The Legal News.

VOL. XIII. NOVEMBER 1, 1890. No. 44.

In the case of *Cox* v. *Hakes*, the House of Lords decided, Aug. 5, that the Court of Appeal in England had no jurisdiction to hear an appeal from the granting of a writ of *habeas corpus*. The Queen's Bench division made absolute a rule for a *habeas corpus*. The Court of Appeal reversed this order. Then an appeal was taken to the House of Lords. The arguments were confined to the question whether any appeal lay from an order granting a writ of *habeas corpus*. The case was twice argued. The first hearing took place before the Lord Chancellor (Halsbury), Lords Fitzgerald, Herschell and Macnaghten, the argument occupying part of three days. Nearly a year afterwards the case was reargued before the Lord Chancellor, and Lords Watson, Bramwell, Herschell, Macnaghten, Morris and Field, when after a long *délibéré* the judgment of the Court of Appeal was reversed, Lords Morris and Field dissenting. This case has some resemblance to *Mission de la Grande Ligne & Morissette*, M. L. R., 6 Q.B. 130.

On the question of damages, which is so frequently coming up, it may be useful to refer to the recent case of *Praed* v. *Graham*, 59 Law J. Rep. Q.B. 230. The action was for libel, and the jury had awarded £500. The High Court, and subsequently the Court of Appeal, refused to order a new trial for excess of damages, Lord Esher, M.R., enunciating the rule as derived from the authorities to be that, if the damages are so large that no reasonable men ought to have given them, the Court ought to interfere, but otherwise not. In the twentieth chapter of the fourth edition of 'Mayne on Damages' (says the *Law Journal*) all the authorities will be found collected, and it will appear from a perusal of them that the rule of *Praed* v. *Graham* is not limited to cases of libel or even to cases of tort, but includes cases of breach of contract also, where, as in an action for breach of promise of marriage, exact calculation is impossible. 'The case must be very gross, and the damages enormous, for the Court to interpose,' it was said by Mr. Justice Yates one hundred and twenty years ago in *Bruce* v. *Rawlins*, 3 Wils. at page 63, where the jury gave £100 in an action for trespass, though 'very little or no damage was done;' and the judgment in *Praed* v. *Graham* is merely a repetition of the same rule in different words.

SUPERIOR COURT—MONTREAL.[1]

Libel—Candidate for election to the legislature—Charge of being a Freemason or Orangeman—Damages.

Held:—1. That when a person is offering himself for election to the legislature, newspapers have a right, in the public interest, to state the truth respecting his character and qualifications; and therefore a statement, true in itself, that a candidate is a Freemason is not ground for an action of damages.

2. A term not injurious in itself may become injurious from the intent of the writer or speaker in its application. Hence to allege falsely of a candidate for election to the legislature, that he is an Orangeman, in a community where Orangeism is held in detestation by a large pr oportion of the people, is an *injure*, and under Art. 1053 C.C., gives rise to an action of damages.

3. As to the amount of damages, no substantial damages being proved, the Court of Review reduced the amount from $500 to $100, with full costs of suit.—*Noyes* v. *La Cie. d'Imprimerie et de Publication*, in Review, Johnson, Ch. J., Wurtele, Davidson, JJ., May 31, 1890.

Simulated sale—Deed intended to operate as pledge of effects to creditor as security for advances.

A manufacturer of farming implements obtained advances to buy machinery which was placed by him in a building belonging to him. He then made a sale of the machinery to the person who furnished the ad-

[1] To appear in Montreal Law Reports, 6 S.C.

vances, with right of redemption within two years. He did not exercise this right of redemption within the stipulated time, but remained in possession of the machinery.

Held:—Following the decision of the Privy Council in *Cushing & Dupuy*, 3 Leg. News, 171; 24 L. C. J. 151, That the deed did not constitute a real sale, the object of the deed being merely to pledge the effects to the creditor as collateral security for the advances, which pledge, not being accompanied by delivery, was without effect, and the creditor, therefore, was not entitled to oppose the seizure of such effects at the instance of a judgment creditor.—*Chevalier* v. *Beauchemin*, in Review, Johnson, Ch. J., Tait, deLorimier, JJ., Feb. 28, 1890.

