

THE LEGAL NEWS.

Vol. IX.

MONTREAL, JANUARY 30, 1886.

No. 3.

Editor.—JAMES KIRBY, D.C.L., LL.D., Advocate.
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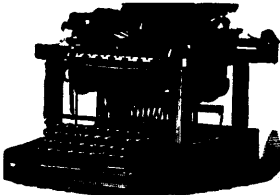
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The Legal News.

VOL. IX. JANUARY 30, 1886. No. 5.

Mr. Justice Stephen, at Manchester, on January 13, made some observations of importance with reference to the right of a prisoner, though represented by counsel, to make a statement to the jury. One Herbert Masters was on trial for assaulting a girl over sixteen. His counsel commented on the fact that the prisoner could not give evidence. Thereupon the learned judge observed:—"For years it has been my opinion—and I shall continue to act upon it—that prisoners, though defended by counsel, have a right to make statements. I always, therefore, allow a prisoner to say what he pleases on his own behalf, provided he make such statement before his counsel speaks, which prevents its being a mere corroboration of counsel's suggestions. I think the law of the land justifies this course, though the authorities on which I adopt it might not, perhaps, be satisfactory to other minds than mine. If a suitable occasion occurs I will give my reasons at length. But the practice is not uniform, there being no superior authority to make it so, and the matter is at present in an unsatisfactory condition. The late Act, which has apparently worked well hitherto, allows prisoners in certain cases to give evidence on oath, but it has left the law in so fragmentary a condition that I hope Parliament will deal with the question before long. The prisoner in this case, therefore, may make a statement if he wishes. If he does not, it should not prejudice him before the jury, as he has not had notice that he might do so." The prisoner then made a short statement denying his guilt, after which his counsel addressed the jury.

During the January appeal term at Montreal 21 cases were heard. Of these two were re-hearings, and three were privileged cases, so that the ordinary list was reduced by only 16. One appeal was dismissed on motion. Judgment was rendered in 18 cases. A

clearance was made of all the *délibérés* remaining from the November Term, and three of the cases heard during the January Term were also disposed of, so that only 18 cases remain for judgment in March.

We suppose that judges for the most part are more competent than juries to appreciate damages, and at any rate both lawyers and clients, in ninety-nine cases out of a hundred, prefer to leave the matter in the hands of the Court. But there is this difference, that each judge acts singly and upon his individual opinion, whereas the jury have to agree upon an amount. It is not surprising, therefore, that the question of damages is not always viewed in the same manner. The Court of Appeal seems to think that the judges in the Court below are inclined to be too liberal. Sir A. A. Dorion expressed regret, in the course of a judgment on Wednesday, at the disposition which appeared to exist, on the part of some of the judges of the Superior Court, to award excessive damages. In one case the amount was cut down from \$6,000 to \$2,500, for the loss of a husband whose earnings during the summer season were proved to amount to \$14 per week. In other cases where the amount involved is not large, the Court finds it difficult to disturb the award without actually punishing the plaintiff who has come into court with a good ground of action; for if the plaintiff be condemned to pay the costs of the appeal, or even to bear his own costs in appeal, the result will often be that the amount of the judgment in his favor will be insufficient to defray the expenses.

The succession of more exciting events has diminished the interest in the Bradlaugh controversy. That gentleman, however, has at last been permitted to go through the form of taking the oath, and it remains to be seen whether the government will prosecute him for sitting and voting. His case is still pending before the House of Lords. The Speaker's refusal to interfere with him in taking the oath is not in accordance with previous rulings, and seems to indicate that for the present he will be allowed the privileges of membership.

**EVIDENCE BY COMMISSION IN INDIA
AND THE COLONIES, AND ELSE-
WHERE IN HER MAJESTY'S DOM-
INIONS.**

Colonel Stanley to the Marquis of Lansdowne.

DOWNING STREET, Dec. 5th, 1885.

MY LORD,—I have the honour to transmit to you, for information and publication in the Colony under your Government, a copy of an Act passed during the late Session of Parliament, entitled "An Act to amend the law relating to taking evidence by commission in India and the Colonies, and elsewhere in Her Majesty's Dominions."

