THE
LEGAL NEWS.

VOL. XVI. MARCH 1 & 15, 1893. Nos. 5 & 6.

CURRENT TOPICS AND CASES.

The courts are seldom called upon to deal with a more complicated and voluminous case than that of the Labrador Company, reported in the present issue. Lord Hannen, with his usual ability, and clearness, has delivered a judgment which shows that the case has received very close attention, and it is satisfactory to find that he has discovered no reason for differing from the conclusions reached by our Court of Appeal. The case also possesses some historical interest, involving as it does a review of titles extending back more than two centuries.

Three of the numerous holidays which have been observed by the Courts of the Province of Quebec and by Parliament, are about to disappear from the legal calendar. Hon. Mr. Angers has introduced a bill in the senate, which provides that "the Annunciation, Corpus Christi and the Festival of St. Peter and St. Paul shall not henceforth be holidays." This is in compliance with the wish of the Roman Catholic Church, and will also be enacted in the Province of Quebec.

An elaborate criticism of the Canadian Criminal Code, by Mr. Justice Taschereau, of the Supreme Court, in the form of a letter to the Minister of Justice, appeared in our last issue. Several defects of importance are

pointed out. The observations contained in the letter are accompanied by a commentary on the articles criticised, in which the writer states at greater length the objections suggested by an examination of the Code. The observations of the learned judge, who, from his study of the criminal law, is an authority on the subject, indicate the wisdom of the course pursued in postponing for a time the coming into force of the Code. It has been pertinently remarked, however, that these observations would have been more useful if they had been presented while the bill was under consideration. Some of the topics treated were not overlooked while the measure was before the House. Other defects pointed out by the learned judge will be remedied by a short amending act.

One point to which Mr. Justice Taschereau has directed attention is of considerable importance, that is, the necessity of some guide to the changes which have been actually effected in the criminal law. The Civil Code Commissioners indicated new law by placing within brackets the clauses which changed the old law. These aids have been found of great value. The Commissioners also framed reports in which the changes were commented upon. Every lawyer who has practised since the introduction of the Civil Code knows how much confusion has been avoided by these reports, and how frequently they have been referred to. If it were possible to have some substitute for these reports, in regard to the Criminal Code, much of the difficulty of finding the law, to which Mr. Justice Taschereau makes pathetic allusion, would be removed.

The important bill introduced by Attorney General Casgrain, in the Quebec legislature, affecting the judicial system, has been postponed for a year. This delay is demanded by the bar, in order that the changes may be

fully considered. The principal features of the bill, creating two orders of judges, reducing the number of superior judges, and permitting them to reside in the large cities, seem to offer great advantages.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, Nov. 19, 1892.

Present: Lords WATSON, HOBHOUSE, MACNAGHTEN, MORRIS and HANNEN.

LABRADOR CO. v. THE QUEEN.
THE QUEEN v. LABRADOR CO.

Act of Parliament—Statement contained therein—Force of—Schedule under Seigniorial Act—Seigniory of Mingan.

HELD:—1. *It is not competent for a court of law to disregard an absolute statement of fact contained in an Act of the legislature, even if it could be proved that the legislature was deceived. If a mistake has been made in an Act the legislature alone can correct it. So, it being stated in the Seigniorial Amendment Act of* 1856 (19 *Vic. c.* 53, *s.* 10), *that there was a Seigniory of Mingan, the courts are bound to give effect to such determination.*

2. *Where the schedule made under the Seigniorial Act of* 1855 *has been deposited without complaint being made by any person interested therein, it must be deemed to be correct, and to establish conclusively the existence and boundaries of the Seigniory therein described.*

LORD HANNEN:

The subject matter of these appeals is a tract of country on the northern shore of the Gulf of the St. Lawrence, extending from Cape Cormorant to the Strait of Belle Isle, a distance of more than 400 miles, with a depth of six miles.

The Labrador Company is in possession of this territory. The Attorney-General for the Province of Quebec, on behalf of Her Majesty, seeks to recover it from the company, who claim title to the whole of the land in question under a grant alleged to have been made in 1661 to one François Bissot by "the Company of "New France," deriving its powers from the Crown of France. The Labrador Company also claimed a title by prescription and immemorial possession. In answer to this claim the Attorney-General denies that the alleged grant of 1661 gave a title to the

land in question, or that a title by prescription can be acquired against the Crown. He also alleges that the grant to Bissot was revoked by the French Crown and abandoned by Bissot's successors in title. The company further rely on certain alleged acts of recognition by the Crown, which they contend preclude the Crown from setting up the said revocation and abandonment of the grant, or from denying its validity.

The judgment of the Superior Court affirmed the title of the Crown to the larger portion (about 250 miles) of the tract in dispute, leaving the company in possession of the rest. The river Agwanus or Gognish was taken as the dividing line, the Crown recovering all that lies to the east of that river, and the company keeping all that lies to the west.

Both parties appealed from the judgment, and the Court of Queen's Bench dismissed both appeals.