Sale—Suspensive condition—Third party purchasing in good faith a thing which does not belong to the seller.

Held:—Where the sale of a movable is made with a suspensive condition, and it is stipulated that the purchaser shall not have any title in the thing sold until the condition shall be performed—as where a subscription is obtained to a book, deliverable in volumes, and the price is payable in monthly instalments as the work is delivered, and it is stipulated that the purchaser shall have no property in the book until the price shall have been wholly paid—the vendor has a right to revendicate the volumes delivered, in default of payment as stipulated, even in the possession of a third party who has acquired the same in good faith and for valuable consideration, unless the circumstances be such as validate the sale of a thing not belonging to the seller.—*Canadian Subscription Co.* v. *Donnelly*, in Review, Johnson, Ch. J., Wurtele and Davidson, JJ., May 31, 1890.

Action pétitoire par la Couronne—Impenses et améliorations—Rétention—Réponse en droit.

Jugé:—Que dans une action pétitoire intentée par la Couronne, le défendeur ne peut réclamer le droit de retenir la propriété jusqu'à ce que le gouvernement lui ait payé ses impenses et améliorations. *Thompson* v. *Desmarteau*, Tait, J., 30 sept. 1890.

Saisie-arrêt avant jugement—Admission—Preuve.

Jugé:—Dans une contestation de saisie-arrêt avant jugement, lorsque le contestant dans ses réponses aux articulations de faits a, pour éviter à frais, admis qu'il devait au demandeur plus de $5, le demandeur peut néanmoins, faire la preuve de sa créance.—*Mallette* v. *Ethier*, Mathieu, J., 18 sept. 1890.

Cession de biens—Curateur—Vente des immeubles—Shérif—Protonotaire—Distribution des deniers.

Jugé:—1o. Que la distribution des deniers provenant de la vente par le shérif, en vertu d'un mandat du curateur, des immeubles cédés en justice par un débiteur pour le bénéfice de ses créanciers, doit être faite par le curateur;

2o. Que, par analogie, ce mode de faire la distribution des deniers doit aussi s'appliquer au cas où une saisie d'immeubles a été pratiquée avant, mais où la vente a été faite après la cession judiciaire.—*Baker* v. *Gariépy*, Würtele, J., 22 juillet 1890.

COUR DE MAGISTRAT.

MONTRÉAL, 10 septembre 1889.

Coram CHAMPAGNE, J. C. M.

MAILLET v. FONTAINE et FONTAINE, opposant.

Opposition à jugement—Affidavit—Insuffisance—Renvoi sur motion.

JUGÉ:—*Qu'une opposition à jugement dans laquelle les raisons qui ont empêché de plaider originairement ne sont pas données, dans laquelle l'affidavit est général, et qui n'a pas été reçue par un juge, est irrégulière, informe, illégale, et doit être renvoyée sur motion.*

Voir 52 Vict., ch. 49.

Opposition renvoyée.

David, Demers & Gervais, avocats du demandeur.

A. A. Laferrière, avocat de l'opposant.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 25 novembre 1889.

Coram CHAMPAGNE, J. C. M.

GRAHAM v. Dame CHANTIGNY.

Demande de paiement—Légataire universel.

JUGÉ :—*Que la demande de paiement exigée par la loi une fois faite est suffisante et n'a pas besoin d'être faite de nouveau, après le décès du débiteur, à son légataire universel.*

PER CURIAM :—Le demandeur réclame de la défenderesse, comme légataire universelle de son défunt mari, le montant d'un compte de marchandises dû par ce dernier.

La défenderesse plaide que demande de paiement ne lui a jamais été faite avant l'action, et offre de payer sans frais.

