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MYER'S FEDERAL DECISIONS.

The Decisions of the United States Supreme, Circuit and District Courts (no cases from the State Courts), on the following plan:

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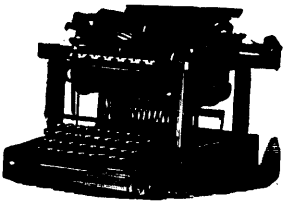

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The Legal News.

VOL. IX. MARCH 20, 1886. No. 12.

A curious attempt to make wounded feelings a basis for damages is disclosed in a recent case of *Blakeney* v. *Western Union Telegraph Co.*, which came before a court in Indiana. The question was raised whether an action for damages could be sustained against a telegraph company for failing to deliver a message, by reason of which the person to whom it had been directed had missed the opportunity of attending the funeral of his brother. The judge held that, while a plaintiff might be entitled to recover the statutory penalty, he could not recover substantial damages, because wounded feelings are not of themselves a ground for the recovery of damages. He therefore sustained a demurrer to the complaint. The opinion says: "By the present action John Blakeney charges that the telegraph company was guilty of negligence in failing to deliver the message, and he asks damages against the company in the sum of $1000 for his mental distress and wounded feelings occasioned by this negligence. The question presented is whether an action can be maintained for this mental suffering. It is true that telegraph companies are liable for special damages occasioned by their negligence. Special damages are such as result not necessarily, but naturally and approximately. And the question remains whether mental suffering comes within the statutory rule. In many actions at law, distress of mind becomes an important factor in estimating damages. Such damages enter into the recovery, when the plaintiff has sustained, by the negligence or wilful act of another, some corporal or personal injury; but mental suffering alone, unconnected with any other injury to the persou, will not support an action. No case can be found where a person has been allowed to recover damages for a shock, injury or outrage to the feelings, unaccompanied by an injury to the person. A different doctrine would lead to absurd and curious litigation. Take, for example, a railroad collision; it is proper that every passenger on the train who is personally injured should recover for the negligence, but shall every one who was frightened by the collision, maintain an action against the company?"

A writer in the *Law Magazine* (London) suggests a rather remarkable scheme for giving young barristers an opportunity to try their 'prentice hands: "Another useful employment for junior local barristers might possibly be the establishment of a central general consultation office, which the junior bar might 'walk,' after the manner of medical students in county hospitals. This would be for the benefit of poorer clients, who might obtain advice gratuitously or for a small entrance fee, on any legal difficulty in which they might be placed, the advice being taken from any perambulating junior barrister, who, however, if the case were carried further, would be bound to charge the usual fees and, presumably, to obtain instructions only in the regular way. There must always be a large class of people to whom resort to courts of law is practically impossible, no matter how low the fees. So long as this is so, it is useless to boast that English justice is available to all, nor does it appear that we can ever see a different state of things, unless in an overtaxed Socialistic State of the future. A consultation office, such as here suggested, would be a useful experience for barristers at the beginning of their career; sound advice might get them known even in such a humble sphere, and rules would soon be enforced limiting such legal 'walking' to barristers of two or three years' standing, while professional respect would prevent a practising barrister from haunting the premises. Such a system would serve to carry out the sound principle that the State, and its local representative the 'Community,' should provide means of justice, as well as of health and education, to all its members according to their several means."

The judges of Georgia are by turns poetical, rhetorical and metaphorical. The decision in *Cunningham* v. *National Bank of Georgia*, 71 Ga. 403, affords an illustration of the

last mentioned style. The point held was that dealing in "cotton futures,"—that is, contracts in form of sales of cotton for future delivery, but with the intention on both sides to deliver no cotton but to settle by payment of differences in the market price, was gambling. Said the judge, "a betting on a game of faro, brag, or poker cannot be more hazardous, dangerous or uncertain. Indeed, it may be said that these animals are tame, gentle and submissive compared to this monster. The law has caged them and driven them to their dens; they have been outlawed, while this ferocious beast has been allowed to stalk about in open mid-day with gilded signs and flaming advertisements, to lure the unhappy victim to its embrace of death and destruction."