The necessity for this measure was brought by the Indian Government to the notice of Her Majesty's Government; and I transmit to you a copy of a Memorandum by Sir Richard Garth, the Chief Justice of the High Court of Calcutta, dated 26th June, 1883, in which he points out the inconveniences which were found to arise from the state of the law as then existing.

The Act which I enclose has accordingly been passed amending the provisions of the Act 22 Vic., chap. 20.

As the Act is an enabling measure, and one which relieves the Judges of Colonial Courts from certain duties imposed by an Act of the Imperial Parliament, my predecessor did not think it necessary to delay the introduction of the Bill into Parliament until the Colonial Governments had first been consulted.

I have the honour to be,

My Lord,

Your most obedient humble Servant,

FRED. STANLEY.

The Officer Administering
the Government of Canada.

CHAPTER 74.

An Act to amend the Law relating to taking Evidence by Commission in India and the Colonies, and elsewhere in Her Majesty's Dominions.

[14th August, 1885.]

Be it 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 assem-

bled, and by the authority of the same, as follows:

1. This Act may be cited as the Evidence by Commission Act, 1885.

2. Where in any civil proceeding in any court of competent jurisdiction an order for the examination of any witness or person has been made, and a commission, mandamus, order, or request for the examination of such witness or person is addressed to any court, or to any judge of a court, in India or the Colonies, or elsewhere in Her Majesty's dominions, beyond the jurisdiction of the court ordering the examination, it shall be lawful for such court, or the chief judge thereof, or such judge, to nominate some fit person to take such examination, and any deposition or examination taken before an examiner so nominated shall be admissible in evidence to the same extent as if it had been taken by or before such court or judge.

3. Where in any criminal proceeding a mandamus or order for the examination of any witness or person is addressed to any court, or to any judge of a court, in India or the Colonies, or elsewhere in Her Majesty's dominions, beyond the jurisdiction of the court ordering the examination, it shall be lawful for such court, or the chief judge thereof, or such judge, to nominate any judge of such court, or any judge of an inferior court, or magistrate within the jurisdiction of such first-mentioned court, to take the examination of such witness or person, and any deposition or examination so taken shall be admissible in evidence to the same extent as if it had been taken by or before the court or judge to whom the mandamus or order was addressed.

4. The provisions of the Act passed in the twenty-second year of Her Majesty, chapter twenty, intituled "An Act to provide for taking evidence in suits and proceedings pending before tribunals in Her Majesty's dominions in places out of the jurisdiction of such tribunals" (which may be cited as the "Evidence by Commission Act, 1859"), as amended by this Act, shall apply to proceedings under this Act.

5. The power to make rules conferred by section six of the Evidence by Commission Act, 1859, shall be deemed to include a power

to make rules with regard to all costs of or incidental to the examination of any witness or person, including the remuneration of the examiner, if any, whether the examination be ordered pursuant to that Act or under this or any other Act for the time being in force relating to the examination of witnesses beyond the jurisdiction of the court ordering the examination.

6. When pursuant to any such commission, mandamus, order, or request as in this Act referred to, any witness or person is to be examined in any place beyond the jurisdiction of the court ordering the examination, such witness or person may be examined on oath, affirmation, or otherwise, according to the law in force in the place where the examination is taken, and any deposition or examination so taken shall be as effectual for all purposes as if the witness or person had been examined on oath before a person duly authorized to administer an oath in the court ordering the examination.

PRIVY COUNCIL.

AT THE COURT AT OSBORNE HOUSE, ISLE OF WIGHT.

December 29, 1885.

PRESENT :

THE QUEEN'S MOST EXCELLENT MAJESTY,
LORD PRESIDENT,
DUKE OF RICHMOND AND GORDON,
SIR FRANCIS SANDFORD.

SWEENEY V. BANK OF MONTREAL.

Order granting leave to appeal.

