THE LEGAL NEWS.

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The Legal News.

Vol. IX. AUGUST 21, 1886. No. 34.

The 49–50 Vict. ch. 14, assented to June 21, 1886, enacts as follows:

1. Article 224 of the Code of Civil Procedure is amended by adding thereto the following paragraphs:

"When the service is made upon an incorporated company, the answers may also be given by the president, manager, secretary, treasurer or any other officer or employee of the company, if he holds a general authorization for that purpose.

When such service is made upon a foreign corporation carrying on business in this province, the answers may also be given by the person who is at the time entrusted with carrying on the affairs of the company, whatever be his designation or official title; but such answers may also be given by any person previously authorized specially, by a resolution of the board of directors of such foreign corporation, to appear and answer for it, the interrogatories that may be served upon it.

The answers so given are as binding upon the company as if they had been given under a special resolution of the company passed after the service of the rule and interrogatories upon articulated facts."

2. Article 617 of the said code is amended by striking out the last paragraph thereof and replacing it by the following:

"When a seizure by garnishment is made in the hands of any corporation, the declaration is made by an attorney or by any other person authorized in the manner prescribed in article 224, for answers upon articulated facts."

A circular despatch from the Secretary of State for the Colonies, of date 20th October, 1878, has been republished in the *Official Gazette* for general information. It is as follows:—

Sir,—An application having been recently made for the recognition of an Officer in the Government service of one of the Colonies as Consul of a Foreign State, I have the honour to inform you that Her Majesty's Government are of opinion that such appointments are undesirable, and have decided to make it the rule in future that a Public Officer will not be allowed to act in a consular capacity for a Foreign State.

I have the honour to be, Sir,
Your most obedient, humble servant,
(Signed,) M. E. Hicks Beach.

The Officer Administering
the Government of Canada.

AMENDMENTS TO MUNICIPAL CODE.

The 49–50 Vict. ch. 21, assented to 21st June 1886, enacts as follows:—

1. The municipal code is amended by adding after article 65 the following article:

"65*a*. Every rural municipality having a population of ten thousand souls, as established by the last general census, or by a special census certified by the mayor or secretary-treasurer, may, upon petition of the majority in value of the proprietors of the said municipality, according to the valuation roll then in force, be erected into a village municipality by proclamation of the Lieutenant-Governor in Council, upon a resolution of the council of the municipality, setting forth that it is in the interest of the inhabitants of the locality that such erection into a village should take place; provided always that the territory does not exceed forty-five square arpents, and that such resolution be accompanied with a plan showing the metes and bounds of the municipality.

The territory, as described in the proclamation, forms a village municipality under its own name, dating from the coming into force of the proclamation; but the councillors in office remain so until the expiration of their term, as if the erection had not taken place.

2. Paragraph 3 of article 291 of the said code is amended by adding at the end thereof the following words: "or at a previous period which any council may fix by by-law, provided that such date be not fixed before the fifteenth of December."

3. Article 1000 of the said code is amended by adding after the said article the following paragraph:

"In all proceedings had and adopted to effect such sale, the county corporation shall not be responsible for the errors and informalities committed by local municipalities,

against which alone shall third parties have recourse."

4. The third paragraph of article 1080 of the said code, as amended by the act 41 Victoria, chapter 18, section 38, is replaced by the following:

"The councils of such municipalities may make such provision as they deem the most equitable for the making and maintenance of the fences along municipal roads, or for ordering that such fences and all those making an angle with the fences of such municipal roads, for a distance of twenty-five feet be, during part of the year, kept down within twelve inches of the ground.

Such by-laws or orders may be put into force as the councils may deem most equitable, either by compelling the proprietors of the adjacent lands to make such fences or to take them down as aforesaid, or in any other manner.

These provisions do not apply to quick-set hedges, to picket fences or those at a greater distance than twenty-five feet from the road, nor to those which cannot be taken down or replaced without great expense.

COURT OF REVIEW.