The basis of the company's claim is the alleged grant of the 25th February, 1661. It is necessary, therefore, in the first place, to examine the nature and extent of this grant. In 1627 a company, called the Company of New France (or of the *Cent Associés*) was formed, to which the King of France conceded the *pays de la Nouvelle France*, including the land in question, "*en toute propriété, justice et seigneurie*," with right to distribute the lands. The rights of this company were subsequently surrendered to the King, and by him ceded to a fresh Company, called "the Company of the West Indies;" but, in 1661, while the Company of New France retained its original powers, it made, on the 25th February of that year, a grant to François Bissot, under whom the Labrador Company claim as successors in title.

This grant is no longer in existence, the original document, as well as the copy supplied to Bissot, having been destroyed by fire. Before their destruction, however, François Bissot, on the 11th February, 1668, made an *aveu*, or declaration, to the Company of the West Indies, the successors of the Company of New France, setting forth the grant made to him by the last-named company in 1661. This *aveu* has been preserved, and it has been treated throughout these proceedings as containing a correct statement of the original grant.

This *aveu* is in the following terms:—

"François Bissot, Sr. de la Rivière, lequel avoue et déclare tenir de nos Seigneurs l'Isle aux Œufs, située au dessous de Tadoussac, vers les Montpellès, du costé du Nord, quarante lieues

ou environ dud. Tadoussac, avec le droit et faculté de chasse et d'établir en terre ferme aux endroits qu'il trouvera plus commodes, la pesche sédentaire des loups marins, baleines, marsouins, et les autres négoces, depuis la dite Isle aux Œufs jusqu'aux Sept Isles et dans la Grande Anse, vers les Esquimaux où les Espagnols font ordinairement la pesche, avec les bois et terres nécessaires pour fa re le dit établissement. Le tout à luy appartenant par titre de concession en date du 25 Février 1661, signé par extrait des délibérations de la Compagnie de la Nouvelle France, A. Chefault, à la charge de payer par chacun an, deux castors d'hyver, ou dix livres tournois au receveur de la dite compagnie, et les droits accoutumés pour la traite à la communauté de ce pays, au bas duquel titre est écrit Dubois Danaugour, ratiffié le don que dessus de laquelle dite déclaration il nous a requis acte et a signé. Ainsi signé, Bissot, avec paraphe.

"Sur quoy, oüy le procureur fiscal, nous avons accordé acte au dit sieur Bissot de son dit aveu et déclaration, et iceley condamné payer la dite redevance, tant pour le passé que pour ladvenir, suivant et conformément au dit titre de concession, sans néantmoins que le dit acte puisse être tiré à conséquence n'y préjudice, remettant au Roy ou à la compagnie de faire valoir le dit titre ou point. Mandons, &c.

"Donné par nous Louis Théandre Chartier, Escuyer, Seigneur de Lotbinière, Conseiller du Roy, Lieutenant-Général Civil et Criminel, à Québec, les assizes tenant le onzième jour de Février, 1668."

It is not disputed that this concession gave to Bissot the seigneurie of the *Isle aux Œufs*, situated some distance to the west of Cape Cormorant, the western boundary of the land now in question. The contest arises on the passage commencing "*Avec le droit et faculté de chasse, &c.*"

For the Crown it is contended that the effect of the grant is to give the seigneurie of the *Isle aux Œufs*, with the accessory right of hunting, &c., on the mainland within certain limits, the extent of which will be considered later. The company, on the other hand, contend that this grant gave a seigneurie, not only in the *Isle aux Œufs*, but in the territory on the mainland within the defined limits.

Their lordships are of opinion that this contention of the company is wholly untenable. They agree on this point with the opinion expressed by all the judges in the courts below, that the rights to be exercised on the mainland are only

accessory to the seigneurie of the island. They consist in the permission (not to take possession of a defined district on the mainland, but) to establish at such places as may be most convenient, fixed stations for the capture of seals, &c., with the privilege of taking the timber and land necessary for the establishment of such stations. This last-mentioned provision effectually excludes the idea that the whole land was conceded to Bissot in fee, in which case it would have been superfluous to give him the right to take the wood and land necessary for the stations. Further, the reservation of an annual payment of two beaver skins for the right to hunt and fish is stated by the Chief Justice Sir A. A. Dorion, in the judgment of himself and his colleagues, to be inconsistent with the hypothesis that a fief on the mainland was granted, and this appears also to have been the opinion of Mr. Justice Routhier, and it has not been controverted before this Board.

One fact remains to be noticed, tending strongly to negative the company's contention that a seigneurie on the mainland was conceded by the grant of 1661. That document contains no limitation inland of the supposed fief. It might therefore as well have been made the basis of a claim to the whole territory northwards forming part of *La Nouvelle France*, as to the land for six miles inland. A license to make stations for fishing and hunting, and trading with the natives in an unsettled country might naturally be given without fixing its limits inland, but it cannot be supposed that a fief would be created without some indication of what its boundaries were to be.