Mais il est prouvé que la demande de paiement a été faite au mari, et il n'était pas nécessaire de renouveler cette demande à la défenderesse légataire universelle de son mari.

Jugement pour le demandeur.

Marceau & Lanctot, avocats du demandeur.
Chauvin & Chauvin, avocats de la défenderesse.

(J. J. B.)

SUPREME COURT OF MINNESOTA.

JULY 1, 1890.

MOORE v. RUGG.

Photographs—Use of negatives.

Where A employs a photographer to make and sell to him a number of photographs of himself, there is by implication an agreement that the negative for which A sat shall only be used to print such portraits as A may order or authorise.

COLLINS, J.—The complaint in this action is not a model, as is admitted by the attorney who drew it, but it appears therefrom that defendant, a photographer, had been employed to make, and had made and sold to plaintiff, a number of photographic portraits of herself; and that subsequently, without the order or consent of plaintiff, he made and delivered to a detective another of these photographs, who used it in a manner particularly stated in the pleading, and claimed to have been highly improper. In justice to defendant, it is right that we should here remark that it is nowhere averred in the complaint that the occupation of the detective was known to him, or that he knew that the photograph so delivered was to be used in the manner stated in the complaint, or in any other improper way. This action was brought to recover damages, and this appeal is from an order overruling a general demurrer to the complaint.

A good cause of action was therein stated, for which nominal damages, at least, may be recovered. The object for which the defendant was employed and paid was to make and furnish the plaintiff with a certain number of photographs of herself. To do this a negative was taken upon glass, and from this negative the photographs ordered were printed. An almost unlimited number might also be printed from the negative, but the contract between plaintiff and defendant included, by implication, an agreement that the negative for which plaintiff sat should only be used for the printing of such portraits as she might order or authorize: *Pollard* v. *Photographic Co.*, 40 Ch. Div. (C. D.) 345. The complaint shows that there was a breach of this implied contract.

Order affirmed.

FIRE INSURANCE.

(*By the late Mr. Justice Mackay.*)

CHAPTER VII.

OF REPRESENTATION AND WARRANTY.

[Continued from p. 344.]

There was, therefore, in the case under consideration (and this is acknowledged by Judge Oakley, in his opinion), an implied stipulation or promise on the part of the insured, that the situation of the premises with respect to the adjacent buildings should not be changed by any act of his so as to increase the risk, or, in other words, that the ground marked *vacant*, should remain so; the insurers must have relied upon this stipulation in fixing the rate of premium ; and the contract is necessarily avoided by its nonfulfilment, whether it is put on Arnould's ground of *legal* fraud, or on that of Duer, that the representation is a part of the contract, and its performance a condition precedent to the validity of the policy. It seems, therefore, that the question whether the loss is occasioned by the fact misrepresented, has nothing to do with the liability of the insurer, but that the sole inquiry must be

was the misrepresentation material to the risk? But see the case of *Howard* v. *Kentucky & Louisville Mut. Ins. Co.*, decided in the Supreme Court of Kentucky, and reported in *Am. Law Reg. for Sept.* 1853, p. 686, where the decision in the case of *Stebbins* v. *Globe Ins. Co.* is approved.

§ 198. *Proof of Representations Inconsistent with Policy Not Admitted.*

Though, as has been already seen, proof of the representations of the insured is sometimes admitted for the purpose of affecting or varying the construction of the policy, this is never the case when the representations and the policy are contradictory of, and inconsistent with each other. In a case like this, the general rule applies, and the policy is considered the sole evidence of the actual agreement.[1]

In 2 Hall, verbal representation of an agent of the insured was attempted to be proved, to restrain a policy; the evidence was excluded, the Court saying that the terms of the policy were clear, and could not be waived by such frail proof. But if it be more comprehensive in favor of the insured, he will get the benefit of it. However, *Bize* v. *Fletcher* did not judge *that* expressly. The defendants did contend that a slip of paper wafered to the policy, and containing a written representation by the insured, restrained the voyage. It did not, but it might have done so. Were a policy not clear, a representation like that ought to bind the insured.