QUEBEC, April 30, 1886.

Coram STUART, C.J., CASAULT, J., CARON, J.

GRANDMONT v. MCDOUGALL.

Execution—Sale for excessive amount.

Held,—That, in a case wherein it is shown that, in violation of article 595 of the Code of Civil Procedure, and despite a remonstrance of the executing bailiff, the defendant in this suit has made such bailiff sell the plaintiff's movables, to an amount about *double* the amount ordered to be levied by the writ of execution, the injured party has a right to vindictive damages, and this Court will not disturb, but will confirm, the judgment giving such vindictive damages.

Dissenting—Hon. Mr. Justice Casault, who conceived that the amount ($150), awarded by the Court below, should be reduced to $100.

Pacaud & Cannon for plaintiff.

Eugène Crépeau for defendant.

(J. O'F.)

SUPERIOR COURT.

QUEBEC, June 15, 1886.

Before STUART, C.J.

BRIDGET COUGHLIN *v.* JAMES COUGHLIN.

Legacy—Forfeiture—Summons.

On the 4th April, 1882, James Coughlin, senior, by notarial will, duly enregistered, made the following bequest:

"Fifthly, *as to all and singular*, THE REMAINDER and residue of all my property, movable and immovable, of whatever kind or nature the same may be, and in whatever place the same may be situated, I do give and bequeath the *use, profit, and full enjoyment of the same* (*la jouissance et usufruit*) unto my said daughter, *Bridget* Coughlin," (the plaintiff), "so that she may enjoy the same during her natural lifetime, FOR, *after* the day of *her death*, all the said property then to return, and *I bequeath the same*, to *James Coughlin*, my grandson" (the defendant), "now living with me, to dispose of the same, after the decease of my said daughter, Bridget Coughlin, his aunt, *on the express condition* that he shall and will *continue remaining* with my said daughter, Bridget Coughlin, his aunt, and work under her directions for their benefit; BUT, *if* the said James Coughlin *does not so stop* with my said daughter, Bridget Coughlin, and leaves her residence, THEN my said daughter, Bridget Coughlin, *may use and dispose of* ALL my said property for her *own benefit*."

The testator died shortly after the execution of this will. About a year after the death of the testator, the defendant abandoned the country, leaving his aunt, and has continually since that time resided in Ontario. It was proved, by affidavits, that process could not be served upon him in Ontario, he having no domicile in that province, and being, at the time, engaged in lumbering on the upper Ottawa.

Held,—1st, That, under the circumstances, the defendant could be summoned under article 68 of the Code of Civil Procedure, by advertisements in newspapers;

2nd, That the failure to comply with the express condition of residence with the plaintiff and of working under her direction, entailed a forfeiture, by the defendant, of the

bequest of the reversionary ownership of the testator's property;

3rd, That the appropriate remedy is an action *en déchéance de legs*, forfeiture of the legacy.

Text of the judgment:—

"Considering the last will and testament of the said late James Coughlin, executed before Watters, notary and witnesses, on the 4th April, 1882, and the legacy therein and in question in this cause, set forth, as follows:" (as above transcribed).

"Considering that the plaintiff hath proved the material allegations of her declaration, and more particularly that the defendant has ceased to reside with her for the last two years, and hath thereby forfeited in her favor the legacy to him, in the said declaration so described;

"The Court doth hereby adjudge that the said defendant be, and he is hereby declared to be, without right in the said legacy, he having forfeited the same; and the Court doth further adjudge that the plaintiff has the right to use, enjoy and dispose of all the property included in the said legacy as entirely her own property, and as if the said defendant had never been mentioned in the said will."

J. G. Bossé, Q.C., for the plaintiff.

COURT OF REVIEW.

QUEBEC, 1886.

VAILLANCOURT v. LESSARD & FOY, *mis en cause*.

Prescription—Evidence — Hypothecary action.

On the 26th September, 1872, a sale of the immovable in question was made by Auguste Morin to George Lessard for $1,100, of which $300 were payable on the 25th December, 1873, the balance to be payable in yearly instalments of $100, with interest.