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council, dated 12th December, 1885, in the words following, viz :

" Your Majesty having been pleased by your general order-in-council of the 18th November, 1885, to refer unto this Committee the matter of a humble Petition of the Bank of Montreal in the matter of an Appeal from the Supreme Court of Canada between the Bank of Montreal (Defendants), Appellants, and Dame Emily Sweeney (Plaintiff), Respondent, setting forth that this is a petition for a special leave to appeal from a decision

of the Supreme Court of Canada reversing a decision of the Court of Queen's Bench for Lower Canada (Appeal Side), which confirmed a decision of the Superior Court for Lower Canada sitting at Montreal. The action was brought on the 23rd of May, 1881, by Dame Emily Sweeney (hereinafter called the respondent), against the Bank of Montreal (hereinafter called the appellants), for the purpose of having it declared that she was the owner of 30 shares in the Montreal Rolling Mills Company, of the par value of \$100 a share, and of having such shares transferred or the value paid to her. The material facts of the case, as appearing in the evidence, are as follows:—A letter dated the 18th of March, 1871, from Messrs. Crawford & Lockhard, of Belfast, in Ireland, to James Rose, was tendered in evidence, which showed that Messrs. Crawford & Lockhard remitted through the appellants' bank by the direction of the family of the respondent to James Rose, the sum of \$9,930.71. An entry in the books of Morland, Watson & Co., of which firm Rose was a partner, was tendered in evidence, which showed that Rose transferred the above sum to his credit with Morland, Watson & Co., and that he drew out part of such sum or of a further sum added thereto by Messrs. Crawford & Lockhard (as to which the evidence was similar), on the 4th of April, 1871. An account entered as the account of "James Rose in trust" in the books of the Montreal Rolling Mills Co. was tendered in evidence, which showed that on the 4th of April, 1871, Rose invested \$4,000 in the purchase of four shares in the Montreal Rolling Mills Co. of \$1,000 each. On the 11th of April, 1871, Rose obtained from the Montreal Rolling Mills Co. a certificate numbered 0,008, certifying that Rose "in trust" was the holder of three shares of \$1,000 each: the certificate stated on its face that the shares were transferable only on the books of the Company: subsequently the value of the shares of the Montreal Rolling Mills Co. was changed from \$1,000 to \$100 each: on the 3rd of June, 1879, Rose transferred to Buchanan, as the manager of the appellants' bank, 250 shares of \$100 each in the Montreal Rolling Mills Co., and on the 13th of March, 1879, a further amount of 60

similar shares : the two instruments of transfer state the transfers to be from James Rose "in trust," to W. J. Buchanan, "in trust," but do not state anything as to the nature of the trust in either case, or who were the cestuique trustent : Buchanan had no knowledge that Rose held the shares in trust for the respondent or any particular person, or otherwise than as appeared on the face of the certificate and the books of the Montreal Rolling Mills Co., that the holding of the shares was affected by any trust : the above transfers were given as collateral security for advances by the appellants to Rose personally : Rose was at all times thereafter largely indebted to the appellants : the respondent was unaware of the transfer to Buchanan until she was informed of the same by a letter from Rose to her, dated the 6th of January, 1880 : it was stated in evidence by Rose that he gave the certificate No. 0,008 to the respondent, but it was not proved when the certificate was given to her : it was also so stated by Rose that he paid respondent the dividends declared on the said shares before the 1st January, 1880, but no evidence was given to show that the respondent knew what the nature and source of the sums so paid to her were : on the 27th of January, 1881, protests were served on behalf of the respondent on the appellants and the Montreal Rolling Mills Co. : the pleadings in the case are not herein stated, as the points at issue fully appear from the judgments hereinafter referred to : on the 24th of December, 1881, Mr. Justice Rainville, as judge of the Superior Court for Lower Canada, sitting at Montreal, gave judgment in favor of the appellants : the case was heard on appeal before the Court of Queen's Bench for Lower Canada (Appeal side), constituted by Sir A. A. Dorion, C.J., Monk, Baby, Doherty and Caron, J.J. : judgment was given on the 25th September, 1884, for the appellants : the learned judges of the Court of Queen's Bench were unanimous in favor of the appellants, and the judgment was delivered by the Chief Justice, by which the judgment dismissing the action of the appellants was confirmed : on the 10th and 11th of March, 1885, the case was heard on appeal before the Supreme Court of Canada, constituted