§ 199. *Statement Not Material to the Risk.*

If a false statement be made, but not material to the risk, or if the risk be *less*, the insurers must pay; as if a man, whose house is covered with *tin*, describe it as covered with wood, the insurers must pay.

There is no difference between marine, fire or life insurance in regard to the construction of representations. The rule is, that so far as they are material to the risk, they must be substantially fulfilled. If the insurer has relied upon them, and has thereby been induced to enter into a contract which he would otherwise have declined, any material want of truth in them will render invalid the policy based upon them. It is not necessary that the misrepresentations should be *intentionally* made; they may be the result of mistake, accident or inadvertence, on the part of the insured, and still be binding upon him. It is enough that the insurer has been misled, and though no fraud was *intended* by the assured, it is nevertheless a fraud upon the insurer, and avoids the policy. But a misrepresentation of an *immaterial fact will not generally vitiate the contract.*[1] Thus it has been held, that where the interest of the insured in the subject matter of the contract is a qualified, conditional, temporary, or equitable one, a description of the property by him as "his," or a representation that he is the owner of it, is not such a misrepresentation as will avoid the policy.[2]

Representation of facts, so far as material to the risk, must be true; *per* Story, J., in *Hazard* v. *N. E. Maine Ins. Co.*, 1 Sumner. But, in all such cases, facts of, 1st, truth of representations, 2nd, materiality, are for the jury. *Ib.*

The meaning of a representation is to be that of the place where made, as New York, if the insurance be after correspondence and in favor of a New York man by a Boston company, though the policy be dated Boston.

Story thought otherwise in the *Hazard* case,[3] but this part of his judgment was reversed.[4]

Duer says that promissory representations, though not written, but proved by parol, and though made in good faith, must be complied with, else *actio non.*[5]

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[1] *Bize* v. *Fletcher*, Douglas, 271: *N. Y. Gas Light Co.* v. *Mechanics' Fire Ins. Co.*, 2 Hall, 108. Babington on Auctions, p. 21, shows the evil of admitting proof of representations before the policy.

[1] *Stetson* v. *Mass. Mut. Fire Ins. Co.*, 4 *Mass.*, 330; *Strong* v. *Manufacturers' Ins. Co.*, 10 *Pick.* 40; *Curry* v. *Commonwealth Ins. Co.*, *id.* 535; *Farmers' Ins. Co.* v. *Snyder*, 16 *Wend.* 481.

[2] *Strong* v. *Manufacturers' Ins. Co.*, 10 *Pick.* 40; *Curry* v. *Commonwealth Ins. Co.*, *id* 535; *Fletcher* v. *Commonwealth Ins. Co.*, 18 *Pick.* 419; *Tyler* v. *Ætna Ins. Co.*, 12 *Wend*, 507; *S. C.*, 16 *id* 385. But see *contra*, *Columbian Ins. Co.* v. *Lawrence*, 2 *Peters*, 25; and also this point further considered *post.*

[3] 1 Sumner. [4] See 8 Peters.

[5] *Alsop* v. *Coit*, 12 Mass.

If the description be substantially untrue in a point material to the risk (thoug only in a representation), the misrepresentation will discharge the insurers, *though the loss happened not from* any fact suppressed or misrepresented; *per* Story, J., in the *Hazard* case.

An insurance company, if defrauded out of a policy, can sue to get the policy cancelled.[1]

Where there are *several policies*, representations made to the first insurer cannot, in fire insurance generally, be proved; certainly not where such proof would be inapplicable to any issue. This was so judged, as to questions to Lunn, in *Grant* v. *Ætna*. But if the plea specially alleged that there were several insurances,—that the first one was obtained by fraudulent representations, that these representations were communicated to the second insurer, and led him to take a risk that he was so defrauded, probably questions as to the original false representation being pertinent to an issue would be admitted.