On the 30th January, 1874, a sale of the same immovable, by George Lessard, the *personal* debtor of the debt bearing hypothec, to Cyrille Vallée, with the condition that Cyrille Vallée, the purchaser, should not have possession of the immovable until the 1st May, 1875, enregistered on the 2nd September, 1874.

On the 9th November, 1875, a sale by Cyrille Vallée to Richard Lessard, J. P., enregistered on the 29th November, 1875.

On the 6th April, 1885, a sale by Richard Lessard, J. P., to James Foy, *not enregistered*.

On the 30th August, 1873, assignment of that hypothecary debt by Auguste Morin to Onézime Létourneau of the payment of $300 to become due on the 25th December, 1873, to which deed of assignment the personal debtor, George Lessard, was a party, accepting that transfer, enregistered on the 30th October, 1873.

On the 12th January, 1855, the execution of the will of Onézime Létourneau, making his wife, the present plaintiff, his universal legatee, and appointing her to be the executrix of his will, and his death, on the 3rd December, 1874.

Five days before the issue of the writ of summons in this case, and twelve days before the service upon him, he, the defendant, Richard Lessard, J. P., caused to be executed the *unenregistered* deed of sale already referred to.

The defendant, Richard Lessard, J. P., by perpetual exception pleaded that, at the time of the service of the action upon him, he had ceased to be proprietor of that immovable, producing, in support of that plea, a copy of his *unenregistered* deed of sale to Foy.

On the 5th October, 1885, the plaintiff in this case, by a hypothecary suit, brought the defendant, James Foy, into court.

James Foy pleaded, 1st, payment of the debt; 2nd, ten years' prescription as against the debt, *claiming* that the prescription ran from the date of the sale by George Lessard to Cyrille Vallée (30th January, 1874), *and not* from the date on which he entered into possession (1st May, 1875).

HELD,—Confirming the judgment of the Court below;

1st. That proof of payment of a hypothecary debt, based on an authentic deed, cannot be made by oral testimony, even though the witnesses may swear that they had receipts proving payment, but could not, after diligent search, find such receipts.

2nd. That the *actual* possession of ten years required to enable a purchaser in good faith to prescribe against a hypothecary debt, must be *exclusive* of the actual posses-

sion of the personal debtor; and that, in the present case, the interval between the 30th January, 1875, date of the purchase by Cyrille Vallée, and the 1st May, 1875, the date of Cyrille Vallée's obtaining possession from George Lessard, will not be reckoned to make up the period of ten years.

3rd. That, upon such a plea by a defendant, and under the circumstances disclosed in this case, the plaintiff may, without previous permission from the court, engraft, upon the pending suit, a hypothecary demand against the actual owner of the hypothecated immovable.

4th. That under the circumstances, both defendants should be condemned jointly and severally to pay the costs of both suits in both courts.

The following is the judgment of the Court below, confirmed in Review:—

"Considérant que le défendeur, Richard Lessard, a été poursuivi hypothécairement en cette cause, le 18 avril, 1885, comme détenteur de l'immeuble hypothéqué, et qu'alors l'acte de la vente qu'il en avait faite le 6 avril, 1885, à James Foy, l'autre défendeur, *mis en cause*, n'était pas enregistré; que partant l'institution de la présente action date du 18 avril, 1885;

"Considérant que la possession utile avec titres du défendeur, James Foy, par lui-même, par Richard Lessard et par Cyrille Vallée, comme tiers-acquéreurs de bonne foi de l'immeuble hypothéqué ne remonte qu'à la date du 1er mai, 1875, aux termes de l'acte de vente du 30 janvier, 1874, par George Lessard, *débiteur personnel* de la dette portant l'hypothèque invoquée en cette cause, à Cyrille Vallée, et que partant le dit James Foy n'a pas acquis la prescription de 10 ans invoquée en son plaidoyer;

