The Legal News.

VOL. XIII. APRIL 12, 1890. No. 15.

The London *Law Journal* referring to a recent judicial appointment which has been criticized, says:—"Experience teaches that no prophecies are more often falsified than those which pretend to forecast the success or failure of a judicial career. It would be easy to point to cases in which selections condemned at the time have been by the event proved to be wise. It would be equally easy to point to more than one case in which the judge, to use the words of Tacitus, was 'consensu omnium capax imperii nisi imperâsset.' The fact is, that so many qualities go to make a good judge, it is not enough for a man to be a learned lawyer or a powerful advocate. He may be either or both of these without having the virtues of good temper, patience, discretion, fairness of mind, knowledge of the world, and industry—all of which are most desirable in a judge."

By Section 89 of the Banking Bill now before the House, the Government propose to lay their hands upon monies the precise amount of which it is impossible to estimate. The Banks make a return of unclaimed dividends, but besides these sums, there are deposits made in banks by persons who for some reason or other do not claim them, and of which nothing is ever heard. The section reads as follows:—

"The bank shall, within twenty days after the close of each calendar year, transmit or deliver to the Minister of Finance and Receiver General, to be by him laid before Parliament, a statement of all dividends which have remained unpaid for more than five years, and also of all amounts or balances due by the bank to any person or persons, firm or corporation, whether in his or their own name or names, or in a representative capacity, in respect to which no transactions have taken place or upon which no interest has been paid during the five years prior to the date of such statement: Provided always, that in case of moneys deposited for a fixed period, the period of five years above referred to shall be reckoned from the date of the termination of such fixed period:

"2. Such statement shall set forth the name of each creditor, his last known address, the amount due, the agency of the bank at which the last transaction took place, and the date thereof:

"3. Each bank which neglects to transmit or deliver to the Minister of Finance and Receiver General the statement above referred to, within the time hereinbefore limited, shall incur a penalty of fifty dollars for each and every day during which such neglect continues:

"4. All moneys, together with any interest due thereon, remaining unclaimed for three years after the first return thereof made in manner above provided, shall be paid by the bank to the Minister of Finance and Receiver General, on behalf of Her Majesty, for the public uses of Canada; but in case a claim to any moneys so paid as aforesaid should be thereafter established to the satisfaction of the Treasury Board, the Governor in Council shall, on the report of the Treasury Board, direct payment thereof to be made to the parties entitled thereto, together with interest on the principal sum thereof at the rate of three per centum per annum for a period not exceeding six years from the date of payment thereof to the said Minister of Finance and Receiver General as aforesaid: Provided however, that no such interest shall be paid or payable on such principal sum, unless interest thereon was payable by the bank paying the same to the said Minister of Finance and Receiver General."

It is curious that these unclaimed deposits should have been so long overlooked. Attention was recently directed to the same subject in England. There the Supreme Court, it is stated, has charge of £74,000,000 belonging to 40,000 suitors; but the amount in banks at the credit of persons who have disappeared is not known. The banks apparently have no special claim to appropriate these sums. Efforts should be made to find the owners; and if there are no heirs or claimants the state should receive the benefit.

COUR DE CIRCUIT.

MONTRÉAL, 20 mars 1890.

Coram OUIMET, J.

POITEVIN v. LEDOUX, & SAGER, T. S.

Saisie-arrêt après jugement—Déclaration—Défaut de déclarer de novo, de plano après un mois — Ordonnance — Contestation de l'ordonnance—Salaire payé d'avance—Contestation des déclarations.