The rule of 2 Campb., R. 544, is unsatisfactory. Yet, in 5 Duer's Rep. is a case of fraud in a loan by A from B, in which B was allowed to prove A's fraud and false representations *before* the loan, and that he made like false statements to others as he made to B; from which others he had tried to procure the loan.

Sometimes the actual state of the title, and the peculiar character of the interest of the insured, may, from the nature of the case, be material, and a misrepresentation in regard to them will, therefore, be fatal to the policy.

Thus where one insured by a mutual insurance company, which, by its charter, was entitled to a lien upon all property insured by it, represented himself as the owner of the building insured, when, in fact, he had merely a bond for a deed of it upon conditions which had not been performed, the court held that this was a material misrepresentation which invalidated the policy, because the actual state of the title was such that no lien could be acquired, but at the same time, they expressed the opinion that it would have been otherwise in such companies as were not conducted upon the mutual system.[1]

But if a fact usually immaterial, like the actual state of the title to the property insured, for instance, be specifically inquired about by the insurer, it will be considered material, and a substantial misstatement in regard to it will avoid the policy; for it is not to be presumed that the party would make such inquiries unless he had supposed the fact material, and hence by a false answer he will be misled, and induced to make a contract which he would otherwise have declined.[2]

It is, therefore, seen that the materiality of the representation to the risk need not be absolute, that is, it need not affect the value of the risk considered in itself. The materiality required, on the contrary, is relative, and its test is its influence upon the insurer. Therefore, although a representation is really immaterial to the risk itself, and would perhaps generally be so regarded, still if it can be shown to have influenced the mind of the insurer, and induced him to take the risk, its falsity will avoid the policy.

Thus, if an applicant for insurance falsely represents the rate he has paid other insurers on the same property, and thereby induces one to take a risk which, but for such representation, he would have declined, he will not be allowed to prove that the representation was in reality immaterial to the risk assumed.[3]

§ 200. *Statement as to Belief, Expectation or Intention.*

An expression of the belief, expectation, or intention of the insured, is not a representation that the fact or thing believed, expected or intended, either actually exists or will certainly occur, but it refers solely to his mental condition at the time it was made, and will not affect the policy, unless the purpose of making it was to deceive the

[1] *Hoare* v. *Brembridge*. L. R., Eq. 522, A.D. 1872-3.

[1] *Brown* v. *Williams*, 15 *Shepley*, 252; *Smith* v. *Boweditch Mut. Fire Ins. Co.*. 6 *Cushing*, 448; *Mahon* v. *Mut. Ass. Co.*, 5 *Call* (*Va.*) *R.* 517.

[2] *Burritt* v. *Saratoga Mut. Fire Ins. Co.*, 5 *Hill*, 192; *Davenport* v. *N. E. Fire Ins. Co.*, 6 *Cushing*, 340.

[3] *Sibbard* v. *Hill*, 2 *Dow*, 263.

insurer.[1] And see, *post*, *Nolman et al.* v. *The Anchor Ins. Co.*

Every affirmation of a fact written in the policy is a warranty—but when the statement relates not to facts but to expectations or belief, it can't be thus construed, says Duer, lect. XIV.

In the case of *Kimball* v. *Ætna Ins. Co.*,[2] the policy issued on a dwelling house (in consequence of a promise that it would be occupied). A condition of the policy was that, "if in any written or verbal application for insurance the assured makes an erroneous representation, materially increasing the risk, the company not to be liable."

The insured had said: "The house would be occupied; that he had a man in view who was going to occupy it." The promise was not carried out, the house remaining empty. The insurance company cited: 1 Duer, Ins. 657, 665, 721, 749, etc.; 1 Phill. Ins. § 553. *Edwards* v. *Footner*, 1 Camp. The insured cited *Bryant* v. *O. Ins. Co.*, 22 Pick., etc. It was held that failure to carry out promise, (no fraud being proved) did not avoid the policy, though the risk was increased. This case (says Gray, J.) has been controverted and criticized; but is well founded, and supported by judgments in England and the United States. Oral representation as to a future fact honestly made can have no effect. It is mere statement of an expectation; subsequent disappointment will not prove it untrue.