"Considérant que le dit défendeur, Foy, n'a point fait de preuve légale de son plaidoyer de payement;

"Vu la vente par Augustin Morin à George Lessard, du 26 septembre 1872, dûment enregistré le 17 juin 1873, le transport par le dit Morin à Onézime Létourneau, du 30 août 1873, accepté par George Lessard, de $300 du prix porté en la dite vente, et enregistré le 30 octobre 1873, portant les dits actes hypothèques sur l'immeuble décrit en la déclaration en cette cause;

Vu le testament dûment enregistré d'Onézime Létourneau, instituant la demanderesse sa légataire universelle et le décès du dit Onézime Létourneau;

Vu la preuve que le défendeur, James Foy est détenteur, à titre de propriétaire, de l'immeuble hypothéqué;

"Déclare le dit immeuble décrit comme suit: (description of immovable) hypothéqué, &c."

Daniel Doran, for the plaintiff.
Sévère Théberge, for the defendant.
(J. O'F.)

COUR DE CASSATION (CH. CIVILE)

4 août 1886.

Présidence de M. Barbier, premier président.

FAILLITE DES KAOLINS DE BRETAGNE v. EPOUX DEPAUL.

Louage—Vente mobilière—Carrière—Droit d'extraction—Prix fixé à tant la tonne—Location d'usine—Conventions connexes—Prix distincts—Privilège du bailleur.

L'acte, portant concession du droit d'extraire les kaolins à exploiter dans une carrière, moyennant le paiement d'une certaine somme par chaque tonne de kaolin extraite, sans que la somme totale à payer puisse être inférieure à un certain chiffre, fixé comme minimum, constitue une vente d'objets mobiliers et non un simple bail.

Et le dit acte conserve ce caractère, alors même qu'il n'est que le complément d'une autre convention intervenue le même jour entre les mêmes parties, et ayant pour objet la location, moyennant un prix d'ailleurs distinct, d'une usine, qui forme avec les carrières, dont l'exploitation est concédée, une seule et même propriété.

Le privilège accordé au bailleur par l'art. 2102 § 1 *C. civ. garantit donc uniquement, en ce cas, le paiement du loyer de l'usine, sans pouvoir être étendu à la garantie du paiement du prix du droit d'extraction concédé.*

LA COUR,

Sur le moyen unique du pourvoi:
Vu les art. 2102, § 1 et 2903 C. civ.;

Attendu qu'il est constaté, en fait, par l'arrêt attaqué, que le même jour 15 septembre 1877, il a été passé entre la dame Carré-Kérisouet, aujourd'hui épouse Depaul, et le sieur Hauet, aux droits duquel se trouve aujourd'hui la Société des kaolins de Bretagne, deux conventions dont la première a pour objet la location de l'usine appartenant à la dite dame, moyennant un loyer annuel de 5,000 francs et dont la seconde fixe à 0 fr. 60 par tonne extraite et à 6,000 francs au minimum, le droit de fortage ou droit d'extraction pour les kaolins à exploiter dans une carrière, faisant partie de la même propriété;

Attendu que, si la première de ces deux conventions constitue incontestablement un louage, et si, par suite, les loyers stipulés de ce chef sont garantis par le privilège de l'article 2102, § 1 du C. civ., il en est autrement de la seconde; qu'en effet, le prix de 6,000 fr. stipulé par celle-ci représente expressément la valeur des matériaux qui devront être extraits de la carrière, et ne peut, dès lors, être considéré que comme un prix de vente d'objets mobiliers;

Attendu qu'il importe peu que les deux actes aient été faits le même jour, et se complètent l'un l'autre; que les deux conventions, quoique connexes, n'en restent pas moins distinctes, puisqu'elles ont stipulé, pour chacune d'elles, un prix séparé;

Attendu que les privilèges sont de droit étroit et ne peuvent être étendus d'un cas à un autre; que dès lors, en accordant à la dame Depaul un privilège du bailleur pour la totalité de sa créance, l'arrêt attaqué a faussement appliqué l'art. 2102, § 1, et par suite violé l'article 2093 C. civil;

Casse.