COURT OF QUEEN'S BENCH.

QUEBEC, Feb. 4, 1886.

Before MONK, RAMSAY, CROSS, BABY, JJ.

LANGLAIS, appellant, and LANGLAIS, respondent.

C.C. Art. 1301—*Renunciation by wife of right of usufruct as survivor.*

A wife commune en biens with her husband, may, during his lifetime, validly renounce to a right of usufruct reserved to her in the event of her surviving her husband, on property possessed by him subject to a substitution in favor of their children. The fact that on her husband's death she renounced to the community will not affect the validity of the renunciation of her usufruct, which does not come within the prohibition of C.C. 1301.

The jurisprudence on the subject of Art. 1301 *reviewed.*

RAMSAY, J.—The sum involved in this case is not great; but it brings before the Court questions of some delicacy, which have been treated on both sides with full appreciation of their difficulties.

On the 21st June, 1864, one Remi Langlais passed certain immovable property over to his son Joseph, by a deed purporting to be a donation, but which was in reality a *titre onereux*. This deed created a substitution in favour of the children of the donee. The clause is ambiguously worded, as is usual in deeds creating substitutions; but it seems to be unquestioned that the wife of the donee, Zoe Ouellet, was to have the usufruct of the property after her husband's death, should she survive him; but, says the deed, "*la propriété des choses données était laissée aux enfants du donataire, qui seroient considérés à tous égards comme propriétaires incommutables du fonds des choses données à leur père.*" Further, the deed contains these words, "*bien compris que la substitution n'aura lieu dans tous les cas qu'après la mort de Dame Zoé Ouellet, &c., à qui la jouissance de la propriété est réservée dans tous les cas pendant son vivant.*"

The legal effect of this deed was to transfer to Joseph Langlais the land in question by *titre équipollent à vente*, subject to the substitution to the children of Joseph Langlais and of his wife Zoé Ouellet, the enjoyment of the *appelés* being in its turn subject to the usufruct of the mother surviving the original donee.

The charges which form the consideration of the deed were:

1st. Payment of two sums forming £300= $1,200 to Pierre Langlais.

2nd. To the two heirs Robitaille, at their majority, £50 each=$400.

3rd. To Sarah Croft an annuity of £24 a year for life.

The land was hypothecated for the payment of these several sums.

The charges on the property were so onerous that Joseph Langlais sold it to Polydore Langlais, by a deed bearing date 15th March, 1870, for the sum of £1,000, according to an authorization of the Prothonotary, fixing that as the lowest sum for which it could be valued, and charging the purchaser with the payment of all the debts affecting the property, and specially the claims of Elzear Langlais, and also allowing him to retain £300 as security for the payment of the annuity to Sarah Croft. The balance to be secured on real estate, subject to the substitution and the usufruct.

Zoe Ouellet became a party to this deed, agreed to it and renounced to her usufruct by the donation. By the same deed, Polydore Langlais, appellant, the purchaser of the property above described, sold to the vendors, Joseph Langlais and Zoé Ouellet, an emplacement for £300, and gave a receipt for the

balance of £214 5 5½ of the sale of the hypothecated property, and he agreed to take the remaining £85 14 6 with 8 p.c. interest out of the sum retained to guarantee the Sarah Croft annuity.

Joseph Langlais died in May, 1879. Sarah Croft died in 1878. In 1882, Zoé Ouellet renounced to the community existing between her husband and herself, and she ceded to her daughter Clara Langlais, the plaintiff, all her rights of usufruct, and specially £24 a year from the death of her husband as representing the interest of the capital of the rent to Sarah Croft, and she declared that the object of the cession was to open the substitution.