This leads to the consideration of the question, over what extent of territory on the mainland is the right of establishing stations for fishing, &c., conceded? It is thus defined: "Depuis "la dite Isle aux Œufs jusqu'aux Sept Isles, et dans la Grande "Anse, vers les Esquimaux où les Espagnols font ordinairement "la pesche," that is "from the said Isle aux Œufs up to the "Seven Islands, and in the great cove in the direction of the Esqui- "maux where the Spaniards usually fish." In English there can be no doubt this means that the fishing stations may be established in the land between the *Isle aux Œufs* and the Seven Islands, and also in the *Grande Anse*. It has, however, been contended that the proper construction of the French is different, and that the force of the word "*jusque*," is carried on to the word "*dans*," and that the passage has the same meaning as if it had run "jusqu' aux Sept Isles et jusque dans la Grande Anse." No

authority for this construction has been given, and all the judges in the court below, whose mother tongue is French, agree that the right of establishing a station in the *Grande Anse* is distinct from the right to make stations up to the Sept Isles. Mr. Justice Routhier says: "Ces derniers mots comprennaient-ils toute "la terre ferme depuis les Sept Isles jusqu'à la Grande Anse? "Je ne le crois pas, car, autrement, on aurait fixé l'étendue de "la concession depuis l' Isle aux Œufs jusque dans la Grande "Anse." And Chief Justice Dorion thus paraphrases the grant: "Que la concession était de l'Isle aux Œufs en seigneurie, et de "plus le droit de faire des établissements de pêche et de chasse sur "la côte Nord jusqu'aux Sept Isles, puis dans la Grande Anse "vers les Esquimaux." Their lordships have no doubt that this is the correct interpretation of the grant, and that it conceded to Bissot no seigneurie on the mainland, but only a right to make establishments for fishing and hunting up to Sept Isles and also in the *Grande Anse*. Where that *Grande Anse* was situated will be considered hereafter.

It may be convenient at this point to refer, in order of date, to a map of 1678, which has been relied on as showing that a seigneurie on the mainland was recognized as belonging to Bissot. This map is described as one "pour servir à l'éclaircisse-"ment du papier terrier de la Nouvelle France," and was dedicated to the Minister Colbert by the Intendant Duchesneau. Upon this map is printed "Seigneurie du Sieur Bissot," stretching along the coast from a little east of the Sept Isles to a place about two-thirds along the "Isles de Mingan." These islands follow one another to a river along which is written "Esquimaux," and at a short distance eastward "Baye des Espagnols" is inscribed.

The bearing of this map on the question of boundary will, so far as is necessary, be referred to by-and-by. Its value as evidence of a seigneurie on the mainland is now the subject of consideration. The utmost effect that could be given to this map would be as evidence of reputation at the date it bears of the existence of such a seigneurie; but this must necessarily give way before the proof which the representatives of Bissot have supplied that this grant to him did not in fact concede a seigneurie on the mainland. But undue importance has been given to this inscription on the map. Bissot had, in fact, a seigneurie, namely, that of the *Isle aux Œufs* to which belonged as an accessory a right of making establishments for hunting, fishing,

&c., on the mainland. It was not necessary for the purpose of the chartographer that all this should be set out on the map. What was of importance to him was to indicate over what extent of coast Bissot exercised rights whatever they might be, and he did this by writing the words referred to. This interpretation is indeed impliedly adopted by Mr. Justice Routhier, who is most favorable to the contention of the Labrador Company. He says (Record p. 731), speaking of the right of continuing the establishment of Mingan, "Comme cette exploitation était un "accessoire de l'ancienne seigneurie de l'Ile aux Œufs, il n'est "pas étonnant que depuis des temps reculés on l'ait appelée "seigneurie du sieur Bissot."

But it is contended on behalf of the Labrador Company, that, even if the grant of 1661 did not in itself create a seigneurie on the mainland in favour of Bissot, this effect was produced by an *Ordonnance* of Intendant Hocquart in 1733, and the subsequent action upon it by the French Crown.

This *Ordonnance* was pronounced in a suit instituted in 1732 by Pierre Carlier, the "Adjudicataire Général des Fermes Unies de France, et du Domaine d'occident," against the heirs of François Bissot (who had died in 1676), and the heirs of Sieurs Lalande and Louis Jolyet, to whom the seigneuries of the isle and islets of Mingan had been granted by the French Crown in 1679, calling upon them to show by virtue of what title they had taken possession of the territory occupied by them on the "terre du nord" (i.e., the mainland north of the St. Lawrence) below the river Moisy up to the Bay of the Spaniards.

The "Adjudicataire Général" did not dispute the title of Jolyet (deceased) to the Isles of Mingan, described in the grant of 1679 (Record, p. 225), as the "Islets du Mingan du côté du "nord et qui se suivent jusqu'à l'anse des Espagnols." He only required the title to anything claimed on the mainland. The seigneurie of the isles and islets of Mingan will therefore only be of importance in considering the question of boundary.

In answer to the demand of the "Adjudicataire Général" the defendants relied solely on the grant of 1661, under which they alleged they had formed establishments and had continual possession for 71 years, and they conclude by a specific claim to be maintained in the possession and enjoyment of the lands granted to François Bissot, deceased, "in accordance with the title of "concession of the 25th February, 1661."