NOTE.— De nombreux arrêts, rendus en matière fiscale, avaient décidé, antérieurement à l'arrêt ci-dessus, que la concession du droit d'extraction de matériaux dans une mine, minière ou carrière, moyennant un prix proportionnel à la quantité de matériaux extraits, constitue non un simple bail, mais une *véritable vente*, passible, au point de vue de la perception des droits d'enregistrement, du droit proportionnel, applicable aux ventes mobilières. V. Cass. 22 août 1842 (S. 42.1.790 — J. du P. 42.2.329); 17 janvier 1844 (S. 44.1.174 — J. du P. 44.1.171); 23 avril 1845 (S. 45.1.576 — J. du P. 45.2.85 — D. 45.1.197); 6 mars 1855 (S. 55.1.379 — J. du P. 55.1.252); 28 janvier 1857 (S. 57.1.640 — J. du P. 57.249 — D. 57.1.319). V. également Cass. 31 décembre 1856 (S. 57.1.641) et la note de M. Cabantous. Cette solution a été cependant vivement combattue par M. Pont, Revue critique, t. I, p. 747 et suiv.

Dans l'espèce, la question se présentait avec cette complication de fait, que la concession du droit d'extraction avait eu lieu en même temps que la location d'une usine, formant avec les carrières à exploiter un seul et même domaine. Les deux conventions étaient connexes, et l'une évidemment n'aurait pas été conclue sans l'autre. Le lien entre elles n'a point toutefois paru à la Cour de cassation assez étroit pour qu'elle ait cru pouvoir les confondre, alors surtout que les parties les avaient elles-mêmes distinguées, en stipulant pour chacune un prix distinct. L'arrêt décide donc que chacune des deux conventions devait être appréciée isolément, au point de vue de sa nature et de ses conséquences juridiques.

Dès lors, une des conséquences nécessaires du caractère de contrat de vente, reconnu à l'acte de concession du droit d'extraction des kaolins des carrières, était évidemment le refus du privilège de l'art. 2201 § 2 C. civ. pour le paiement du prix de la dite concession.—*Gazette du Palais.*

CHANCERY DIVISION.

LONDON, June 24, 1886.

Before NORTH, J.

In re WHORWOOD. OGLE *v.* LORD SHERBORNE.

Will—Construction—Specific Bequest to Lord Sherborne— Death of Lord Sherborne — Lapse.

Dr. Whorwood, who died in August, 1884, by his will made the following bequest: 'To Lord Sherborne and his heirs my Oliver Cromwell cup, presented to our common ancestress, Dame Ursula Whorwood, for an heirloom.' The cup to which the bequest related had been given to Dame U. Whorwood by General Ireton, who had received it from Oliver Cromwell. The testator was not personally acquainted with Lord Sher-

borne, and the latter died in March, 1883, on which event the title devolved on a relative. In July, 1883, the testator, who had previously executed four codicils to his will, made a fifth and last codicil, by which he bequeathed his silver and plate to R.

The question was now raised by originating summons, in which the trustees of the will were plaintiffs, whether the present Lord Sherborne, who had succeeded to the title, took the cup under the will.

NORTH, J., held that on the proper construction of the will the cup was given to the Lord Sherborne who held the title at the date of the will; and that, he having predeceased the testator, the bequest lapsed, and the cup passed to R., under the fifth codicil.

QUEEN'S BENCH DIVISION.

LONDON, Aug. 5, 1886.

Ex parte COX.

In re HAKES *v.* COX.

Practice—Ecclesiastical Suit—Order of Suspension—Service—Lord's Day Act, 29 Car. II. c. 7.

In the course of an *ex parte* application for a rule *nisi* for prohibition to be directed to James Hakes, the promoter of an ecclesiastical suit, and to Lord Penzance, which application was granted on certain grounds, which for the present purpose it is unnecessary to state, the following point was taken on behalf of the Rev. James Bell Cox.