In order to keep the matters in issue clear, and to avoid unnecessary complications, it is as well at once to observe that, it signifies not what was the motive of making the cession to the plaintiff. If her rights were coextensive with those of her daughter, it could have no effect on this action, whether plaintiff claimed as proprietor or as representative of the usufructuary. But it is equally evident that Zoe Ouellet could not, by a cession, give more rights than she had. Strictly speaking, the plaintiff is the *cessionnaire* of her mother, and no more, and we have, therefore, to see whether the mother could, and if so, how she did, affect her rights by the deed of 1870.

The pretention of the respondent is, that by joining in the deed of 1870, her mother only bound herself as *commune en biens*, and not otherwise, that the property in question did not fall into the community, that the order of the Prothonotary could authorize a sale of the property in order to liquidate the debts, but that he had no jurisdiction to specify as a charge that which evidently was not a charge on the property, and that consequently her mother's rights as usufructuary were intact.

It seems to me that in some respects this pretention is correct. At all events it has not been contended by appellant that the property fell into the community. Again, it is unquestionable that the order of the Prothonotary ought not to have decreed that the private debts of Joseph Langlais should be paid out of the price of sale. But it is *chose jugée*, it binds the parties to the proceeding, but no one else. It does not appear that Zoé Ouellet was a party to these proceedings, and therefore they don't bind her. We are thus forced back on the naked question, whether Zoé Ouellet could do all or any of the things she purports to have done by the deed of 1870, or rather whether she is bound by them otherwise than as *commune en biens*. The judgment of the Court of Review disposes of this question without ambiguity. It says:—

"Considérant que Zoé Ouellet, l'épouse de Joseph Langlais, n'a stipulé à l'acte de vente consentie au défendeur le 15ème jour de mars 1870, par le dit Joseph Langlais *qu'en sa qualité de commune en biens avec celui-ci*, qu'elle a depuis la mort de son mari, renoncé à la communauté de biens entr'eux, et que le défendeur ne peut pas lui opposer les imputations de paiement faites par le dit acte de vente sur le prix d'icelle," &c.

There is nothing in the words of the deed which declares that Zoé Ouellet contracted as *commune en biens*, on the contrary, she takes all her qualities. This decision, therefore, is based on Art. 1301 C. C., which is in these words: "A wife cannot bind herself either with or for her husband, otherwise than as being common as to property; any such obligation contracted by her in any other quality is void and of no effect." Now, what is binding herself *with or for* her husband?

For the origin of this difficulty we must go back to the Registry ordinance, section 36. "It shall not be lawful for any married woman to become security or responsible, or incur any liability whatever, in any other capacity, or otherwise, than as *commune en biens* with her husband, for the debts, contracts or obligations which may have been contracted or entered into by her husband before their marriage, or which may by her said husband be contracted or entered into at any time during the continuance of any such marriage; and all suretyships, contracts or obligations made or entered into by any married woman, in violation of this enactment, shall be absolutely null and void, to all intents and purposes whatever." Later, we find the enactment thus expressed, C. S. L. C., c. 37, sec. 55, "No married woman shall become security or incur any liability otherwise than as *commune en biens* with her hus-

band, for debts or obligations entered into by her husband before their marriage, or which may be entered into by her husband during their marriage; and all suretyships by any married woman, in violation of this enactment, shall be absolutely null."

Section 36 of the ordinance was a profound innovation on the old law, which simply forbade the *conjoints par mariage, constant icelui de s'avantager l'un ou l'autre par donation entre vifs, par testament ou ordonnance de dernière volonté ni autrement, directement ni indirectement en quelque manière que ce soit, sinon par don mutuel, et tel que dessus.*—C. de P., Art. 282. The Imperial Act 14 Geo. III., c. 83, and its complement the 41 Geo. III., c. 4, relaxed the rule of the custom in one respect, and now the ordinance, in another respect, intensified it. The statutes allowed the husband or wife to dispose of the whole of his or her property to the other by will, while by the ordinance, as has been seen, the wife could not consent to become security or responsible, or incur any liability whatever, in any other capacity or otherwise, than as *commune en biens* for the debts, contracts or obligations which may have been contracted or entered into by her husband before their marriage, or which may by her said husband be contracted or entered into at any time during the continuance of any such marriage, and contracts in violation of this enactment, are declared to be null and void.