JUGÉ:—*Qu'en vertu du Statut de* 1888, *les ouvriers et journaliers ne peuvent être payés d'avance dans le but de les protéger contre la saisie de leurs salaires; qu'un patron—que son employé soit payé d'avance ou non—est tenu, dans tous les cas, sous peine de s'obliger personnellement, de se conformer en tout point au statut de* 1888, *quant à ce qui concerne les déclarations et le dépôt en Cour.*

Le 18 octobre 1889, le demandeur fit signifier une saisie-arrêt après jugement au défendeur et au tiers-saisi; le 26 du même mois le défendeur fit défaut et le tiers-saisi comparut et déclara comme suit: "*That at the time of the service made upon me of the writ of saisie-arrêt issued in this cause, I had not, have not now and it is not to my knowledge that I will have hereafter in my hands, possession or custody any sum of money, credits, moveables or effects belonging to the defendant in this cause. The defendant is still at my employ, with a salary of twelve dollars a week. Since the service, I paid him no money.*"

Le 9 décembre 1889, le demandeur fit une motion par laquelle il demanda que, vu qu'il apparaissait, par la déclaration du tiers-saisi en date du 26 octobre 1889, que le défendeur était encore à son emploi, et que le tiers-saisi avait négligé de renouveler sa déclaration après l'expiration d'un mois, il fût enjoint au dit tiers-saisi de déclarer *de novo*. Cette motion *of course* fut accordée avec dépens, *nisi causa*, etc.

L'ordonnance au tiers-saisi de comparaître *de novo* fixait le 12 décembre 1889, et, au jour indiqué, le tiers-saisi se présenta au greffe de la Cour de Circuit et fit *de novo* sa déclaration sous les réserves suivantes: "*And said James Sager, in obedience to an order of this Court, bearing date the 9th December instant, appears under reserve of his right to contest the Rule or Ordonnance served upon him, and says: "That at the time of the service made upon him of the writ of saisie-arrêt issued in this cause, namely the 19th October,* 1889, *he owed nothing to said defendant.*"

Cross-examined by plaintiff.

"*I have paid defendant* $84.00 *since the service of the present attachment. The defendant is still at my employ. During the past twelve months, the defendant has been paid in advance. It was after the defendant entered my employ that I ascertained the defendant was in debt when several seizures were served upon me: there was another seizure of attachment prior to the present one and another after, from other parties. The defendant is employed by the week.*"

Immédiatement après sa déclaration, le tiers-saisi contesta l'ordonnance en ces termes: "That the proceedings herein taken are illegal, null and void; that at the time of the attachment made in his hands, he owed nothing to defendant; that defendant is his foreman, and will not remain with the *tiers-saisi* unless the latter pay him always one week's salary in advance; that defendant is engaged by the week and earns $12, with which he has to support his wife, children and himself; that the law prohibiting the attachment of working men's wages in advance has never been repealed, and such an enactment would simply prevent the defendant from earning his livelihood; that the *tiers-saisi* is not bound to make a monthly declaration, nor is the *tiers-saisi* liable in any way to plaintiff. Wherefore the *tiers-saisi* prays the dismissal of the said rule with costs, etc."

De son côté, le demandeur contesta les deux déclarations du tiers-saisi et allégua ce qui suit: "Qu'il est faux que le tiers-saisi ne soit pas endetté envers le demandeur; que vu la déclaration du tiers-saisi en date du 26 octobre 1889, il appert que le défendeur était encore à son emploi et que, depuis cette dernière date jusqu'au 12 décembre 1889, il lui aurait payé la somme de $84, malgré que par la loi la saisie-arrêt fût de plein droit tenante; que le tiers-saisi et le défendeur ne peuvent s'entendre pour éluder la loi en fraude

des droits du demandeur ; que le demandeur par la loi avait droit au quart du salaire du défendeur et que le tiers-saisi devait déposer en Cour cette quotité tous les mois en faisant sa déclaration ; que le tiers-saisi, sans s'occuper de la loi a négligé de déclarer *de novo* après l'expiration du mois écoulé depuis sa première déclaration, et de déposer en Cour le quart des gages du défendeur ; que ce n'est que sur l'ordonnance de cette Cour qu'il vint faire une nouvelle déclaration dans laquelle il dit avoir payé au défendeur depuis la signification de la saisie-arrêt une somme de $84.