by Ritchie, C.J., Strong, Fournier, Henry and Taschereau, J.J., and on the 22nd of June, 1885, judgment was given by Ritchie, C.J., Fournier and Taschereau, J.J., for the respondent ; Strong, J., dissenting ; Mr. Justice Henry does not appear to have delivered any reasons : it is submitted that the judgment in favor of the respondent in the Supreme Court, proceeded chiefly, if not entirely, upon the principles and authorities of English and American law relating to trusts, and not on the law in force in the Province of Quebec, and that it is of the utmost importance that questions of law should be decided according to the system of law of the province in which they arise, and especially that the doctrines of English law relating to trusts and notice should not be applied in cases in the Province of Quebec, where they are not legally applicable : it is submitted further that questions of great and general importance on the subject of the law of Quebec in regard to trusts are raised in this case, and that it is important the present decision of the Supreme Court should not be allowed to stand as a precedent : it is submitted further that in the present case important questions of the admissibility of evidence in the court of the Province of Quebec, according to the law in force there, were raised and were erroneously decided : the above questions are of great importance to the appellants and other bankers in the Province of Quebec in the conduct of their business : deposits of shares, of which the certificate states them as in the present case to be held "in trust," are frequent and it appeared in evidence that the appellants have never regarded these words as putting them on inquiry or limiting the rights of the holders of the shares so to deal with them ; and humbly praying that your Majesty in council will be pleased to order that the petitioners shall have special leave to appeal from the said judgment of the Supreme Court of Canada of the 22nd June, 1885, and that the Supreme Court of Canada may be ordered to transmit forthwith their transcript of their proceedings and evidence on which such judgment was given to the Privy Council office or for other relief in the premises.

The Lords of the Committee, in obedience to your Majesty's said general order of reference, have taken the said humble petition, for leave to appeal, into consideration, and having heard counsel on behalf of petitioners, their Lordships do this day agree humbly to report as their opinion to your Majesty, that leave ought to be granted to the Bank of Montreal to enter and prosecute their appeal from the said judgment of the Supreme Court of Canada of the 22nd June, 1885, upon depositing in the Registry of the Privy Council the sum of £300 sterling as security for the costs of the respondent in case the said appeal should be dismissed, and their Lordships do further report to your Majesty that the Registrar of the Supreme Court of Canada ought to be directed to transmit to the Registrar of the Privy Council, without delay, authenticated copies under the seal of the said court of the record, pleadings, proceedings and evidence proper to be laid before your Majesty on the hearing of this appeal, upon payment by the appellants of the usual fees for the same."

Her Majesty having taken the said report into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof and to order, as it is hereby ordered, that the said Bank of Montreal be and the same is hereby allowed to enter and prosecute their said appeal from the judgment of the Supreme Court of Canada of the 22nd June, 1885, upon depositing in the registry of the Privy Council the sum of £300 sterling, as security for the costs of the respondent in case the said appeal should be dismissed, and the Registrar of the Supreme Court of Canada is hereby directed to transmit to the Registrar of the Privy Council without delay, authenticated copies under the seal of the said court of the record, pleadings, proceedings and evidence proper to be laid before Her Majesty on the hearing of this appeal, upon payment by the appellants of the usual fees for the same.

Whereof the Governor-General, Lieutenant-Governor or Commander-in-Chief of the Dominion of Canada for the time being, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

CIRCUIT COURT.

MONTREAL, December 9, 1885.

Before DOHERTY, J.

MULLIN v. KEHOE, and KEHOE, petitioner.

*Saisie-Arrêt conservatoire—Petition to quash.*HELD:—That a *saisie-conservatoire* may be quashed on petition.

The plaintiff proceeded by *saisie-conservatoire* against the defendant, alleging an indebtedness to him by the defendant of \$75, and that the defendant had transferred to him as security for this amount a certain hearse.

The defendant petitioned to quash the seizure on grounds of informality and insufficiency of affidavit.

M. J. F. Quinn, for plaintiff, submitted that the petition could not be granted, as a petition was not the proper proceeding, citing in support *Burnett v. Pomeroy*, and *Pomeroy* petitioner, S. C., 14th March, 1884. Doherty, J., 7 Legal News, p. 110.

The following is the judgment:—

"The Court, etc., doth grant the petition made in this cause by said defendant to annul the seizure *conservatoire* made therein, and in consequence declare the said seizure before judgment made in this cause, and all proceedings had thereunder, null and void, and doth grant *main-levée* thereof, and order that the guardian in whose possession the hearse in question now is do forthwith deliver the same to the defendant, but without costs, said defendant being in bad faith."