The extent of the innovation of the old law was at once questioned both in the courts and by legal critics.

Mr. Lafontaine noted the innovation thus, in his *sommaire* 204 (p. 105) "*La femme ne peut plus se rendre caution de son mari, si ce n'est en qualité de commune en biens, sous peine de nullité.*" It will be seen that the scope of the section 36, noticed so early as 1842, was that which has become settled by jurisprudence.

In 1847 Mr. Lacoste read a paper, before an association of legal friends, on the 36th section of the ordinance of 1841. The learned commentator, when treating of what the wife could do with and for her husband, followed the doctrine of Ulpian on the Senatus-Consult Velleianus. That law regularly comes to the relief, says Pothier, "of a married woman in all *obligations*," whether the contract be personal or real. Pandects by Breard Neuville, Vol. 6, p. 230. Starting from this principle, Mr. Lacoste says (p. 131):—"L'ordonnance annule toutes les obligations qu'une femme peut contracter pour les engagements pris par son mari tant personnelles que réelles." And on page 133, he puts the counter proposition, "L'ordonnance ne défend à la femme que le cautionnement des dettes, des engagements, contractés par le mari de cette dernière; elle lui défend de s'obliger pour lui, de se rendre responsable de ses obligations autrement que comme commune en biens; pas d'autre chose." . . . En consequence elle peut payer pour son mari, car ce n'est pas là s'obliger pour lui, puisqu'elle ne contracte aucune obligation en ce cas..... L'ordonnance vient au secours de la femme qui s'engage, ou engage ses biens, et non de celle qui aliène."

There are texts in the Digest which appear at first sight to be somewhat at variance with the opinion just cited. It will, however, be observed, that the Digest, as also Pothier, in his notes, treats of the intercession of the wife. "*Intercedere*," says M. Ortolan 2, 242, "*c'est s'obliger volontairement pour la dette d'un autre, soit de manière à le libérer immédiatement, soit en restant obligé avec lui et pour lui.*" Keeping this definition in view it becomes clear that the alienation must not partake of the character of a pledge in any sense whatever. "Hence Julian rightly says, that a woman may always revendicate the real estate she gave as security for another, although the creditor may have sold it." B. Neuville, 6, 232.

Cujas also says that the S. C. only prohibits suretyship by a woman (4, c. 239, C.D.) *S. C. Vellejanum est tantum de intercessionibus mulierum improbandis.* The case was this—the prætor authorized the tutor to sell the real estate of a minor. The mother prevailed on the tutor not to sell, promising him indemnity, should he be troubled for maladministration. The minor, come of age, attacked the tutor, and he claimed the *garantie* of the mother. Papin. *non putat eum intercessisse.* She entered into no obligation, new or old, for another. She made this obligation for herself.

Turning to the jurisprudence, we find the case of *Hudon & Latourelle*,(1) which held that a wife *séparée de biens* could bind herself *with* her husband, and that no law forbade it. There was another reason that the evidence of the obligation did not show it was for a debt of the husband, and she was condemned, *solidairement*, with her husband. In Mr. Lacoste's paper the error of this decision in restricting the ordinance to the wife *commune* is demonstrated.