" Pourquoi le demandeur conclut à ce que cette Honorable Cour, faisant droit sur la présente contestation, déclare la dite contestation bien fondée; déclare de plus que par la signification du bref de saisie-arrêt en cette cause le quart des gages du défendeur était saisi pour tout le temps que ce dernier travaillerait à l'emploi du tiers-saisi, tant que le jugement du demandeur n'aurait pas été éteint, et que de plus, le tiers-saisi n'avait pas le droit de payer au défendeur ainsi qu'il l'a fait; à ce qu'en conséquence le dit tiers-saisi soit condamné à payer au demandeur le quart de la somme de $84.00, sans préjudice au droit d'avoir la présente saisie-arrêt tenante, avec dépens, etc."

Après la contestation liée, les parties inscrivirent sur les deux contestations à la fois, et, sans preuve de part et d'autre, admirent comme vraies toutes les pièces du dossier.

A l'argument,Me *Edmund Guerin* prétendit que le statut de 1888, n'avait pas eu pour effet d'abroger ni d'amender le paragraphe 5 de l'article 558 du C. P. C., qui déclare insaisissables les gages et salaires non échus, et qu'en outre le défendeur étant engagé à la semaine et payé d'avance comme condition de son travail chaque semaine, la saisie du demandeur avait frappé dans le vide, et que, comme conséquence le tiers-saisi n'était pas tenu de déclarer *de novo*, vu que le salaire non échu du défendeur n'avait pas été saisi, et qu'ainsi l'ordonnance était illégale et émanée sans droit.

De l'autre côté, Me *Ls.-Arsène Lavallée* prétendit que le tiers-saisi ne pouvait échapper à l'application du statut 51-52 Vict., ch. 24, parce que tout en admettant que le tiers-saisi ne dut rien au défendeur, il admettait néanmoins qu'il avait été à son service depuis la signification de la saisie-arrêt jusqu'à la date de la signification de l'ordonnance de comparaître *de novo*. En conséquence, le défendeur ayant été continuellement à l'emploi du tiers-saisi, la saisie-arrêt demeurait tenante de plein droit, et Sager était tenu, sans notification, pour se conformer au statut, de renouveler sa déclaration tous les mois tout le temps que le défendeur serait resté à son service, et ce tant et aussi longtemps que le jugement en capital, intérêts et frais n'aurait pas été éteint.

Le tiers-saisi a eu tort de payer le défendeur en prétendant que le statut ne pouvait avoir d'effet; qu'il ne pouvait en aucun cas avoir d'application, parce que ce serait contredire le paragraphe 5 de l'art. 558 du C.P.C. qui n'avait été ni abrogé ni amendé par le statut de 1888; que ces deux lois étaient une contradiction formelle l'une de l'autre.

Il n'y a pas plus de contradiction entre ces deux lois qu'il n'y a d'amendement ou d'abrogation par le statut de 1888, de l'art. 558 C.P.C., parce que le paragraphe 5 de l'art. 558 s'applique à tous les débiteurs généralement, tandis que le statut de 1888 crée simplement une exception à la règle établie par l'art. 558 : *Les gages et salaires des ouvriers et journaliers, etc.*

Quant à la contestation par le demandeur de la déclaration du tiers-saisi, elle doit être maintenue, parce que Ledoux, étant un *operarius*, ne peut échapper à l'application de la loi de 1888. Les déclarations de Sager font voir qu'il a toujours été à son emploi et payé à la semaine, et l'*operarius*, payé à la semaine, reste sous le coup de la saisie-arrêt, qui est tenante, tant que le jugement n'est pas complètement acquitté s'il continue à travailler pour le même patron. Et Sager n'eût-il pas admis dans ses déclarations que le défendeur avait toujours travaillé pour lui depuis la signification de la saisie-arrêt jusqu'à sa déclaration *de novo*, que la Cour, sans preuve, de plein droit, devrait déclarer que le défendeur a toujours été à son service, parce que le statut force le tiers-saisi, lorsque le défendeur quitte son emploi, d'en venir faire la déclaration au greffe, et il n'a rien fait de tel.