Quinn & Weir, attorneys for plaintiff.

E. Houle, attorney for defendant.

(M. J. F. Q.)

APPEAL REGISTER—MONTREAL.

January 15.

Heffernan & Walsh.—Motion to dismiss appeal; granted for costs which will be costs in the cause.

Kelly & Halliday.—Motion to dismiss appeal; granted for costs only.

Cheney & Binnet & Chauveau.—Motion of appellant that the copy of record produced be accepted and received in place of the original record which is lost; granted by consent.

Papineau & Corporation de N. D. de Bonsecours.—Heard on motion for deposit of exhibits with Clerk of the Court.—C. A. V.

Reinhardt & Davidson.—Heard on motion to complete the record.—C. A. V.

Exchange Bank & Cheney.—Motion for dismissal of appeal, discharged.

Burroughs & Wells.—Heard on motion that appellant's factum be rejected from the record, in default of appellant paying \$10 condemnation money. C. A. V.

Brady & Stewart.—Heard on merits. C. A. V.

Cheney & Brunet & Chauveau.—Heard on merits. C. A. V.

City of Montreal & Lewis.—Heard on merits. C. A. V.

Cie. d'Assurance Mutuelle & Villeneuve.—Hearing commenced.

January 16.

Papineau & Corporation de N. D. de Bonsecours.—Motion for deposit of exhibits rejected without costs.

Normor & Farquhar.—Motion for leave to appeal from interlocutory judgment, granted.

Canadian Pacific Railway Co. & Barry.—Motion for leave to appeal rejected, Ramsay, J., dissenting.

Robinson & Canadian Pacific Railway Co.—Judgment reversed.

Grothé & Saunders.—Judgment confirmed.

Hamilton Powder Co. & Lambe.—Motion for leave to appeal to P. C. Granted.

La Cie d'Assurance Mutuelle contre le feu de la cité de Montréal & Villeneuve.—Hearing concluded. C. A. V.

January 18.

Chapleau & Giles.—Motion for leave to appeal from interlocutory judgment. Motion rejected.

Corner & Byrd.—Heard *de novo*. C. A. V.

Almour & Cable.—Heard on merits. C. A. V.

Rolland & Cassidy.—Hearing on merits commenced.

January 19.

Rolland & Cassidy.—Hearing concluded. C. A. V.

Central Vermont Railway Co. & Corporation Ville St. Jean.—Hearing on merits commenced.

January 20.

Duranceau & Larue.—Heard on petition for leave to appeal. C. A. V.

Phillips & Bain.—Petition for appointment of sequestrator rejected; motion to unite cases, granted only for argument.

Central Vermont Ry. Co. & La Corporation Ville de St. Jean. Hearing on merits resumed and concluded. C. A. V.

Brunet & L'Association Pharmaceutique.—Heard on merits. C. A. V.

Macdougall & Demers.—Hearing *de novo* commenced.

January 21.

Bryson & Cannavan.—Motion for dismissal of appeal, granted for costs.

French & McGee & Rogers.—Judgment confirmed.

Burroughs & Wells.—Motion discharged without costs.

La Corporation d'Yamaska & Durocher.—Judgment reversed, Tessier and Cross, JJ., *diss.*

Bell & Court & McIntosh.—Judgment confirmed.

Filiatrault & Prieur.—Judgment confirmed.

O'Keefe & Desjardins.—Judgment confirmed.

Muldoon & Dunn.—Judgment confirmed.

Macdougall & Demers.—Hearing *de novo* continued.

January 22.

Major & Mackay.—Petition to give security at Montreal, granted by consent.

Willett et al. & Gilmour & Marchand.—On appellants' motion to unite this appeal with the cross appeal; C. A. V. On respondent's motion to dismiss appeal for not having filed factum within the delay. C. A. V.

Bourgeois & La Banque de St. Jean.—Appeal on petition to quash writ of *saisie-arrêt avant jugement*. Cause declared privileged.

Cadot & Ouimet.—Heard on merits. C. A. V.

Deldge & Deldge.—Heard on merits. C. A. V.

Quebec Central Ry. Co. & Ontario Car Co.—Heard on merits. C. A. V.