Charles, Q.C., and *Beaufort* (*Sir W. Phillimore, Q.C.*, with them), as a subsidiary point, argued that the service of the order of suspension by affixing the same to the church door on Sunday, June 13, 1886, was void, since the statute 29 Car. II. c. 7, enacted that no person on the Lord's day should serve any process except in cases of treason, felony, or breach of peace, and that an order of suspension did not come within this category. In support of this objection they cited the case of *Alanson* v. *Brookbank*, Carthew, 504, and 5 Mod. 450, which is also commented on in Comyn's Digest (temps. b. 3), 5th ed. vol. 7, 401.

The COURT (LORD COLERIDGE, L.C.J., and DENMAN, J.) held that an order of this kind was not within the mischief sought to be provided against by the Act in the expression 'the better observation of the Lord's day'; that it could not be contended that a misbehaving clergyman could not be stopped in his misbehaviour because it was Sunday, and that *Alanson* v. *Brookbank*, in which the plaintiff moved for a prohibition to the Court of Durham because she was cited by their process on a Sunday in a cause of incontinency, so far from being in point, was a direct authority the other way, for both reports of the case showed that the application for prohibition was refused.

THE BENCH AND THE BAR.

Some at the Bar with subtlety defend,
Or on the Bench the knotty law untye.

—*Dryden.*

The origin of the terms, "The Bench" and "The Bar," is interesting alike to the lawyer and the layman. In legal meaning or definition, what is "The Bench?" what is "The Bar?"

Webster defines *Bench*, in a court of justice, as the seat where judges sit in court; the seat of justice, quoting: "To pluck down justice from your awful Bench."—*Shak.* And remarks: One of the highest courts in England is called the King's or Queen's Bench; the English Court of Common Pleas was formerly called the Bench or the Common Bench. In this country we speak of going before, or taking the opinion of, the full *Bench*.

Bar (law) is defined by Webster, referring to Burrill, *inter alia*, as: (*a*) The railing that incloses the place which counsel occupy in courts of justice. Hence the phrase "at the Bar of the court," signifies in open court. (*b*) The place in court where prisoners are stationed for arraignment, trial or sentence. (*c*) The whole body of lawyers licensed in a court; the legal profession.

In a very able article by George Cowles Lay, Jr., on the subject "Of Judges," published is the *Albany* (New York) *Law Journal*, Vol. 6, page 391, it is observed that there is some meaning to be attached to the correlative terms, "The Bench" and "The Bar." It is well known that these terms arose from

the simple fact that the judges in the olden time sat upon a rude seat of boards, called a bench, and the lawyers were separated from them by a fence, called a bar.

This separation, however, was not merely a matter of convenience or form, but had an enlarged significance as civilization advanced.

On one side, in the chair of justice, sat her representative, above the petty interests and selfishness of suitors, unapproachable by friend or foe, and blind to all considerations save those of honor, truth and justice, and on the other side, the lawyers carrying on their warfare on an open field, equally separated from the judge, and none able to pour into his ear the poison of private interest or flattery undetected and unopposed.

As to the Bench, as a piece of furniture, its occupants and their official dress in the court room—in the *Albany* (New York) *Law Journal*, Vol. 28, page 422, Dec. 1, 1883, "Current Topics," it is stated, among other matters, that no other court in this country, probably no other in the world, are so sumptuously housed as their Court of Appeals will be when they occupy their premises in the new capitol on the first of January. The court room is completely lined with oak, with a heavy timber ceiling, and a grand fireplace backed by the most exquisite Mexican onyx. The judge's desk is a beautiful example of carving. The adjoining rooms, for libraries, consultation and toilette purposes, and those allotted to the Bar, are all that could be desired. The hope is expressed by the above journal that the judges will adopt gowns, and that there will be judicial uniformity in dress as well as in decisions. That the judges of the highest court in this country wear gowns and no one scoffs at them. That the gown is a much more dignified garment than the average coat, be it "claw-hammer," "frock," "Prince Albert," "cutaway" or what not. In warm weather, too, it admits an *ex parte* style of dress (so to speak) which underneath is not without its advantages. We are in no danger in this country of degenerating into formalism, but rather of losing respect for courts and pulpits through familiarity and a lack of elevation.—*Pitts. Legal Journal.*

COSTS IN SMALL CASES.