La Cour maintenant totalement les prétentions du demandeur, renvoya la contesta-

tion de l'ordonnance, et donna jugement suivant les conclusions de la contestation du demandeur. Elle décida, en outre, que le défendeur ne fût-il pas un *operarius*, elle condamnerait encore le tiers-saisi parce que dans sa déclaration, il avait failli de se conformer à l'art. 619 C.P.C., en ne dévoilant pas les conditions sous lesquelles le défendeur était à son service.

Greenshields, Guerin & Greenshields, pour le tiers-saisi.

Lavallée & Lavallée, pour le demandeur-contestant.

(L. A. L.)

APPOINTMENT OF QUEEN'S COUNSEL.

[Continued from page 111.]

SIR JOHN THOMPSON: Now, having said that much with regard to the hon. gentleman's contention, which he understood that his argument had established, and which he enumerated among the points which he had established, that Her Majesty is an integral part of the Legislature of the province, let me refer the hon. gentleman to the mistake which, I think, he made, in attributing that as the foundation of the decision in the case of Lenoir *v.* Ritchie. It seems to me, and it has always seemed to me, that the Executive Government, not only of Canada itself but of every one of her provinces, is vested in Her Majesty. It seems to me, that it is perfectly within the competence of a Provincial Legislature, to make enactments binding Her Majesty's prerogative, and binding that prerogative to the fullest extent, but only in regard to matters which are entrusted to the Provincial Legislature under the British North America Act; and this, for the very obvious reason, that, inasmuch as these powers are given to Provincial Legislatures, the Provincial Legislatures cannot fully legislate upon them without binding all the rights which Her Majesty has in regard to them, as well as the rights which Her Majesty's subjects have in regard to them. When we find the power to regulate the civil procedure of the courts entrusted to the Provincial Legislatures, it is surely competent for the Provincial Legislatures to control that Provincial procedure, even though it affects to some extent the use of Her Majesty's name, as, for instance, in the issue of writs, which the hon. gentleman has referred to as running in Her Majesty's name. It seems to me perfectly within Provincial powers to control and to regulate that procedure, notwithstanding the mere fact that justice is supposed to be administered in Her Majesty's name, and that all who come within her courts are supposed to come at Her Majesty's summons. But the difference between the proposition which the hon. gentleman has laid down, with regard to Her Majesty being an integral portion of the Provincial Legislatures, and the principle which is laid down, rightly or wrongly, in the case of Lenoir *v.* Ritchie, seems to me to have been this: that the respect in which Her Majesty was said not to form a part of the Provincial Legislature by the Supreme Court of Canada, in the case of Lenoir *v.* Ritchie, was this respect, that Her Majesty could not be said to be bound in her prerogative rights, by a Provincial statute, unless the power of a Legislature upon that subject was expressly conferred by the British North America Act. It had been contended there by counsel, for the appellant, that even though the subject dealt with should be the distribution of honors and of titles—of honor proceeding essentially from Her Majesty as the fountain of honor—yet the Provincial Legislature might properly pass a statute binding Her Majesty in respect to the exercise of that prerogative, even though it was not conferred upon them by the British North America Act, on the ground that the Provincial statute being once passed, Her Majesty was bound to yield her prerogative in her assent to that Act. That involved the proposition that Her Majesty was a portion of the Legislature of the Province, and it was in that respect, with regard to the unrestricted legislative powers of the Provinces, that the Supreme Court of Canada, as I understand the decision in the case of Lenoir *v.* Ritchie, held that Her Majesty was not bound by a Provincial statute, and that she did not form part of the Provincial Legislature. The logical result of that conclusion was, not at all as the hon. gentleman seems to suppose, that Her Majesty could not be bound in any of her rights by a Provincial statute, but simply that Her Majesty was not