Bowen & Ontario Car Co.—Heard on merits. C. A. V.

January 23.

Macfarlane & Parish of St. Osaire.—Heard on merits. C. A. V.

Dorsennens & Milliken. Heard on merits. C. A. V.

January 25.

Copeland & Leclere.—Judgment reversed; Tessier and Cross, JJ., *diss.*

Gregoire & Gregoire.—Judgment reversed, Monk, J., *diss.*

Willett & Gilmour & Marchand.—Motion to dismiss appeal rejected without costs. Motion to unite appeal and cross appeal, rejected without costs.

Reinhardt & Davidson.—Motion for completion of record dismissed with costs.

Duranceau & Larue.—Petition for leave to appeal granted.

Ross & Ross.—Motion to dismiss appeal granted.

La Banque d'Epargne & La Banque Jacques Cartier.—Judgment reversed. Motion for appeal to Privy Council, granted by consent.

Citizens Insurance Co. & Bourguignon.—Judgment reversed.

Kieffer & Whitehead.—Heard on motion to dismiss appeal. C. A. V.

McShane & Byron et al.—Heard on motion for leave to appeal from interlocutory judgment. C. A. V.

Ross & Stearns.—Heard on merits. Judgment confirmed.

Ross & Pringle.—Heard on merits. C. A. V.

Great North Western Telegraph Co. & Archambault, & cross appeal.—Hearing on merits commenced.

January 26.

Macdougall & Demers.—Hearing *de novo* concluded. C. A. V.

Great North Western Telegraph Co. & Archambault, and cross appeal.—Hearing continued.

January 27.

Kieffer & Whitehead.—Motion for dismissal of appeal, granted for costs.

McShane & Byron.—Motion for leave to appeal from interlocutory judgment, rejected.

Daigneau & Levesque.—Judgment confirmed.

De Blois & La Corporation de St. François du Lac.—Judgment confirmed.

Monette & La Société St. J.-Bte. de Valleyfield.—Judgment confirmed.

Evans & Monette.—Judgment confirmed, Ramsay and Cross, JJ., *diss.*

Corner & Byrd.—Judgment reformed and damages reduced to \$2,500. Ramsay and Cross, JJ., *diss.*, were for reversing wholly and dismissing action. Appeal and cross appeal to P. C., granted by consent.

Brunet & L'Association Pharmaceutique de la Province de Québec.—Judgment reversed.

Redfield & La Banque d'Hochelaga.—Motion to dismiss appeal. C. A. V.

Petelle & St. Louis.—Motion for leave to appeal from interlocutory judgment. Rejected.

Great North Western Telegraph Co. & Archambault; and Archambault & Great North Western Telegraph Co.—Hearing on merits concluded. C. A. V.

The Court adjourned to March 15.

SUPERIOR COURT—MONTREAL.*

Libel—Mercantile agency—Privileged communication—Damages.

The defendant, a mercantile agency, sent a circular to its subscribers with the words "call at office," in reference to the plaintiffs, dry goods merchants of Montreal. Those who enquired at the office, including a newspaper correspondent who was not a subscriber, were informed that the plaintiffs had applied for an extension of time on a large indebtedness to their English creditors. This information was untrue, and was based upon a rumour which the defendant had not verified. The report injured the plaintiffs' credit, and embarrassed them in their business.

HELD:—That the reports of a mercantile agency to its subscribers are not privileged communications, though made in good faith, and from information upon which it relies; and such agency comes under the general rule which makes every person capable of discerning right from wrong responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

2. The defendant having been guilty of gross neglect in circulating a report of an injurious nature without verifying it, the damages, though no special amount was proved, were assessed at \$2,000. *Carley et al. v. The Bradstreet Company.* Loranger, J., Nov. 20, 1885.

Evocation—Jugement de la Cour Supérieure—Validité de l'évocation admise—Renvoi subéquent du dossier à la Cour de Circuit.

Jugé:—1o. Qu'un jugement de la Cour Supérieure ne peut être révisé par la même

* To appear in Montreal Law Reports, 2 S. C.

cour ; il ne peut être modifié que par un tribunal supérieur.