In the case of *Bertrand & Saindoux*, and his wife, which was on an obligation by defendants in favour of plaintiff, "*pour prêt d'argent de pareille somme* À LUI FAIT," it was held, that the wife could only bind herself with her husband as *commune en biens*, that the female defendant was *séparée de biens*, and therefore, she could not bind herself at all by such a deed, and the action was dismissed *quant à elle*. Mr. Lacoste contends that this decision, save a slight error in the redaction of the motives, supports the doctrine he invokes. *Ste. Marie & Ste. Marie* is still more explicit. In that case it was held that the wife, *commune en biens*, who joins in a deed of sale, with the usual *garanties*, only binds herself as *commune en biens*, and that she, being subsequently *séparée* by judgment according her *reprises et droits matrimoniaux*, was not personally liable as *garant*, and that she had a prior hypothec to that of the purchaser, Brosseau.(2)

In *Jodoin & Dufresne*, it was held that a bond of suretyship entered into by a married woman jointly with her husband, for a third party, is null and void under the provisions of the ordinance.(3) The principle here is that she was acting *with* her husband.

Mercille & Fournier (4) came up only on a question of evidence, namely, whether a married woman could prove by verbal testimony that the enunciation of her deed that she was the debtor was false, and that the real debtor was the husband; but impliedly it maintains the doctrine that the married woman cannot undertake to pay her husband's debt. (5)

In *Russell* v. *Fournier* and *Rivet*, Mr. Justice Smith held: "*Que la femme sous puissance de mari ne peut valablement renoncer à son hypothèque sur les biens de son mari au profit des créanciers de ce dernier, pour le paiement d'une rente viagère que son contrat de mariage lui donne pour tout douaire, et que c'est en contravention à l'Ord. comme étant un cautionnememt indirect.* (6)

In *Boudria* & vir & *McLean*, (7) the Court of Queen's Bench laid down the rule in very precise form. It was held, that the 36th Section of the Ord. "*tout en rendant nuls les engagements de la femme, pour son mari, au point de la soustraire à toute action résultant de tels engagements, ne l'empêche pas néanmoins de renoncer à l'exercice de ses droits hypothécaires, pour reprises matrimoniales, sur les biens aliénés par son mari, et que la renonciation de la femme à l'exercice de tels droits n'a pas besoin d'être stipulée, et qu'elle peut être inférée du fait qu'elle ratifie et garantit l'aliénation faite par son mari.*" This is precisely the doctrine advocated by Mr. Lacoste. Mr. Justice Smith seems to have fully acknowledged the authority of this case in *Armstrong & Rolston*. (8)

It may perhaps be said that these decisions are all before the code, and that the terms of the code differ from those of the ordinance and of the C. S. L. C. On this point the report of Commissioners (p. cx. 2 vol.) denies any change but that of the addition of the word *for*, an extension (it is called) introduced by the jurisprudence and particularly by *Jodoin & Dufresne*.(9) The amendment is not momentous, but it cuts off a possible chance to cavil. The surety is usually bound *for* and *with* the debtor; but he may be bound for and not with. Since the code several cases have arisen bringing up the question that had been decided under the ordinance. The first case was that of *Lagorgendière & Thibaudeau*.

(1) Rep. by Mr. Lacoste, 3 Rev. de Leg. 123.

(2) 3 Rev. de Leg. 134, Rep. by Mr. Lacoste, who shows that the intervention of the wife at the sale, only bound her as *commune*, but having renounced the community she was not liable to warrant the sale. He thought she had renounced her hypothec validly, and should not have been collocated for her *reprises* by preference.

(3) 3 L. C. R. 189.

(4) 2 L. C. J. 205.

(5) Confirmed in appeal, 4 L. C. J. 51.

(6) 3 L. C. J. 324.

(7) 6 L. C. J. 65.

(8) 9 L. C. J. 16.

(9) 3 L. C. R. 189.

(1) After an elaborate argument the majority of the Court laid down the same rule as in *Boudria & McLean*. This case was decided in 1871.