bound by a Provincial statute, unless that Provincial statute was passed in pursuance of powers conferred on the Legislature by the British North America Act. In the case of a statute passed by this Parliament, or passed by the Imperial Parliament, the result would be different. Her Majesty would be bound, and her prerogative would be yielded by the fact of her giving assent to the Act, irrespective altogether of the powers which the Parliament itself possessed. Now, to show that I am right in supposing that that was the view taken by the Supreme Court of Canada, and that, therefore, the hon. gentleman (Mr. Amyot) was hardly right in impugning that decision, as being erroneous in that respect, I will call his attention to a passage from the judgment of Justice Henry, in which he says:

"The Local Legislatures are now simply the creatures of a statute, and under it alone have they any legislative powers. The Imperial Parliament, by the Union Act, prescribed and limited their jurisdiction; and, in doing so, has impliedly and virtually and effectually prohibited them from legislating on any other than the subjects comprised in the powers given by that Act. The right of the Imperial Parliament, when conferring legislative power on the Local Legislatures, to limit the exercise of them, cannot be questioned; and any local Act passed beyond the prescribed limit, being contrary to the terms of the Imperial Act, must necessarily be *ultra vires*."

A little further on, and toward the conclusion of his judgment, Justice Henry deals directly with that question, of Her Majesty being a portion of the Legislature, in these terms:

"If the Imperial statute has not given the necessary legislative power to the Local Legislatures, an Act of theirs would be of no higher value than a city ordinance, such as I have stated. The argument of this question, however, is unavailable, for the Queen has not signified her assent to the local Act in question. By the provisions of section 90 of the Imperial Act, the Governor General, and not the Queen, assents to local Acts made in his name, as provided. The Lieutenant Governors are apppointed, not by the Queen, but by the Governor General in Council. It cannot, therefore, be successfully contended that the Queen has assented to the Local Act in question; nor can it be with greater success contended that by assenting to it the Governor General had any power, in doing so, to interfere with the Royal prerogative."

One other extract from the decision of Mr. Justice Taschereau indicates the same conclusion:

"But, said the appellants, Her Majesty has assented to this Act of the Nova Scotia Legislature. This, in my opinion, is a grievous error. Her Majesty does not form a constituent part of the Provincial Legislatures, and the Lieutenant Governors do not sanction their Bills in Her Majesty's name."

Then he goes on to show that the Bills are not sanctioned by Her Majesty at all. The hon. gentleman, therefore, I think, will see that the heresy which the Supreme Court of Canada was aiming at in the decision of Lenoir *vs.* Ritchie was not at all, in fact, the proposition that the statutes of a Province cannot bind the Crown; but that the Crown is not necessarily bound by the provisions of a Provincial statute by the fact of its being allowed to go into operation, and the Act for its validity and effect on the Crown, must depend on the single consideration whether it is within the powers conferred on the Provinces by the British North America Act. Then the court proceeded to the next step, to consider whether it was within the range of the subjects entrusted to the Provincial Legislatures, and came to the conclusion that the appointment of Queen's Counsel was simply the conferring of a title of honor carrying rank and precedence, and, therefore, was not within the exclusive powers given to the Local Legislatures. Now, the hon. gentleman read to the House a summary of several decisions of Her Majesty's Privy Council, in which the position was laid down, that the Provincial Legislatures have, as the hon. gentleman asserted, a plenitude of powers. I do not for a moment question the force of the decisions referred to. They by no means take the view, that the Provincial Legislatures have any powers, plenary or otherwise, beyond those given to them by the British North America Act. The single effect of all that line of decisions is, that within the powers conferred upon them by the British North America Act, the Provincial Legislatures are supreme in their legislation; but the fundamental question which lies at the base of this whole controversy with regard to the appointment of Queen's Counsel, is, whether it is within Provincial powers or not. If it is within Provincial powers, I admit that those powers are so plenary, that they may supersede the powers which may be vested in the Central Govern-