In the city of London Court, July 27, during the hearing of the case of *Moore* v. *Adams*, the question was raised whether the judge under the new rules had power to allow a barrister's professional fee in a case where the amount sued for was under £5.—Mr. Guiry, who was counsel for the defendant, for whom judgment was given, applied that the costs of barrister, solicitor, and two witnesses should be allowed, on the ground that the question involved was one of legal technicality, and professional assistance was absolutely necessary. Plaintiff's solicitor: I do not see the necessity for having employed counsel.—His Honour; Oh, you will find 500 barristers who will say there is a legal difficulty in a case if there is a guinea to be got out of it. (Laughter). Perhaps they might say as the French thief said to the French judge, 'Il faut vivre'—'It is necessary to live.' I suppose lawyers must also live. (Laughter.)—Plaintiff's solicitor: It is difficult enough in these times.—Mr. Guiry: Your honour has power under the old Act in a case such as this to allow for a barrister's attendance.—His Honour: Yes, but only if there is anything novel in the case or a difficult point of law is involved. There is a point of law in this case, but to me it was not difficult. I am willing to make every allowance for the bar, but there must be a limit even to that. It would be better for the country if the Scotch system were adopted and no professional costs allowed in a case under £20. In this instance I can only allow costs of solicitor and witnesses.—*Law Journal* (London.)

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Aug. 14.

Judicial Abandonments.

Charles Gingras, and Hubert Morel, manufacturers and contractors, Montreal, July 28.

Curators Appointed.

Re J. B. Gascon, St. Jérôme.—David Seath and George Daveluy, Montreal, curator, Aug. 14.

Re Magloire Gascon, St. Jérôme.—John Ogilvie and W. R. Adams, Montreal, curator, Aug. 14.

Re Charles Gingras and Hubert Morel, manufacturers, Montreal.—J. E. Viger, wood merchant, Montreal, curator, Aug. 7.

Re Joseph Reid et al.—James Crothers, Bedford, curator, Nov. 26, 1885.

Dividend.

Re Charles David, Montreal, shoemaker.—Dividend sheet at office of Seath and Daveluy, Montreal, curator, Aug. 14.

Separation as to Property.

Julienne Monette vs. Joseph Vannier, butcher, Salaberry de Valleyfield, Aug. 10.

Quebec Official Gazette, Aug. 21.

Judicial Abandonments.

Bruno Beaulieu, St. Epiphane, Aug. 16.

D. E. Morin, Cacouna, Aug. 16.

James Smith, butcher, St. Sauveur de Québec, July 14.

Curators Appointed.

Re Guillaume Boivin.—Kent and Turcotte, Montreal, curator, Aug. 13.

Re T. Jean Fradette, St. Prime.—H. A. Bedard, Chicoutimi, curator, Aug. 18.

Re James Smith.—Ed. Bégin, N.P., Quebec, curator, Aug. 13.

Re J. D. Tellier.—Kent and Turcotte, Montreal, curator, Aug. 14.

Dividend.

Re Goldberg and Levitt.—Dividend sheet at office of W. A. Caldwell, Montreal, curator, Aug. 18.

Separation as to Property.

Dame Angele Lafleche vs. Elzear Gauthier, trader, Montreal, Aug. 6.

Dame Jane Davidson vs. William Smillie, Montreal, Aug. 12.

Commissioner.

Thomas McLaren, solicitor, Edinburgh, Scotland, appointed commissioner to take affidavits in Scotland under Art. 30, C.C.P.