In 1879 Mr. Justice Jetté held that the wife might "legally renounce her priority of *hypothèque* for her *reprises matrimoniales* in favour of a third party lending to her husband on the security of his real estate. (2)

And in 1880 the same learned judge held "*Qu'une cession par la femme de sa priorité d'hypothèque sur les biens de son mari, en faveur du créancier de son mari, est légale, et ne constitue pas une obligation de la femme en faveur de son mari.*"—*Homier & Renaud.* (3)

This Court has also held the same thing, I think, on more than one occasion.

We have therefore to examine what Zoé Ouellet did by the deed of 1870 to which she became a party. Did she contract for herself or did she contract for him? After setting up all the arrangement between Joseph and Polydore Langlais we have this clause:

"*A ce faire est intervenue Dame Zoé Ouellet, épouse du dit Jos. Langlais, et de lui dument autorisé à l'effet des présentes; laquelle après avoir eu communication et lecture par le notaire soussigné de la présente vente, a dit la bien comprendre et veut et entend qu'elle ait son plein et entier effet et qu'elle soit suivie et exécutée suivant sa forme et teneur, et de plus elle a renoncé et renonce en faveur du dit acquéreur ses héritiers et ayans droits, ce accepté par le dit acquéreur, tant pour elle que pour ses enfants, à tout douaire et à tous droits et prétentions qu'elle peut avoir sur le dit immeuble en vertu de quelque titre que ce soit, et notamment à l'usufruit de la propriété sus-vendue à elle réservée par le dit acte de donation.*"

Now, where is the suretyship—the obligation for her husband—in this deed? It is a renunciation to certain rights she possessed. Whatever her motive might be she was acting for herself exactly as the mother was acting for herself when she gave the tutor security against *trouble*, if wrongly he neglected to sell the minors' heritage.

It is said that all this transaction was not only null but a fraud on the rights of the *nus-propriétaires*. The first part of this we have endeavored to explain, with the latter we have nothing to do. Respondent's rights as a *nu-propriétaire* are not now before us.

We are therefore to reverse and dismiss the respondent's action with costs of both courts.

Judgment reversed.

(1) 2 Q. L. R. 163.
(2) 23 L. C. J. 276.
(3) 24 L. C. J. 253.

CIRCUIT COURT.

MONTREAL, March 11, 1886.

Coram TORRANCE, J.

DEGUIRE et al. v. BASTIEN, and WILFRED BASTIEN, *témoin saisissant*, and DEGUIRE et al., contesting seizure.

Witness—Minor—Fees of Witness paid to Attorney—C.C.P. 281.

A minor summoned as a witness is entitled to take execution for his taxed fees. But where the amount of such fees has already been paid to the attorney of the party obtaining the judgment, as part of his taxed bill, a seizure by the witness for the same amount is illegal.

This was the merits of an opposition by the plaintiffs against an execution taken out by the witness Wilfred Bastien, to recover his tax as a witness in the cause under C. C. P. 281.

The amount claimed was $3.10. The plaintiffs whose goods were seized alleged the nullity of the seizure, *inter alia*, 1st. because Wilfred Bastien was a minor; 2nd. because M. Turgeon, the attorney for the party obtaining the judgment, had already received the tax from the opposants.

The COURT held that it being proved that the amount had already been included in Mr. Turgeon's bill of costs and paid to him as attorney of the party obtaining the judgment, the seizure was illegal: C. C. P. 281. It was proved that the witness was a minor of 20, but the Court held that this objection could not prevent him from levying what was allowed to him as his expenses in obeying the subpœna.

Opposition maintained on the ground of payment to attorney previously made after being included in his taxed bill.

Beaudin, for Opposants.

Lafortune, for witness Wilfred Bastien.

COURT OF QUEEN'S BENCH.

[CROWN SIDE.]

MONTREAL, March 12, 1886.

Before RAMSAY, J.

REGINA v. MARY MURPHY.

Perjury—Loss of original affidavit—Swearing to fact not in issue.