ment. The hon. gentleman has made reference to the form of the commissions which are now issued, and which the hon. gentleman thinks are ludicrous in their character. I do not profess to be wiser in my generation than all the Attorney Generals who have preceded me, and all those who administered affairs of this kind in the various Provinces of Canada, and I think it will be found that the commission which we have issued is in substantially the same form as that established ever since the appointment of Queen's Counsel has been made by the Federal Government, and is substantially in the same tenor as the commissions issued by the Provincial Governments before Confederation. I think, further, it will be found, on a close comparison of that commission with the commissions that used to be issued by Her Majesty's Government conferring the rights of Queen's Counsel on practitioners in British North America, that the forms of the two are substantially the same. The commission simply confers the title *quantum valeat*, and does not profess that the precedence conferred upon the recipient shall justify him in asserting rank or precedence over any class or over any particular number of persons. It assumes that the decisions of the Supreme Court of Canada, when they are announced, are the law of the land, and being so, the precedence is to be regulated by the court to whom the patent is presented, and, in the ordinary course, confers on the recipient the right to rank next to the person who last received the authority. The hon. gentleman impugned the force and effect of the decision in the case of Lenoir *vs.* Ritchie, not only on the ground I have already referred to, that it proceeded on a point which really was not raised in the argument on the appeal, but likewise on the ground that the parties interested had not been heard. I am not able to agree with the hon. gentleman in that view of the case. It might have been more satisfactory if all the Provincial Governments had been invited to take part in that argument, or it might not. The question was raised in the Supreme Court of Nova Scotia between a barrister holding a patent from the Governor General and a barrister holding a patent from the Lieutenant Governor of the Province. Those two parties were all whose rights were immediately concerned in the subject under controversy. Although, in the litigation of those rights, doctrines of law were laid down which were exceedingly interesting to many persons outside of the immediate litigants, that is precisely the case with every important decision pronounced; and if we impugn the decision of Lenoir *vs.* Ritchie on the ground that every person who took an interest in the subject was not heard, we must take the ground that every decision of the courts of this country and of the mother country is inconclusive in establishing the law because the hon. member for Bellechasse or myself may have had, or intended some day to bring, a suit just like it, and ought to be heard, and, therefore, is not binding on us. Now, in replying to the observations of the hon. gentleman somewhat fully, as I felt bound to do in courtesy to him, considering the care he had bestowed on this subject, and the care and ability with which he brought it before the House, although I have followed him at some length, I do not propose to ask the House, and I hope he will not think of pressing it, for a decision of the legal question by a vote proposed in amendment to going into Supply. I do not propose this afternoon to state, and, I think, I am not called on to state to the House, what my opinion is as to the powers of the Provincial Legislatures or Governments with regard to the appointment of Queen's Counsel. That has been within certain lines decided by the Supreme Court of Canada. All I have ever said, in answering despatches which have come from any of the Provinces in reference to my report, is, that while the decision of the Supreme Court of Canada in Lenoir *vs.* Ritchie exists and remains undisturbed, we must recognise it to be the law of the land within the limits within which it proceeds, not extending those limits; and that, if any person, whether a Provincial or Federal appointee to this office or any other, is of opinion that the case of Lenoir *vs.* Ritchie does not deny the authority of the power which appointed him, it rests with the courts of the country to administer between him and those who contest his rights, the same measure of justice that was meted out

