have been and to be simulated, fraudulent and inoperative, null and void, that the said deeds be rescinded and set aside, and the action in revendication of the said plaintiff dismissed. To this plea Burland replied that Moffatt had no legal status to oppose such objections to this action; that Moffatt *was not a creditor, and had no interest; that he could not plead defences that belonged only to the creditors*, and that he had no authority to represent the creditors, by pleading in his own name.

The Superior Court in Montreal, Rainville, J., dismissed Moffatt's plea, and maintained Burland's action, on three grounds as follows:

"Considérant que le défendeur n'a pas droit de plaider à cette cause en la qualité par lui invoquée, parce que personne d'après l'article 19 du Code de Procédure Civile ne peut plaider au nom d'autrui;

"Considérant en outre qu'en supposant que la vente faite par les dits George J. Gebhardt & Cie. serait simulée et frauduleuse, cette simulation ou cette fraude ne pouvait réfléchir contre le demandeur qui a acquis les dits meubles de bonne foi, pour valable considération;

"Considérant que d'après les articles 1025 et 1027 du Code Civil du Bas-Canada, l'aliénation d'une chose certaine et déterminée rend l'acquéreur propriétaire par le seul consentement des parties sans tradition, et ce aussi bien à l'égard des tiers qu'a l'égard des parties contractantes, et qu'en conséquence le demandeur est propriétaire des effets saisis revendiqués," etc.

I am of opinion that this judgment was right, and should not have been reversed by the Court of Appeal, as it has been. Clearly, Moffatt by this plea professes to act in lieu of the creditors of Gebhardt & Co. and of them only. It is not for Gebhardt & Co. and as their representative that he asks the resiliation of these deeds. In that quality he could not have done so, for the simple reason that Gebhardt & Co. could not themselves have done it. And, as to himself, he is not a creditor and does not claim to be one and has personally no interest whatsoever in the case. He is certainly not *procurator in rem suam*. By the said plea he became virtually a plaintiff, in his own name, in an action Pauliana, or *en déclaration de simulation*. Now, if he had instituted a direct action of the same nature, would he have done so in his own individual name, or in his quality of assignee? I can answer, without hesitation, that he never would have thought of suing otherwise than in his quality of assignee. Then on what ground can he contend that here he, in his own individual name, has the right to demand for Gebhardt's creditors the resiliation of the said deeds? The only answer he has given to this is, that he had to do it, because he is sued in his own individual name. But, surely, that did not hinder him from filing an intervention in his quality of assignee, or from bringing a direct action in his said quality. That *nul ne peut plaider par procureur* is and has always been the law. In *Nesbitt* v. *Turgeon* (2 Rev. de Lég. 43), the Court of Queen's Bench, as far back as 1845 (Sir James Stuart, Chief Justice, Bowen, Panet and Bedard, JJ.), held that even in the case where the debtor had expressly agreed that the action against him should be brought in the name of the attorney or agent, it could not be done. There are apparent though no real, exceptions to this rule, but none applicable here, and the respondent has failed to produce a single authority to establish that with us, the assignee or trustee for the benefit of creditors has, in his own individual name, the actions of the creditors. And this alone would dispose of his demand *en résiliation*. Could he, however, be considered as assignee or trustee, he would not have had more success. In the absence of a bankrupt law, the assignee represents the assignor, but not the creditors. Mr. Justice Monk has clearly demonstrated this proposition in his dissenting opinion, and the respondent has cited no authority to the contrary, outside of the writers under the Ordinance of Commerce of 1673, or the

French Code of Procédure, or the code of commerce, all of which are not law here.

In our own courts, I cannot find a single case in which, the point being taken, it has been held, that an assignee under such circumstances can with us act for and in the name of the creditors. In all the cases cited by the respondent and which I have been able to refer to, the assignee was suing for the assignor as his *locum tenens*, and claiming the assignor's rights. In not one of them can I see that the assignee was exercising the personal actions of the creditors, that is the actions given to them alone, and denied to the assignor. *Withall* v. *Young*, 10 L.C.R. 122, and *Bruce* v. *Anderson*, Stuart's Rep. 127, would seem to be exceptions to this, but a reference to these cases shows that the point there was not raised by the parties, or decided by the Court. In *Starkie* v. *Henderson*, 9 L.C.J. 238, it was the assignor's action that the plaintiff had taken, and on the peculiar state of facts, the Court held that there was a privity of contract between himself and the defendant, and that so he had rightly brought the action in his own name. Of course, in exercising the assignor's actions, and claiming the assignor's rights and debts, the assignee does it in the interest of the creditors, as well as of his assignor, but that is quite different. It is then as any *cessionnaire* may do, the actions pertaining to the assignor, not the actions that before the assignment, or without it, the assignor would himself have had, which he then brings. Whilst here the assignee claims rights pertaining to the creditors alone to which his assignor could never have had any claim.