Dennistoun v. *Lillie*, 3 Bligh, is the strongest case showing that an oral representation promissory may be set up to defeat a written policy; but examination will show that the representation in this case was in no sense promissory, or relating to anything after execution of the policy. The representation was an untrue statement of a past fact. The vessel had sailed, 23rd April, and yet it was represented that she was to sail at 1st May, a future date. She was lost shortly after the date at which she was stated as "to sail."

At the worst, all that could be said against Kimball was that he was bound to occupy in a reasonable time (*per* Gray, J.)[1]

Intention expressed the insured may depart from, says Duer; but he ought to give some evidence of good faith, says Duer. But query, and see generally Warranty, *post*.

If mere intention by the assured be stated, the risk of change of intention is on the insurer. 3 Kent, Comm. (284.) See also 2 Duer.

Positive representations of future facts material to the risk will, if false, avoid the policy, Arnould, p. 509.

It has been contended by an able jurist, that there is no such thing as a *promissory* representation. See opinion of Chancellor Walworth in *Alston* v. *Mechanics' Mut. Ins. Co.*, 4 Hill 329.

SOME SCOTTISH JUDGES.

In a sketch of "The College of Justice and its Members," the London *Law Journal* has the following about Lord Rutherfurd Clark:

Lord Rutherfurd Clark is the son of the late Rev. Thomas Clark, D.D., Edinburgh. He was admitted to the Scotch bar in 1849, rapidly gained a professional status similar to that which Mr. Baron Huddleston held in the days of his forensic eminence, was sheriff of Inverness, Haddington, and Berwick successively, Solicitor-General for Scotland and Dean of the Faculty of Advocates, and then took his seat in the Second Division of the Inner House.

We have passed thus hurriedly over those facts in the life of Lord Rutherfurd Clark, which are accessible to everybody, in order that we might have space to deal with the two most important, yet least widely known, events in his career—his defence of Jessie Maclachlan in 1862, and his defence of Dr. Pritchard in 1865. The *Sandyford Murder Case* is one of the *causes célèbres* of Scotland. On the night of July 7, 1862, Jessie Macpherson, the housekeeper of a Mr. Fleming, an accountant, residing in Sandyford Place, Glasgow, was murdered in her bedroom with a hatchet or cleaver. Her dead body was

[1] *Catlin* v. *Springfield Fire Ins. Co.*, 1 *Sumner*, 434; *Bryant* v. *Ocean Ins. Co.*, 22 *Pick.* 200.

[2] 9 Allen's Rep. Jany. 1865.

[1] *Bilbrough* v. *Metropolis Ins. Co.*, 5 Duer, is disapproved by Gray, J. In this case the declaration of an intention to do an act materially affecting the risk was treated as an engagement to do it.