between Mr. Lenoir on the one hand and Mr. Ritchie on the other. I think myself that it would be more convenient to allow these constitutional questions to be settled in that way, unless the actual rights of property of the two Governments are so interfered with by the action of one of them as to make it inconvenient that such action should be allowed to continue in a contestation of the rights which respective parties claim to have, under appointments conferred upon them by different Governments; when, without derogation to the exercise of administrative powers by the two Governments, the questions in dispute can be left to the decision of the tribunals which may be appealed to by those parties, I think it is more simple that they should be left to the tribunals than that we should interfere. For these reasons I do not feel called upon, this afternoon, to assert with any confidence or dogmatism what is my own individual opinion on this point. The hon. gentleman has not been able successfully to question the decision in the case of Lenoir *vs.* Ritchie. While that decision remains unreversed, it ought to be recognised by this Parliament as the law of the land. But the hon. member for Bellechasse (Mr. Amyot) has made an argument to the House in which he claims to have reached the conclusion that the decision of the highest tribunal in this country was wrong in point of law, and he asks the House this afternoon, on amendment to go into Supply, to reverse that decision by its vote. Without, therefore, saying what foundation there may be for the ingenious and able argument the hon. member has advanced, without saying that I am able to concur in any of the points which I may have omitted to answer, from forgetfulness of the hon. gentleman's argument as it fell on my ear, or from the difficulty I sometimes experienced in hearing him—without going further into the matter, I simply ask the House to decline giving an opinion on this question, seeing that it has been decided by the highest court in the country within certain lines and limits, and that, outside those lines and limits, we may leave that question to be pressed to a solution by those directly interested. I would urge on hon. members that we should pause before undertaking to declare our opinion to-night on a difficult question of law, upon which the courts have differed, and Provincial Governments have differed, and in respect of which, when this question comes finally to be conclusively decided, we might have the mortification of seeing that we had expressed and recorded on our Journals a fallacious opinion as to what the law of the country is.

After some remarks from Mr. Mills the amendment was withdrawn.

RECOMMENDATIONS TO MERCY.

The Crewe murder case was one in which two lads were charged with the murder of their father, who had been guilty of cruelty to their mother. Richard Davies, the elder lad, was hanged April 8. The younger lad was reprieved. The *Law Journal* remarks upon the case :—

The Crewe murder trial has, as might have been expected, ended in a verdict of guilty, accompanied by a recommendation to mercy on the ground of the youth of the prisoners, who are seventeen and nineteen years of age respectively; and this recommendation, together with the ground of it, was no doubt at once 'forwarded to the proper quarter.' The recommendation to mercy is entirely outside the law of England. The judge has no judicial duties in respect of it; and, as far as we have been able to discover, text-writers are silent both as to its history and general practical effect. Sir James Stephen, however ('History of Criminal Law,' vol. ii. p. 89), makes the wise suggestion, 'that improvements might be made in the definition of the offence of murder, which would diminish the proportion of cases in which an interference with the law would be necessary,' and 'is convinced that in regard to capital cases the judge should have a discretion analogous to that which he has in cases not capital,' though he says, 'no one is more opposed than I am to the abolition of capital punishment.' In many foreign countries the question whether or not the punishment of death should be awarded in doubtful cases rests entirely and expressly with the jury. This is notoriously the case in France, Italy, and Russia, while in Geneva the law goes so

far as to recognise a distinction between a verdict of guilty 'under extenuating circumstances,' and one with the words 'under very extenuating circumstances,' the effect of either being to prevent the sentence of death or imprisonment for life being passed, and the punishment being, of course, slighter in case of the latter verdict. In the United States a solution of the difficulty appears to have been pretty generally attempted by a division of murder into murder in the first and murder in the second degree. From the appendix to the report of the Capital Punishment Commission it appears that the youth of the prisoner is recognized as a reason for mitigating the sentence of death in Spain, Saxony, and one of the Swiss cantons; but it has never been expressly recognised in this country beyond the application of the common-law rule that below the age of seven no criminal offence can be committed, and between the ages of seven and fourteen a prisoner is presumed to be incapable of felonious intent until the contrary be proved.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, April 5.

Judicial Abandonments.

Alphonse Bertrand, hotel-keeper and trader, parish of St. Placide, district of Terrebonne, March 27.

Gilbert Currie Campbell, tinsmith, Ormstown, district of Beauharnois, March 26.

Stanislas Gougeon, butcher, Montreal, March 31.

Louis Pelchat, trader, St. Valier, district of Quebec, March 29.

Curators appointed.