In *Prévost* v. *Drolet*, 18 L. C. J. 300, in the Court of Appeal, Mr. Justice Loranger, delivering the judgment of the Court, held that an assignee, under an assignment to him by an insolvent for the general benefit of his creditors, not made under the insolvent act, has no quality to sue in his own name for anything connected with such assignment. That was going further than it is necessary to do here. By the report of the cause, one would certainly think that the Court there, were unanimous in that holding. It may be, however, as has been said at the Bar, that the three other Judges composing the Court simply concurred in the result of the judgment on the plea to the merits, without entering into the question discussed by Judge Loranger. But to make them hold quite the reverse, as contended here by the respondent, simply because the demurrer attacking the plaintiff's right of action had been dismissed by the judgment of the first Court, and because the said judges in appeal did not reverse that judgment, seems to me going far, as the appeal was by the plaintiff, who had obtained *gain de cause* on the demurrer, and who consequently did not complain of the judgment which had dismissed it. However, this is immaterial, the case having no application here, as the plaintiff there also claimed, purely and solely as *locum tenens* of the assignor, a debt due to the assignor.

The cases of *Ferrie* v. *Thomson* and *Armour & Main*, 2 Rev. de Lég. 303, and *Mills* v. *Philbin*, 3 Rev. de Lég. 255, cited by the respondent, do not seem to me to have any bearing on the present case, whilst two reported cases are decidedly adverse to him. In *Chevalt* v. *De Chantal*, 8 L.C.J. 85, it was distinctly held that the assignee cannot judicially represent the creditors of the assignor. And in *Whitney* v. *Badeaux*, 12 Rev. Lég. 518, Mr. Justice Badgley also held that the assignees of an insolvent cannot *ester en justice* for the creditors.

The respondent has cited some unreported cases from Montreal of 1844 or 1845. I have not been able to refer to them, but they probably were under the then existing Bankruptcy law, 7 Vic., ch. 10, (1843). And from what has been said of them, they were, I believe, all actions belonging to the assignor that had been brought by the assignee.

I may here remark, this assignment was not made for the benefit of Gebhardt & Co.'s creditors generally, but only for the benefit of nine specified creditors, parties to the said deed, the said nine creditors to be paid their claims on the proceeds of the sale of Gebhardt & Co.'s estate, goods and chattels, the surplus if any to be paid over to the said Gebhardt & Co.

Burland, the appellant, was himself one of these nine creditors, and it has been urged upon us that this was fatal to his present action. But I really cannot see how this

alone could confer upon the respondent the right to *ester en justice* as *locum tenens* of the creditors. Burland moreover signed the deed, without prejudice to any privilege or security he had. And when Gebhardt & Co. assigned their goods and chattels, without any description or enumeration whatsoever, and without any schedule annexed to the deed, or any mention whatsoever of the machinery in question here, Burland was, it seems to me, perfectly justified not to see in the deed an assignment of what were then his goods and effects. They ceded their goods not Burland's.

Another serious objection taken against the respondent is that none of the parties to the sale by Gebhardt & Co. to the Canada Paper Co., of which he asks the revocation, are *en cause*; *Lacroix* v. *Moreau*, 15 L. C. R. 485. Neither the Paper Co. nor Gebhardt are parties to this issue, and neither of them have had an opportunity to contest this demand in revocation. Moffatt here, as I have already remarked, does not represent Gebhardt & Co., and does not pretend to do so. "L'action en rescission, says Bédarride, doit être poursuivie directement contre les auteurs du dol alors même que la chose qui en est l'objet serait passé en d'autres mains," 1er Dol & fraude, No. 299. The reasons this author there gives for this opinion apply to all revocatory actions and to the actions instituted by the creditors not parties to the deed (Ibid, No. 273). See also 4 Bédarride, No. 1436, on this point as to the action Pauliana itself. And it is on the party who demands the revocation of any deed under such circumstances, that lies the entire fulfilment of all the conditions necessary for the success of his demand. If Moffatt had formed his demand in resiliation by action, he would have had to direct it against Gebhardt & Co., as well as against the Canada Paper Co. and against Burland. Now when he demanded this resiliation, as here, by an incidental procedure, why did he not bring *en cause* Gebhardt & Co., and the Canada Paper Co., *en déclaration de jugement commun?* By holding fast to the old and well established rule that, in any proceeding and demand, all the parties interested in its results should be called in, Courts of Justice will prevent a multiplicity of contestations, and contradictory judgments. For it is evident that, here, for instance, a judgment between the appellant and the respondent could not be opposed to the Canada Paper Co., and would not be *res judicata* as to him. And this would be so perhaps even as regards Gebhardt & Co. Though some cases have gone so far as to say that it is not always necessary that all the parties should be called in, (on what authority does not appear), I am not aware of any case in which a deed has been annulled in the absence of all and every one of the parties thereto. The Court may, perhaps, sometimes, if in the course of the proceedings, it be of opinion that certain other parties have an interest in the case, upon a proper application, order them to be summoned. Bioche, dict. de procéd. vo. *mise en cause*, No. 4. But it would not do so after a final hearing on the merits. If it then appears that though the objection has been taken *ab initio*, the party demanding the resiliation has claimed the right and persisted to go on with the case on the issue joined with the adversary he has chosen, his demand must be dismissed. He has failed voluntarily to put the Court in a position to grant it, and his adversary has then an acquired right to its dismissal. Were the Court to order then the *mise en cause* of any other party, it would necessarily follow that the pleadings, *enquête*, and all the proceedings would have to be begun over again, a result which, it is obvious, would be an injustice to the party entitled to a judgment. Moffatt's contention that on an action in revendication, "*Si la chose n'appartient pas au possesseur, vous devez faire assigner son bailleur*" is irrefutably answered on the part of appellant by the fact that he has done so, and that Gebhardt & Co., Moffatt's *bailleurs*, are co-defendants in this suit. That the appellant should have summoned the creditors, I cannot see. Is the plaintiff in a petitory action obliged to put *en cause* the mortgagees? Then, if Moffatt had no right to question the titles upon which the action is based, his doing so cannot have put appellant under the obligation to call in any other party who might have had that right. Burland's action is to re-