In reply the "Adjudicataire Général," after taking the objec-

tion, not now insisted on, that the grant of 1661 was in conflict with certain earlier grants, said that, admitting the grant of 1661 and the declaration of 1668 as valid title deeds, and construing them in the sense most favourable to the defendants, the grant gave no proprietary title except on the Isle aux Œufs. On the mainland it conferred no right of ownership, but only the right to establish there "la peche sédentaire," from l'Isle aux Œufs up to the Seven Isles and in the Bay of the Spaniards, "a right," he continues, "which it would have been useless to "express, if the intention of the concession had been to give a "right of property, and which by its expression positively ex- "cludes a right of property." He then presents substantially the arguments against the then defendants' claim, which have been repeated before this Board, and he proceeds, "Though the "defendants have not even the right to make establishments in "the tract of country from the Seven Islands up to the Bay of "the Spaniards, it is in consequence of their title of concession "that Bissot, deceased, has founded the establishment of Mingan "continued by the defendants, for which they allege a continued "possession of 71 years. Having regard to this long enjoyment "of the seigneurie of Mingan, he will not dispute it, provided "that they be limited to a concession of which the limits shall be "certain and determined, so that they cannot injure or prejudice "the 'Traites du Domaine du Roi.' It is at Mingan that they "have fixed their establishment on the mainland. The Farmer- "General will not offer opposition to the enjoyment of it being "continued to them, and even that the property in it be accorded "to them by a new title, if His Majesty should think fit to "accord to them as recompense the establishments which they "have made there." The Mingan here referred to as the place where the defendants are said to have fixed their establishment on the mainland is a station on the mainland opposite to the islands of Mingan, and is marked on several maps as the Mingan settlement.

The "Adjudicataire Général" concludes by demanding that he be maintained in his right, to the exclusion of all others, to exercise trading, hunting, fishing, and commerce in the tract of the domaine between l'Isle aux Coudres up to and including the river Moisy, that the defendants be condemned to pay him the arrears of the annual dues of two beaver skins or ten "livres Tournois" from 1661 to the then present year, unless they should prefer to give up ("se désister de") the said concession,

and consent to the reunion to the domaine of the said seigneurie of the Isle aux Œufs, which they long since abandoned, and moreover also to pay the dues for the trading which they had carried on at Mingan; and that the said defendants be bound to take a new title for the establishment made by them at Mingan aforesaid, to commence from Cormorant Point ("en allant") in the direction of the Bay of the Spaniards, with such depth and on (payment of) such dues as it should please His Majesty to accord them.

By way of rejoinder to the reply of the "Adjudicataire Général," the defendants reassert in general terms their claims, and ask whether their possession for 70 years, and the expenses they have been put to, and the losses they have suffered from the English in times of war, ought not to serve them in the place of title, and they conclude that though they have proved their right, they consent to the river Moisy being the western limit of their concession up to the Bay of the Spaniards, and therefore they pray that they may be relieved from the payment of the dues with which that territory is charged, and that they may be given a new title to it.

This was the state of the controversy which the Intendant Hocquart had to decide. After reviewing the pleadings, Monsieur Hocquart gave his judgment as follows:—

He took notice of the abandonment by the defendants of the territory conceded to François Bissot, deceased, by the Company of "Nouvelle France" on the 25th February, 1661, from the Isle aux Œufs up to the river Moisy, and in consequence, as far as was necessary, reunited to the domain of His Majesty the said territory conceded to the said François Bissot from and including the Isle aux Œufs to Cormorant Point, four or five leagues below the river Moisy; forbade the defendants and all others directly or indirectly to exercise any trading, hunting, fishing, commerce, or establishment in the territory so reunited, or in the said river Moisy and its affluent lakes and rivers; and, in consideration of the abandonment aforesaid by the defendants, he discharged them from any arrears which might be due from them, and "as to the new title of concession required "by them for the establishment made by them and their pre-"decessor François Bissot at the place of Mingan aforesaid, the "parties shall apply to His Majesty to obtain the same, with "such frontage and depth and on payment of such dues as His "Majesty shall be pleased to grant."

The effect of this "Ordonnance" was entirely to put an end to the seigneurie in the Isle aux Œufs, and to the rights, whatever they were, which had been conceded to Bissot by the original grant, as far as Cormorant Point, and to reannex the district from and including the said Isle aux Œufs up to Cormorant Point to the domain of the King. This, with the remission of the arrears, was the whole operative part of the "Ordonnance." As to the request of the defendants that the limits of their concession should be from the river Moisy to the Bay of the Spaniards, and that of this district a new title should be granted to them, this was not acceded to. The district for five or six leagues eastward of the river Moisy was reunited to the Crown, and no mention whatever of the Bay of the Spaniards is made, and the defendants are remitted to the Crown to obtain a new title for "the establishment made by them and the said Fran-"çois Bissot, at the place of Mingan aforesaid," for such frontage and depth as His Majesty might think fit to grant.

François Bissot, the son, addressed several petitions for a new title to the Comte de Maurepas, the French Secretary of State. In these petitions he set out the substance of the original grant of 1661, explained that his father had made his first establishment at Mingan, where the family residence was formed, but that he had made many others at different places, which, after they had been destroyed by the English, had been from time to time re-established. He stated that the limits of the Royal domain had been fixed by Hocquart at Cormorant Point, and he prayed that he might be continued in the remainder of his concession from that point "down the river to the conceded lands" (by which appears to be meant, conceded to other persons), and the exclusive privilege of continuing there his establishments, and others if possible, for the hunting of seals, with the rights of hunting and trading with the savages such as he and his late father had enjoyed for 70 years.