found next morning lying on the bedroom floor, and so mangled that it was evident she had offered a desperate resistance. Mr. Fleming and his family were at the seaside, and the only inmates of the house at the time when the murder was committed were his father, an old man eighty-seven years of age, and Mrs. Jessie Maclachlan, who before her marriage had been a servant to the Flemings, and who was on the most friendly terms with the deceased. At first suspicion fell on old Mr. Fleming, and he was arrested and imprisoned. But it was soon discovered that certain silver plate which belonged to the family, and which had been missing since the fatal night, had been pawned by Mrs. Maclachlan under the *alias* of Mary Macdonald. Mr. Fleming was at once released and 'precognosced,' after the Scotch fashion, on behalf of the Crown; and in due time the *soi-disant* 'Mary Macdonald' was tried for murder and theft at the Glasgow Circuit Court, (September, 1862). The advocate-depute Gifford, afterwards a judge of the Court of Session, prosecuted; Mr. Clarke was retained for the defence; Lord Deas was on the bench. The conduct of the case for the prisoner will probably divide legal opinion till the end of time. Mr. Rutherfurd Clark took up two lines of defence—a general plea of 'Not guilty,' and a special plea, throwing the blame of the murder on Mr. Fleming. He cross-examined that unfortunate gentleman ably and severely, and urged upon the jury that his behaviour, before and after the murder, was incompatible with innocence. But, luckily for the prosecution, the law gave the last word to Lord Deas. Sir George Deas (1804-87) was one of the most remarkable men that ever sat on the Scottish bench. In bluntness of speech he was no unworthy descendant of Braxfield, and his bitter tongue spared neither the criminals he sentenced nor the counsel that defended them. 'Prisoner at the bar,' he once said to an unhappy house-breaker, on whose behalf a very young advocate had been feebly urging some 'extenuating circumstances,' 'everything that your counsel has said in mitigation I consider to be an aggravation of your offence.' But Lord Deas was much more than a rough, and occasionally coarse, judge. He possessed those high legal characteristics and qualities which in our own time have been united in Lord Bramwell alone—a healthy settled conviction that all crime is not insanity, a faculty of grasping and explaining to others complicated details, a gift of telling yet homely speech, a wide knowledge of law, and a power of persuading the constitutional tribunal. In the Sandyford murder case Lord Deas had evidently made up his mind which way the verdict ought to go, and he so charged the jury that the verdict went in accordance with his judgment. The prisoner was found "Guilty," and the almost formal question whether she had anything to say in arrest of the sentence of death, was duly put. An extraordinary scene followed. Mr. Rutherfurd Clark asked and obtained permission from the judge to read a written statement that the prisoner had prepared. The purport of this statement was that old Fleming had committed the murder, and that Mrs. Maclachlan had accepted the silver plate as a bribe to conceal her discovery of his crime. But Lord Deas was not convinced. He declared that he had in his day prosecuted, defended, and tried prisoners innumerable, and that he had never found their written statements to be anything but a tissue of lies; and he promptly sentenced Mrs. Maclachlan to be hanged. Mr. Clark could hardly have anticipated any other result, and the prisoner's statement was clearly intended as an appeal to the bar of public opinion. This clever stroke of legal diplomacy—if such it was—was crowned with success. It was alleged that Mrs. Maclachlin's story was too circumstantial to be false; and all the noisy people in Scotland clamoured for a reprieve. The Home Secretary, Sir George Grey, bent before the storm. In spite of the opinion of Lord Deas, of the Lord Justice Clerk—to whom he applied in the first instance for advice—and of fourteen out of the fifteen jurors who, after considering Mrs. Maclachlan's belated confession, unanimously resolved not to interfere in her behalf, he took the unprecedented—and, as we venture to think, the highly improper—course of constituting a new tribunal for the re-trial of the case. Mr., afterwards Lord, Young, then one of the most eminent advocates at

the Scotch Bar, was commissioned to go to Glasgow and, in Sir George Grey's own words, 'get at the bottom of the matter.' Mr. Young held his investigation with closed doors in the Sheriff Court of Lanarkshire (October 16-18, 1862), and in due time presented his report. Thereupon the Home Secretary commuted the death sentence to penal servitude—justifying his action on the grounds that there was some doubt as to whether Mrs. Maclachlan was not merely an accessory after the fact, and that capital punishment ought not to be inflicted in the face of the strong and clearly expressed opposition of the public. At this distance, in point of time, it is hardly worth while to subject Sir George Grey's 'reasons' or his 'fears' to a minute analysis; and the chief modern interest of the Sandyford murder case lies in its curious resemblance to *Regina* v. *Maybrick*.

In 1865, Mr. Rutherfurd Clark defended Dr. Edward William Pritchard, who was tried and eventnally executed in Edinburgh for the murder of his mother-in-law and his wife by antimonial poisoning. The case for the prisoner was hopelessly bad; but Mr. Clark did all that could be done to save his life. We shall now simply refer the reader to Mr. Clark's cross-examination and comments upon the evidence of Dr. James Paterson, who, having been called in by Dr. Pritchard to see his mother-in-law, Mrs. Taylor, came to the conclusion that Mrs. Pritchard was being poisoned, and yet never went back to see her because 'she was not his patient.'