vendicate the possession and ownership of this machinery, and is surely well brought against both the actual detainer and the pretended owners of it, (for the assignment would not deprive Gebhardt & Co. of the ownership of it). Then how can Moffatt be admitted to contend that the appellant should have called in the creditors, when he rests and bases his whole case on the ground that he himself here is acting for them and represents them, and that it is entirely and solely for and in their names that he asks the resiliation of the plaintiff's title? If he represents the creditors, they have not to be called in. If he does not represent them, he is out of Court. The rule that when the defendant, in an action in revendication, upon his declaring that he does not hold for himself, has a right, upon saying for whom he holds, to be put *hors de cause*, does not apply, I believe, where the said defendant joins issue and engages in a contestation with the plaintiff. This contestation, it is evident, has to be brought to judgment between the parties to it, and them alone, and the defendant then who has taken upon himself to resist the plaintiff's demand cannot be admitted to complain that the real owner is not *en cause*.

Another important question raised by the appellant and also decided in his favour by the Superior Court, is that he was a second purchaser in good faith of the machinery in question, and that whatever fraud may have been committed between Gebhardt & Co. and the Canada Paper Co., cannot affect his rights to the said machinery and his purchase of it from the Paper Company. *Bédarride, Dol & fraude, No.* 1764—*Demolombe*, 2 *des contrats Nos.* 198 *and* 204, *and No.* 235, 4 *Proudhon, usufruit No.* 2412, *Duranton, Vol.* 10 *No.* 582,—*Marcadé, Vol.* 4, *page* 406—*Capmas de la revocation p.* 104, *Table Gén. vo. vente, No.* 13, 737, *et seq*—3 *Aubry & Rau, p.* 92. And the great majority of writers on this point are of opinion that the action Pauliana does not lie against a subsequent purchaser in good faith. Laurent, Vol. 16, Nos. 464 and seq. and 497 and seq., is, it would seem, of a contrary opinion. However, it is unnecessary for us to consider and determine that question here.

The appeal should be allowed with costs.

Judgment reversed.

Robertson, Q.C., and *Archibald*, for the Appellant.

Bethune, Q.C., Doutre, Q.C., and *Dunlop*, for the Respondent.

COURT OF QUEEN'S BENCH—MONTREAL. *

Perjury by witness in Civil Suit—Production of Record—Materiality of Facts sworn to by Defendant—32-33 *Vict.* (*Can.*), *c.* 23, *s.* 7—*New Trial ordered upon Reserved Case in Misdemeanour.—Held*, 1. The non-production by the prosecution, on a trial for perjury, of the plea which was filed in the civil suit wherein the defendant is alleged to have given false testimony, is not material where the assignment of perjury has no reference to the pleadings; but the defendant, if he wishes, may, in case the plea be not produced, prove its contents by secondary evidence. 2. It is not essential to prove that the facts sworn to by the defendant, as alleged in the indictment, were material to the issue in the cause in which the defendant was examined. 3. A Reserved Case may be amended at the request of the defendant, during the argument thereon before the full Court, by adding the evidence taken at the trial. 4. (Following *Reg.* v. *Bain*, 23 L. C. J. 327.) A new trial may be ordered on a Reserved Case, in misdemeanours, where it appears to the Court on the evidence that an injustice may have been done to the defendant. *Regina* v. *Ross* (Reserved Case.)