The result of a correspondence which followed between the Comte de Maurepas and the Marquis de Beauharnois, the Governor of la Nouvelle France, and the Intendant Hocquart, was that the Comte de Maurepas stated, in a letter to M.M. de Beauharnois and Hocquart, that the circumstances of the case would have determined him to propose to the King to confirm the heirs of Bissot in the possession of a part of the coast conceded by the grant of 1661, and to fix their condition; but that, having regard to the existing circumstances of the family, and the dis-

cussions which such a confirmation might give rise to, he had taken the course recommended by M. M. de Beauharnois and Hocquart, to suspend all determination on the subject, and that he had only induced the King to agree that the heirs (of Bissot) should enjoy such extent of coast as they (Beauharnois and Hocquart) had designated in their letter, from the boundary of Tadoussac down the river to the concession of the Sieur Lafontaine, with such depth as they (Beauharnois and Hocquart) should think right to fix; and he concluded with a request that they would consider whether it would be convenient to leave them this extent of territory, or whether it would not be right to reduce it for the purpose of locating other concessionaries.

It does not appear that these suggestions of M. de Maurepas were ever communicated to the heirs of Bissot. No new title was ever granted to them. This letter imports no engagement on the part of the Crown to give one; it contains only the expression of a possible intention to do so if, upon the examination of this matter by MM. Beauharnois and Hocquart, it should be thought expedient. No further action on the subject is shown. No boundary inland was ever fixed. All that can be inferred is that the representatives of Bissot continued to carry on their stations for fishing, &c., at Mingan as before. Their lordships, therefore, are of opinion that the judgment of Hocquart and the action of the French Crown upon it did not create or recognize any title in the heirs of Bissot to a seigneurie on the mainland.

Nothing between the date of M. de Maurepas' letter down to the cession of Canada to England in 1763, calls for observation. In 1766 the representatives of François Bissot laid before the British Government a claim to be proprietors of the "terre ferme de Mingan," commonly called "the seigneurie and post of Mingan." In support of their claim they do not appear to have furnished evidence of the contents of the grant of 1661, but they relied on an "Acte de Notoriété," signed by several citizens and notables of Quebec, two of whom, at least, were parties interested, to prove an immemorial possession of the seigneurie of the mainland of Mingan by the heirs of MM. F. Bissot and Lewis Jolyet. This claim was referred to the law officers of the Crown in England, who, in the year 1768, reported upon it. After observing that "the claim is of an exclusive right of pro-
"perty in the soil containing originally, in extent along the "north shore of the River St. Lawrence from the Isle of Eggs

"to the Bay of Phellipeaux which appears to be about 500 miles, "and in depth into the country without bounds or limitation," but of which a space of about 30 leagues from Egg Island to Cape Cormorant was acknowledged to have been surrendered, the law officers comment on the uncertainty of the grant, as well as of possession, and they conclude, "Under these circumstances, "we are of opinion that this claim, standing as it does at pre- "sent upon these papers, could not in any judicial inquiry be "allowed in point of law as valid and effectual; at the same time "there is reason to think that some part of this family has been "in some kind of legitimate and authorized possession of some "particular parts of the shore within the limits described, but "the ground, the nature and extent of such possession does not "appear at present in such authentic manner as to be capable "of receiving any judicial confirmation."

In 1781 the claimants appear to have endeavoured to supply the want of proof thus pointed out. On the 28th of May in that year F. J. Cugnet, on behalf of himself and others named, claiming to be seigneurs and proprietors in undivided shares of the seigneurial fiefs of the isles and islets of Mingan, of the isle of Anticosty, and of the "terre ferme de Mingan," is alleged to have presented an act of "foi et hommage" in respect of the said fiefs and seigneuries. A document of this date and to this effect is found in the register of "foi et hommage," and it states that the "Seigneurie de la terre ferme de Mingan," commencing at Cape Cormorant, "jusqu' à la grande Ance vers les Esqui- "maux où les Espagnols faisaient ordinairement la pêche sur "deux lieux de profondeur," was conceded by the Company (of La Nouvelle France) on the 25th of February, 1661, to the Sieur François Bissot. Appended to this document is a certificate of Cugnet himself (who appears to have held the office of keeper of the "Papier Terrier") that this "foi et hommage" had been presented, but it is not signed by the Governor, and therefore has no validity. But from its having been found in the registry it has since been frequently assumed, though erroneously, to have had an official character.

This document contains two statements which are now known to be untrue, whether wilfully or not, it is unnecessary to inquire. The one is that the grant of 1661 conceded a seigneurie from Cape Cormorant as far as the "Grande Anse." It omits altogether the mention of the "Sept Isles," and changes the language with regard to the "Grande Anse." The second is

that it introduces a limitation inland, thus supplying words which would meet the objection taken as to the uncertainty of the grant in this respect. It is said that these words are introduced in the margin of the document, but as the original is not before them, their lordships cannot verify the statement.