Re Barton & McDonald, auctioneers and commission agents.—P. E. E. de Lorimier, Montreal, curator, March 28.

Re George Darveau, Quebec.—D. Arcand, Quebec, curator, March 29.

Re Marie Anne Dusault, doing business under name of Gingras & Co.—Bilodeau & Renaud, Montreal, joint curator, April 1.

Re N. Godbout & Co., Montreal.—C. Desmarteau, Montreal, curator, March 26.

Re Joseph E. Laflamme, roofer, St. Henry.—N. P. Martin, Montreal, curator, March 28.

Re Jacques Neveu, Ripon.—Kent & Turcotte, Montreal, joint curator, March 29.

Re Anthime Robert, Upton. — P. Fafard, Upton, curator, March 29.

Dividends.

Re A. Wm. Beattie, Dunham.—First and final dividend, payable April 21, T. F. Wood, Dunham, curator.

Re Rémi Bernard.—First and final dividend, payable April 15, F. X. A. Boisseau, St. Hyacinthe, curator.

Re Bonin & Allaire, Montreal.—Dividend, payable April 23, Kent & Turcotte, Montreal, joint curator.

Re Aldéma Bourbonnais, parish of Ste. Marthe, tanner.—First and final dividend, payable April 28, P. E. E. de Lorimier and A. Jeannotte, curator.

Re Wm. Doucet, Grande-Piles.—Dividend, payable April 28, Kent & Turcotte, Montreal, joint curator.

Re Georges Duberger. — First and final dividend payable April 17, Elie Angers, Malbaie, curator.

Re Giguère & Co., Quebec. — Dividend, payable April 28, Kent & Turcotte, Montreal, joint curator.

Re M. Guillet, Three Rivers.— Dividend, payable April 28, Kent & Turcotte, Montreal, joint curator.

Re Francis Lemay, Montreal.— Dividend, payable April 28, Kent & Turcotte, Montreal, joint curator.

Re F. X. Lepage, dry goods, Quebec.—First and final dividend, payable April 21, H. A. Bedard, Quebec, curator.

Re Prosper Philippe Mercier.—First and final dividend, payable April 23, P. S. Grandpré, St. Valérien de Milton, curator.

Re F. X. Sarrasin, Three Rivers.—Dividend, payable April 28, Kent & Turcotte, Montreal, joint curator.

Re Wm. Stanley, book-seller, Quebec.—First and final dividend, payable April 21, H. A. Bedard, Quebec, curator.

Re F. X. Trudeau, Montreal.—Dividend, payable April 28, Kent & Turcotte, Montreal, joint curator.

Separation as to Property.

Filicité Brosseau vs. Vital Robert, parish of St. Philippe, March 29.

Caroline Eno *dit* Deschamps vs. Isaie Rivet, Montreal, March 26.

Rosina Foreman vs. Wilfrid Leclerc, Montreal, April 5.

GENERAL NOTES.

ENFORCING ENGLISH JUDGMENTS IN ITALY. — The British vice-consul at Venice, in his last report, remarks that cases frequently occur of British subjects having to enforce a sentence in Italy against foreigners obtained from a legally constituted Court in England, commencing proceedings anew in accordance with the local laws, thereby incurring a heavy expenditure, with doubtful prospects of success. It is quite needless to do this, for whenever a sentence against foreigners is legally pronounced by a duly constituted Court in England, the enforcement in Italy may be demanded of the Court of Appeal in the jurisdiction of which the sentence is to be put into execution, on production of the original documents duly legalised by an Italian consul. The Court of Appeal will examine if the sentence has been legally issued, and if all the required formalities with respect to the serving of summonses, &c., have been observed; and, if there is nothing in the sentence against public order or right, the Court will issue a decree giving the same force to the judgment as if it had been delivered by an Italian tribunal. This mode of proceeding, which would appear to be little understood in England, or at least imperfectly resorted to, is called 'Giudizio di Deliberazione.'—*Law Journal.*