20. Qu'ainsi lorsque la Cour Supérieure a jugé et admis la validité d'une évocation de la Cour de Circuit, elle ne peut par un jugement subséquent déclarer qu'il n'y avait pas lieu à évoquer la cause et ordonner que le jugement sera remis à la Cour de Circuit. *St. Aubin v. Leclair*. In Review, Jetté, Mathieu, Loranger, JJ., 31 janvier 1884.

Cité de Montréal—Règlement—Inconstitutionnalité—Bateau-traversier—Taxe annuelle—Prescription.

Jugé :—10. Que quoique le commerce et la navigation soient du ressort du parlement fédéral, néanmoins la législature provinciale a le droit, en vertu de la section 92 de "Acte de l'Amérique Britannique du Nord," d'autoriser une municipalité à imposer une taxe annuelle sur tout bateau-traversier partant d'un endroit quelconque dans cette municipalité.

20. Que bien que le havre ne soit pas inclu dans les limites de la cité de Montréal, cette dernière a le droit, par le chapitre 52 de la 39e Victoria, d'imposer une taxe de \$200 sur tout bateau-à-vapeur traversier transportant dans la cité des voyageurs d'un endroit n'étant pas à une distance de neuf milles.

30. Que l'on ne peut demander la cassation d'aucun règlement de la cité de Montréal après l'expiration des trois mois qui suivent sa mise en force, excepté lorsque ce règlement est inconstitutionnel ou *ultra vires*. *La Compagnie de Navigation de Longueuil v. La Cité de Montréal*. Loranger, J., 20 nov. 1885.

RECENT U. S. DECISIONS.

Witness—Professional Opinion—Pre-requirement of Professional Fee.—In an action for an assault and battery, a witness, who was a physician, was called to testify in behalf of the plaintiff, on the trial, and stated that he was called to see the plaintiff professionally, after the injury, and described the condition in which he found the patient. The witness was then shown a policeman's "billy," and asked if a blow struck with it on the head, at or near the temple, would or would not be likely to produce upon the person receiving such blow, a condition like or similar to that in which he found the plaintiff. The witness

thereupon, without answering the question, made inquiry of the court whether it did not call solely for a professional opinion, and the court answered that it did. Witness then declined to answer until his professional fee of \$10 should be paid or secured to him, and persisting in his refusal, the court imposed a fine upon the witness, as for a contempt of court. On error it was held, that having already, and without objection on his part, stated the condition of the patient he had visited professionally, the witness could not properly refuse to give his opinion as to the cause of the symptoms he discovered to exist, and this without a professional fee being paid or secured to him therefor. The opinion sought to be elicited was pertinent to the subject about which he had voluntarily testified. Sup. Ct. Ill. *Wright v. People*, 112 Ill. 540.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Jan. 23.

Judicial Abandonments.

J. Omer Michaud, merchant, parish of St. Gabriel de Brandon, district of Richelieu. Jan. 14.

Dame Eugénie Demers, wife of Evariste Barrett, *marchande publique*, Chambly Basin. Jan. 15.

Curators Appointed.

Venance Paiement. — George Daveluy, Montreal, curator. Jan. 15.

A. E. Racicot. — Kent & Turcotte, Montreal, joint curator. Jan. 15.

Gagnon & Dion. — Arthur M. Perkins, Montreal, curator. Jan. 16.

Dividend Sheet.

Savage & Lyman, Montreal. Interim dividend sheet, J. M. M. Duff, curator, Jan. 23.

Rule of Court.

Evans Sons & Mason vs. Emmanuel Huot, Quebec, curator to vacant estate of late O. E. Brunet. Notice calling in creditors of estate.

Actions en séparation de biens.

Dame Méline Jobin vs. Joseph Turcotte, carter. L'Assomption. Jan. 19.

Dame Edwidge Joubert vs. Isaïe A. Gauthier, dealer, St. Enfant Jesus. Coteau St Louis. Jan. 19.

Dame Lumina Vandal vs. Moïse Dupaul, carter, St. Johns, Iberville. Jan. 20.

GENERAL NOTES.

Mr. William Grantham, Q.C., has been appointed a Justice of the High Court in succession to Sir Henry Lopes, raised to the Court of Appeal. Mr. Grantham, who is descended from a long line of solicitors, was born in 1835, called to the bar in 1863, and created a Q.C. in 1877.

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