The effect of these inaccuracies, whether intended or not, was that in 1803 MM. Vondenvelden and Charland, surveyors, in a work on the subject of the titles of ancient concessions, include that of "la terre ferme de Mingan," on the authority of the supposed act of "foi et hommage" of 1781; and from this work the same error has been derived and continued in subsequent transactions. Thus in 1805, in an action at the suit of Ralph Rosslewin against one Crawford and others, the sheriff seized fifteen thirty-second undivided parts of the seigneurie of the Isles Mingan, "with all the rights in the seigniory "of the mainland of Mingan." The Procureur Général claimed the "droit de quint" due to the Crown on the sale. The matter was referred to the arbitration of M. Planté, an advocate, who gave his decision and based it upon the supposition that the grant of 1661 was a concession of the "terre ferme de Mingan" to Sieur Fr. Bissot, and refers for his authority to the false entry of the 28th May, 1781, in the register of "foi et hommage" and the work of MM. Vondenvelden et Charland. The demand and receipt on this occasion of the "droit de quint" by the Procureur Général has been relied on by the Company as a recognition by the Crown of their title to a seigneurie of the "terre ferme de Mingan." There is no proof that it was paid, but assuming that it was, it does not amount to a recognition by the Crown. A recognition to be effectual for the purpose of curing a defective title must be made with knowledge of the defects to be cured, and no such knowledge on the part of the Crown can in this case be inferred from the mere receipt by its officer of a fiscal due, under a mistake induced by the company's predecessors.

In 1837 James Stuart, on the part of several persons named, rendered faith and homage for, amongst other things, certain undivided shares in the "Seigneurie de la terre ferme de Mingan." On this occasion the act of faith and homage is signed by the Governor, Lord Gosford. This would be *primâ facie* proof of the existence of some seigneurie on the mainland of Mingan, but this *primâ facie* proof is rebutted by the title relied on by the claimants, namely, that supposed to be derived from the grant of 1661, and the "Ordonnance" of Hocquart of 1733. The effect of these documents of title has been already considered.

Nothing calling for observation occurred after 1837 until the year 1854. Down to this time their lordships are of opinion that the facts proved fail to establish that there was a seigneurie of the mainland of Mingan, or that the Crown had recognized its existence, although, chiefly from the supposed act of "foi et hommage" of 1781 containing the erroneous statement of the effect of the grant of 1661, a reputation had arisen that there was such a seigneurie.

With regard to the claim of the company to hold by prescription and immemorial possession, it is unnecessary to consider what would have been the effect of the evidence if the title of the company had rested on this basis alone, because as the true root of their title has been shown by the company themselves, there is no room for the application of the law of prescription. This is clearly stated by many authors of authority: "On ne "peut pas prescrire contre son titre en ce sens que l'on ne peut "pas se changer à soi-même la cause et le principe de sa posses- "sion * * * il suit de là que lorsque le titre est représenté, "c'est par lui qu'il faut régler la cause et le principe de la pos- "session; et tant que le possesseur ne prouve pas une interver- "sion légale soit par le fait d'un tiers, soit par une contradiction "formelle, le titre reste la loi invincible qui sert à qualifier sa "possession. Il y est ramené sans cesse par la loi et par la "raison. C'est ce que les praticiens ont voulu exprimer par ce "brocard; ad primordium tituli posterior semper refertur even- "tus." Troplong de la Prescription, 522, 4th ed.

In this state of things the legislature of the Province of Canada, deeming it expedient to abolish all feudal rights and duties in Lower Canada, passed for this purpose the Seigniorial Act of 1854 (18 Vict., c. 3), amended by the Act of 18 Vict., c. 103 (1855), and the Seigniorial Amendment Act of 1856 (19 Vict., c. 53). The 10th section of this last-mentioned Act is as follows: "Inasmuch as the following fiefs and seigniories, namely: Perth- "uis, Hubert, Mille Vaches, Mingan, and the island of Anticosti, "are not settled, the tenure under which the said seigniories are "now held by the present proprietors of the same respectively, "shall be and is hereby changed into the tenure of 'franc aleu "roturier'."

This is an absolute statement by the legislature that there was a seigneurie of Mingan. Even if it could be proved that the legislature was deceived, it would not be competent for a court of law to disregard its enactments. If a mistake has been made

the legislature alone can correct it. The Act of Parliament has declared that there was a seigneurie of Mingan, and that thenceforth its tenure shall be changed into that of "franc aleu roturier." The courts of law cannot sit in judgment on the legislature, but must obey and give effect to its determination.

It remains only to consider what was the seigneurie of Mingan to which the Act of 1856 referred. It has been contended for the Crown that there was a seigneurie of the isles and islets of Mingan which may have been intended. The answer to this contention is that the proper name of this last-named seigneurie was that of "the isles and islets of Mingan," and that there is no trace of evidence that it has been on any occasion otherwise designated, or that it has ever been known as the *Seigneurie de Mingan.*

An examination of the Act further proves that a seigneurie on the mainland was contemplated.

The original Act provides for the appointment of Commissioners (Sec. 2), to whom (Sec. 4), the Governor shall assign the seigneurie or seigneuries in and for which each of them shall act, and whose duty it shall be (Sec. 5), "to value the several rights " * * * with regard to each seigniory which shall be "assigned to him as aforesaid."

By virtue of these provisions Henry Judah, one of the Commissioners, had assigned to him the making of the *cadastre*, and the valuation of the rights of the seigneurie of Mingan, and he has discharged his duties specifically with regard to the "seigneurie of the *terre firme de Mingan*," while on the other hand no mention has been made of the seigneurie of the isles and islets of Mingan.