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Oct. 25.

Judicial Abandonments.

Damase Bédard, trader, Lachute, Oct. 22.
Drolet & Co., boots and shoes, Quebec, Oct. 21.
Hubert Alfred Houde, grocer, Quebec, Oct. 20.
François Leblanc, Arthabaskaville, Oct. 8.

Curators Appointed.

Re A. Beauvais, Montreal, an absentee.—Kent & Turcotte, Montreal, joint curator, Oct. 22.

Re Stanislas Boucher, Marieville.—Kent & Turcotte, Montreal, joint curator, Oct. 15.

Re J. Landsberg, Sherbrooke.—Kent & Turcotte, Montreal, joint curator, Oct. 20.

Re François Leblanc.—A. Quesnel, Arthabaskaville, curator, Oct. 21.

Re Augustin Limoges.—J. M. Marcotte, Montreal, curator, Oct. 13.

Re Archibald McCallum, jeweller, Quebec.—H. A. Bédard. Quebec, curator, Oct. 20.

Re O. Bégin & Co., shoe manufacturers, Quebec.—N. Matte, Quebec, curator, Oct. 18.

Dividends.

Re Wm. Gariépy, Montreal.—Dividend, payable Nov. 14, J. Frigon, Montreal, curator.

Re Emerie Lacasse.—First and final dividend, payable Nov, 1, Bilodeau & Renaud, Montreal, joint curator.

Re Jean Lemelin, grocer.—First and final dividend, payable Nov. 10, H. A. Bédard, Quebec, curator.

Separation as to property.

Emélie Obé, vs. Joseph Perrault, trader, Lavaltrie, Oct. 18.

Separation from bed and board.

Emma Hallé vs. Louis George Bégin, trader and contractor, St. David de l'Aube Rivière, Oct. 16.

Thanksgiving Day.

Thursday, Nov. 6, proclaimed a day of public thanksgiving.

SURPRISES TO COUNSEL.—The following is said to have occurred in the Cass County (Mich.) Circuit Court during the incumbency of the late Judge Blackman. Lawyer T. had sued out a writ of *capias*. Lawyer L. moved to quash the writ for the reason that the affidavit upon the filing of which it issued did not sufficiently set forth the nature of the plaintiff's cause of action. At the hearing of the motion the discussion turned upon the interpretation of the word 'nature' as used in the statute which required the nature of the plaintiff's cause of action to be set forth in an affidavit before a writ of *capias* could issue. Lawyer L. was proceeding with his argument when the Court interrupted him with the following query: The Court—What are you reading from, sir? Lawyer L.—From a work on logic, your honor. The Court—Did you give Brother T. notice that you were going to read from a work on logic? Lawyer L.—Of course not, your honor. The Court—Are you aware, sir, of the rule of Court which requires notice to be given of matter which would be liable to surprise the attorney on the other side? Lawyer L.—Yes, your honor. but the rule has no application to a matter of this kind. The Court—I don't know, sir; I don't know. I know of nothing that would surprise Brother T. more than logic, and if you haven't given him notice that you are going to read from a work on logic, why I can't permit you to read it. Lawyer L. proceeded with his argument, and presently he was again interrupted by the Court. The Court—What are you reading from now, sir? Lawyer L.—'Green's Grammar,' your honor. The Court—Did you give brother T. notice that you were going to read from 'Green's Grammar'? Lawyer L., very testily—Of course not, your honor. The Court—Well, sir, I know of nothing in this world aside from logic that would surprise brother T. more than grammar, and if you haven't given him notice that you are going to read from 'Green's Grammar,' why I can't permit you to read it, and I shall have to deny your motion with costs.—*Albany Law Journal.*