RAMSAY, J., in charging the Jury, said:—Gentlemen of the Jury,—The case submitted to you is one of some difficulty. It is also important. The prisoner is accused of having committed perjury by swearing to a false affidavit making accusations of a very serious character, against a respectable married man living in this city. This affidavit was made to procure an order from a judge to permit the prisoner to take out an action *in forma pauperis*, based on these accusations. There can be no doubt the prisoner gave all this information to her lawyer; and it is not less clear that the story is false. The complainant has been examined as a witness; and he denies the whole of the prisoner's statements. In addition to this he has been enabled, providentially, to establish by independent testimony, that the chief part of the story is impossible. The complainant was, however, compelled to institute this proceeding to vindicate his character, because a newspaper had published the whole story on this *ex parte* statement for the edification of its readers, who, it appears, delight in this sort of garbage. A story of this description is sought after with the greater avidity because it accords with the craze of the moment—the protection of women. A special protection to a particular class is anti-social, and a peril to all others. Society's right arm, the law, protects alike all classes, rich and poor, young and old, male and female. It makes no exception. An unprincipled statute was passed last session in England, in a moment of excitement, setting natural law at defiance, and already it has borne some portion of the ill fruits that might have been anticipated. Recently a man named Hodner was tried at the Cork assizes, the complainant was under 16, yet it was clearly proved she was the transgressor. The man sent her away on several occasions from his house, and the last time she returned and said her mother had sent her to visit him. This was all proved by her own testimony, and it was not contradicted. Nevertheless the man was severely punished because a statute declared that a girl under 16 could not consent, which is physically and morally untrue. It is not improbable that an effort may be made at this session to introduce here legislation of this kind, the danger of which is well illustrated by the case before us.

Bad as the prisoner's conduct has been, and little though she may deserve sympathy, there is a protection to which she is entitled, and that is to have a fair trial on the accusation now before the court. She is not accused of slandering complainant, but of having perjured herself in an affidavit. At first sight a great difficulty presented itself, the petition and affidavit were lost, and the commissioner could not identify the prisoner or remember the circumstances of the administration of the oath. However, a pressed copy of the petition and affidavit was produced, and the boy Montgomery has supplied what was wanting in the oral evidence. This is, of course, less satisfactory than the evidence of the swearing might have been, but it is legal evidence, and will probably be considered satisfactory by you. The real difficulty in the case is, that according to a very evil practice, which courts and judges have been condemning ineffectually for years, the narrative is contained in a petition drawn in technical language, which a young person in the condition of life of the prisoner, in all probability, could not understand, if it had been read to her; and the evidence does not show that it was read to her. It is also to be remarked that the object of the whole proceeding was not to state her ground of action against complainant under oath, which the prisoner was not bound to do, but to establish that she was too poor to pay the costs of court. If this indictment had taken place under the law of perjury as it formerly stood, I should have been able to tell you that all the allegations of the petition which did not bear on the question of the poverty of the prisoner, were matters on which perjury

could not be assigned, because they were not in issue. The idea of the common law was this—that swearing to an immaterial fact was simply a false statement; that the attention of the party swearing was not specially directed to what was not in issue, and therefore that, probably, the moral guilt did not exist, and that at all events there was no damage done. These distinctions were made by the old sages of the law, who were not much less able to judge than we are; but some wise people of our day thought it would be a great reform to break down this institution of the law, and to declare that a person might be convicted of perjury, although swearing to a fact not in issue. This change may have some convenience to recommend it, but we must be careful not to give it too much extension. The statute does not say that the materiality of the matter is not to be considered in deciding as to the intention to commit perjury. It is of the essence of perjury that it must be wilful as well as corrupt, and, therefore, the circumstances must be such as to convince you that the accused not only swore to what was not true, bnt that she did it wilfully and corruptly. Now, what you have to ask yourselves is this: Is it not possible—nay, more probable—that this young woman did not know, in swearing to this very general affidavit, that she was also swearing to the whole facts of a petition which she could not have written or dictated? As an illustration, there is an allegation that complainant promised to pay her the damages she asked. This is a usual allegation, constantly thrown into declarations by the lawyer to cover any undertaking which may unexpectedly be proved. If she is liable on an indictment for perjury for every incorrect statement in the petition, she is liable for this piece of legal style. Now, gentlemen, this appears to be the real question of importance you have to consider. It is not complainant's character you have to protect. It requires no protection. The charges against him are gross and unfounded slanders. But even if it were otherwise, you could not allow any consideration of this kind to affect your verdict. You are sworn to decide whether the prisoner perjured herself and not whether she has a right of action against the complainant.