GENERAL NOTES.

In an action for breach of promise of marriage tried recently in the Queen's Bench Division, the plaintiff's counsel read the following letter: "My dear Nellie—I hope to have a letter in the morning from my dear Nellie. The wind and weather here are something D——D——D——." — Mr. Justice Hawkins: What does that mean?—Mr. Austin: I think it is for your lordship to construe written documents.—*Irish Law Times.*

"I remember well," says Charles Phillips in 'Curran and his Contemporaries,'" at the Sligo Summer Assizes for 1812, being of counsel in the case of the King against Fenton, for the murder of Major Hillas in a duel, when old Judge Fletcher thus capped his summing up to the jury: 'Gentlemen, it's my duty to lay down the law to you, and I will. The law says that the killing of a man in a duel is murder; therefore, in the discharge of my duty I tell you so. But I tell you at the same time a fairer duel than this I never heard of in the whole course of my life!' It is scarcely necessary to add that there was an immediate acquittal.—*Central Law Journal.*

A Scotch cobbler, described briefly as a "notorious offender," has passed his life in a certain "Auld Licht" village without being converted. Last week a Farfar magistrate sentenced him to a fine of half a crown or twenty-four hours' imprisonment. If he chose the latter he would be taken to the jail at Perth. The cobbler communed with himself. "Then I'll go to Perth," he said; "I have business in the town at any rate." An official conveyed him by train to Perth, but when the prisoner reached the jail he said that he would now pay the fine. The Governor found that he would have to take it. "And now," said the cobbler, "I want my fare home." The Governor demurred, made inquiries, and discovered that there was no alternative; the prisoner must be sent at public expence to the place he had been brought from. So our canny cobbler got the two shillings and eight and one-half pence, which represented his fare, did his business, and went home triumphant—two and one-half pence and a railway ride better for his offence.

Liability for False Representations.—The Court of Appeals has rendered an opinion of much practical interest to people who have personal property in storehouses. It was the suit of Mrs. Hickey against John H. Morrell, which has been pending more than two years. The defendant had issued a circular saying his warehouse was fireproof. The plaintiff read the circular and stored some valuables in the warehouse. The building took fire and was destroyed. Mrs. Hickey sued for the value of her property on the ground of false representations. She lost her case in the trial court and in the Common Pleas, General Term. It was conceded that the owner had represented the building to be fireproof. But the lower courts held that such representation was not a statement of a fact, but merely the expression of an opinion, for which the defendant was not liable. That decision is overruled by the Court of Appeals. The appellate tribunal says that representing a building to be fireproof is not the expression of an opinion, but the allegation of a fact, and that if the statement is false it is a misrepresentation for which the person making it is liable.—*N. Y. Herald.*

Any person desirous of inspecting the actual last will and testament of the immortal bard of Avon can do so by visiting Somerset House and paying a shilling. The visitor is conducted to a dimly-lighted room, in which this precious relic is preserved, and is not a little astonished to find it securely fixed in a series of frames protected by glass. The will remained for many years without any attempt being made to protect it from the wear to which it was subjected. Indeed the reference to the will during the period at which it was unprotected has slightly worn away the writing at the folds of the paper. It is a remarkable fact that for every Englishman who visits Somerset House to inspect it, there are at least two Americans. The will has been reproduced in *fac simile* on two or three occasions at distant intervals, one of the last copies being taken in 1864, when a *fac simile* (now out of print) was published at six shillings. *Fac similes* have for many years past been exceedingly scarce, and a sovereign or more has been paid for good copies. Messrs. Cassell & Co. have now reproduced the will in a form which will enable every person to possess it, for they will issue a *fac simile* copy with Part I of "Cassell's Illustrated Shakespeare," to be published on the 26th inst., the price of the part, including the will, being but 7d. This new *fac simile* of the will has been very carefully executed, its permanent value being greatly enhanced by its being printed on paper of antique style, and in ink similar in color to that of the original document.—*Law Times.*

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