Before beginning to prepare the schedule for any seigneurie it was the duty (Sec. 7 of the Act of 1854) of the Commissioner to give public notice of the place, day, and hour at which he would begin his enquiry; he had power to examine on oath any person appearing before him.

Immediately after the making of the schedule the Commissioner was bound (Sec. 11 of the Act of 1854, and Sec. 5 of the Act of 1856, to give eight days' public notice that such schedule would remain open for the inspection of the seignior and the *censitaires* of the seigniory during thirty days following the said notice, "and any person interested in the schedule may point "out in writing any error or omission therein, and require that "the same be corrected or supplied." Provisions are also made

for the revision of the schedule, and it is enacted (Sec. 8 of the Act of 1856) that no revision shall be allowed, unless application be made for the same within fifteen days after the Commissioner shall have given his decision under Sec. 11 of the Act of 1854; and by the 10th Sec. of the Act of 1855 it is enacted that "after any schedule shall have been completed and deposited "under said Act, it shall not be impeached, or its effect im- "paired for any informality, error or defect in any prior proceed- "ing in relation to it, or in anything required by the said Act "to be done before it was completed and deposited, but all such "prior proceedings and things shall be held to have been rightly "and formally had and done, unless the contrary expressly appear "on the face of such schedule; and the same rule shall apply to "all proceedings of the Commissioners under the said Act, so "that no one of them, when completed, shall be impeached or "questioned for any informality, error, or defect in any previous "proceeding, or in anything heretofore done or omitted to be "done by the Commissioners or any of them."

It was open, therefore, to the Government on the one hand, or the persons claiming to be proprietors of the seigneurie of the *terre ferme* of Mingan, to have complained in due time and in the manner prescribed, of any error in the schedule. As no such complaint was made, the schedule as deposited must be deemed to be correct.

Now, by the schedule drawn up by Henry Judah (dated the 23rd January 1864) it is certified that the "*seigneurie de Mingan "ou de terre ferme de Mingan*" is scheduled in the county and district of Saguenay, and is not conceded; it contains fifty leagues of frontage by two leagues of depth, extending from Cape Cormorant up to the river Goznish, forming an area of 705,400 *arpents*, and is bounded in front by the river St. Lawrence, and along its depth and two sides by the public domain.

This schedule, with the Act under which it was made, must now be deemed to have conclusively established the existence and boundaries of the *Seigneurie de Mingan* referred to in the 10th Section of the Act of 1856.

Mr. Justice Routhier by an independent examination of the evidence has arrived at the conclusion, in which their lordships entirely concur, that the territory in which the right to make establishments for fishing, &c., was granted by the Concession of 1661, did not extend further eastward than the river Goznish, and that there is no foundation for the claim to extend it to

Brador Bay in the strait of *Belle Isle.* Their lordships concur with Mr. Justice Routhier in thinking that the bay referred to in the grant of 1661 as that where the Spaniards ordinarily fished was not that which is now called Brador Bay, but was the one indicated as the *Baye des Espagnols* on the map, presumably drawn up on the information of Sieur Jolyet, an experienced navigator, and one of the parties having an interest under the Concession of 1661. This bay exactly answers the description given in the grant of 1679 to Laland and Jolyet of the seigniory of the isles and islets of Mingan, "which follow one another to "the bay called *l'Anse aux Espagnols*, and to the position assigned to it in the map of 1678, near the eastward end of those islands and near a place or river marked "Esquimaux." It is, however, unnecessary to examine this question in detail, as their lordships are of opinion for the reasons already given, that the schedule drawn up by Mr. Judah is conclusive on the subject of boundary.

Their lordships will humbly advise Her Majesty that both appeals be dismissed, and that the judgment of the Court of Queen's Bench be affirmed, and they direct that the parties pay their own costs of the appeals.

The Solicitor-General, *Sir H. Rigby, Q.C., H. Abbott, Q.C.*, of the Quebec Bar, and *Tyrrell T. Payne*, for the Labrador Company.

Sir Horace Davey, Q.C., R. Laflamme, Q.C., (of the Quebec Bar), *M. Belleau, Q.C.*, (of the Quebec Bar) and *F. C. Gore*, for the Queen.

COURT OF APPEAL ABSTRACT.

Testament—Interprétation des lois—"Sain d'esprit"—Preuve —Captation.

Jugé, le Code exigeant à l'article 831, que le testateur soit "sain d'esprit," ne frappe pas de nullité seulement le testament du fou proprement dit, mais aussi le testament de celui dont la faiblesse d'esprit ne lui permet pas d'apprécier le caractère et les effets de l'acte qu'il accomplit.

La preuve d'un état mental semblable peut résulter, directement, des actes, du langage et de la conduite du testateur, avant, pendant, et après la confection du testament, et, indirectement de la nature de la disposition testamentaire et de sa portée, v. g., de son injustice.

Dans l'espèce, la testatrice quoique susceptible de concevoir une donation ou transport afin d'assurer sa vie, étant trop faible d'esprit pour connaître l'étendue de sa fortune, apprécier la nécessité d'une telle donation, se rappeler les avantages respectifs que ses enfants avaient reçus dans le passé, et se rendre compte de la position relative de chacun d'eux vis-à-vis de sa succession et de celle de son mari, n'était pas assez " saine d'esprit " pour pourvoir tester valablement.