The jury returned a verdict of "not guilty."

INSOLVENT NOTICES, ETC.

(*Quebec Official Gazette, March* 13.)

Judicial Abandonments.

Henry J. Brown, trader, Windsor Mills, March 11.

Joseph Couture, Montmagny, Feb. 1.

Parpétu Boileau, Aylmer, March 4.

Mary Harvey, boarding-house keeper, Montreal, March 3.

Solomon Fox, merchant tailor, Montreal, March 6.

Victor Ollivon, eating-house keeper, Montreal, Feb. 20.

Henry Sevigny, trader, St. Flore, March 5.

Sulpice Télesphore St. Cyr, trader, Berthier-en-haut, March 3.

Hermyle Parent, trader, Rivière Blanche, March 8.

Alexander Waters, Melbourne, March 2.

Curators Appointed.

Re J. A. Beauvais, Montreal.—Kent & Turcotte, Montreal, curator, March 11.

Re Maurile Betner, Montreal.—Kent & Turcotte, Montreal, curator, March 8.

Re Ovila Chagnon, cabinet-maker, St. John's.—Jas. O'Cain, St. John's, curator, Feb. 25.

Re Pierre Cormier, St. Ours.—Damase Caron, St. Ours, curator, March 2.

Re J. B. Dumesnil, Jr., Montreal.—C. Desmarteau, curator, Feb. 4.

Re John Egger and Henry O'Sullivan, watchmakers and jewellers, Montreal.—W. A. Caldwell, Montreal, curator, March 9.

Re Victor Girouard, Montreal.—Kent & Turcotte, Montreal, curator, March 11.

Re J. H. Leblanc, Montreal.—Kent & Turcotte, Montreal, curator, March 4.

Re Joseph Limoges, Montreal.—Kent & Turcotte, Montreal, curator, March 8.

Re Victor Ollivon, Montreal.—A. C. Wurtele, Montreal, curator, March 1.

Re Louis Gonzague Renouf, wheelwright, Trois Pistoles.—J. M. Michaud, Trois Pistoles, curator, March 1.

Re Froby Valentine, (C. Valentine & Son), Three Rivers.—Geo. Daveluy, Montreal, curator, March 10.

Re A. S. Vinet, Bedford.—Kent & Turcotte, Montreal, curator, March 3.

Dividend Sheets.

Re P. A. Armstrong, district of Ottawa.—Dividend sheet open to objection till April 1, at office of Kent & Turcotte, Montreal.

Re J. A. Bouthillier, Montreal.—Final div. sheet open to objection till April 15, at office of Chas. Desmarteau, Montreal.

Re Exchange Bank of Canada.—2nd div. of 30 cents, payable March 22, at office of liquidators, Montreal.

Re Alphonse Laurier.—Final div. payable April 5, at office of Kent & Turcotte, Montreal.

Re Jos. Perrier, Montreal.—Final div. payable April 1, at office of Kent & Turcotte, Montreal.

Separation as to Property.

Dame Marguerite H. Toussaint vs. Louis Wingender, marble-cutter, St. Hyacinthe, March 6.

Dame Marie J. A. Prendergast vs. Eusèbe O. Lemieux, St. François, March 4.

Parliament.

Convoked for dispatch of business on April 8.

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