Intervention—Prescription—42-43 *Vict.* (*Q.*) *ch.* 53—*Assessment roll*—31 *Vict.* (*Q.*) *ch.* 37—*Held:* 1. Where an action had been brought by one of several persons assessed for the cost of a special improvement, to set aside the assessment roll, that any other person assessed for the cost of the same improvement had an interest which entitled him to intervene if the principal plaintiff abandoned the case. 2. Where the principal action was instituted before the expiration of the delay fixed by a Statute for contesting assessment

* The above cases will be reported in full in the Montreal Law Reports, 1 Q.B.

rolls, the right of an intervenant taking the same conclusions as those of the principal action was not barred, though the delay had expired before the intervention was filed. 3. Under the Statute 31 Vict. (Q.), ch. 37, it was necessary that the Commissioners appointed to carry out an expropriation and to determine the parties interested therein and to be assessed for the purpose of the proposed improvement, should give public notice of their proceedings in the manner therein provided, and in the absence of such notice the assessment roll made by the Commissioners was null and void; nor could the subsequent homologation of the report of Commissioners by the Superior Court give validity to such proceedings.—*Hubert & The City of Montreal.*

Vente d'immeubles—Crainte de l'acheteur d'être troublé—Cautionnement—Art. 1535 *C. C.—Matière discrétionnaire—Limitation du cautionnement.*—JUGÉ:—1. Que la question de savoir si l'acheteur a juste sujet de craindre d'être troublé et peut demander caution en vertu de l'art. 1535 C. C., est une matière discrétionnaire, dans laquelle cette Cour sera peu disposée à déranger le jugement de la Cour de première instance. 2. Que lorsque la Cour de première instance a condamné le vendeur à donner caution, sans limiter la durée de tel cautionnement, la Cour d'Appel réformera le jugement à cet effet.—*Biron & Trahan.*

Master and Servant—Injury sustained by servant—Responsibility of Employer—Fault—Held: That where a servant meets with an accident while engaged in the ordinary duties of his employment, and the accident is not the result of any fault or negligence on the part of the employer or of those for whom he is responsible, the servant or his representatives has no right to recover damages from the employer.—*La Compagnie de Navigation du Richelieu et Ontario & St. Jean.*

Charter-party—Time—Rejection of Contract. The appellant, in January, 1879, agreed to charter a steamship, for the carriage of live cattle to England, and the conditions of the charter-party were that the steamship should proceed to Montreal with all convenient speed to arrive there 'between' the opening of navigation in 1879, and thereafter to run regularly between Montreal and London, and to be dispatched from Montreal in regular rotation with other steamers to be chartered up to 1st October, 1879. Navigation opened at Montreal about 1st May, but the steamship did not arrive there until 5th June when the appellant refused to load.—*Held,* that there was not a substantial compliance with the contract on the part of the ship, and that the appellant was entitled to throw up the charter-party.—*McShane & Henderson et al.*

Contract—Rescission for fraud—Rights of innocent third party.—Held,—That the rescission, on the ground of fraud, of a deed transferring real estate, will not affect the rights of a third party who in good faith has lent money on the property while in the possession of the purchaser, where the vendor, by his own act or fault, has to some extent, induced the third party to make the advance. So where the plaintiff sold certain real estate to defendant (who then obtained an advance from C. on the security of the property), and in the deed from plaintiff to defendant, it was declared that the consideration was cash paid by the purchaser, whereas in fact the consideration was mining stock which turned out to be worthless, it was *held,* that the plaintiff was in fault in permitting and requesting such misstatement as to the consideration to be inserted in the deed, which misstatement might to some extent have induced C. to advance money on the property; and therefore the plaintiff was entitled to obtain the rescission of the deed for fraud, *only on condition of his re-imbursing to C. the amount of his advance.—Lighthall & Craig.*

Master and Servant—Responsibility of employer for accident resulting from defects in machinery—Negligence of laborer.—Held, 1. An employer is responsible for injuries to his employees resulting from defects in the tackle, machinery or appliances provided for their use. Tackle used in work such as loading or unloading a vessel ought to be amply sufficient to withstand any strain that is likely to be put upon it by ordinary unskilled laborers; and where tackle breaks, without any extraordinary strain upon it, it will be presumed to be insufficient, though it may have been used previously for the same purpose without accident. 2. A laborer engaged in work such as loading or unloading a vessel is only bound to use ordinary care, and the employer is not relieved from responsibility by showing that if the laborer had used the greatest skill and care the accident might not have happened.—*Ross & Langlois.*