Au surplus, le bénéficiaire, l'intimé, qui avait le contrôle des affaires de la testatrice et exerçait une grande influence sur elle, lui avait suggéré le testament, qui était le résultat de captation dolosive de sa part.—*Baptist & Baptist*, Québec, Lacoste, J.C., Bossé, Blanchet, (diss.), Wurtele & Tait, JJ., 5 mai 1892.

Bail—Prohibition de sous-louer—Cession de bail—Aliénation de la chose louée.

Jugé:—Le cessionnaire d'un locataire principal qui a sous-loué une partie des lieux loués, malgré une prohibition de sous-louer dans le bail, et qui a ensuite acquis du locateur principal la propriété de ces lieux, n'a pas d'action contre le sous-locataire pour le faire évincer avant l'expiration du sous-bail.—*Hough & Cowan*, Québec, Baby, Bossé, Blanchet, Hall, et Wurtele, JJ., (Bossé & Hall, JJ., diss.) 8 octobre 1892.

Libelle—Jurisdiction.

Jugé, que dans une action en dommages pour libelle publié dans un papier-nouvelles, le défendeur peut être poursuivi dans un autre district que celui de son domicile et du lieu de publication du journal, si le demandeur a limité les dommages qu'il réclame au seul district dans lequel il a assigné le defendeur.—*White & Langelier*, Sir A. Lacoste, J.C., Bossé, Blanchet, Hall, & Wurtele, JJ., Québec, 8 octobre 1892.

Loi électorale—Nullité de contrat—S. R. Q. 425—*Preuve.*

L'intimé, poursuivi par l'appelant sur billet promissoire, a offert en compensation un compte pour effets et marchandises allégués avoir été vendus et livrés à l'appelant et à sa demande et requisition spéciale. La preuve a démontré que ce compte se rapportait à une election faite en vertu de la loi électorale de

Québec, et ne paraissait pas avoir été transmis à l'agent légal du candidat dans le délai d'un mois de la déclaration de l'élection, et de plus, que le dit compte n'avait pas été encouru pour l'appelant personnellement, ni pour rencontrer des dépenses légitimes de la dite élection, et que l'intimé connaissait l'objet pour lequel il vendait et livrait les dits effets et marchandises.

Jugé, qu'en vertu des dispositions de l'article 425 des Statuts Révisés de Québec, le dit prétendu contrat était nul, et le compte en question non recouvrable en loi. Sous les circonstances de cette cause, et en l'absence d'objection de part et d'autre, une preuve verbale et secondaire de la tenue de l'élection était suffisante.—*Brunelle & Begin*, Québec, Lacoste, J.C., Baby, Bossé, Blanchet, Hall, JJ., 6 mai 1892.

Inscription en faux—Acte signé hors la présence du notaire.

Jugé, Un acte notarie, daté et clos comme fait à Rimouski, mais qui a de fait été signé à Québec, où le notaire qui connaissait les signatures des parties, avait envoyé le projet de minute pour y être signé, est nul comme acte authentique.—*Cie d'assurance mutuelle etc., & Cedar Shingle Co.*, Québec, Lacoste, J.C., Baby, Bossé, Hall, Wurtele, JJ., 6 mai 1892.

Billet de location—Conditions d'établissement non accomplies—Délai accordé par Département—Cancellation par erreur—Complainte et réintégrande—S. R. Q. arts. 1269, 1273, 283, *et seq.*—*Interprétation.*

Jugé : Le droit de révoquer un billet de location pour cause est un droit absolu qui peut toujours être exercé par le commissaire des terres de la Couronne, lorsqu'il y a lieu, mais il ne peut pas y avoir révocation sans avis et sans publication par l'agent local, non plus qu'avant 60 jours de délai après l'affiche de l'avis. Cependant, lorsqu'une location octroyée par un agent local est répudiée par le Commissaire, ce n'est pas la révocation d'une location régulièrement faite, mais le refus par le Commissaire de ratifier le billet donné par l'agent; il n'est pas nécessaire, dans ce cas, de donner avis, et le refus de ratification rend sans effet le billet de location.

Si avant l'expiration d'un délai accordé pour l'accomplissement des conditions d'établissement, la location est cancellée par erreur, le Commissaire a droit de retirer cette cancellation et

remettre la partie dans la position qu'elle avait occupée auparavant, et comme conséquence de ne pas approuver un second billet de location accordé dans l'intervalle par un agent local.

Un porteur de billet de location, ainsi dépossédé par erreur, a droit à l'action possessoire pour se faire réintégrer,—le permis d'occupation étant un titre et une preuve *prima facie* de possession, aux termes de l'article 1270, par. 2, S. R. Q.—*Rocheleau & La Charité*, Québec, Lacoste, J.C., Baby, Bossé, Hall & Wurtele, JJ., 2 juin 1892.

Parishes—Canonical and civil erection and division—Jurisdiction of the Courts—R. S. Q. 3371-3381.

Held: 1. The civil courts in the province of Quebec have no jurisdiction to annul or revise a canonical decree erecting a parish, the only remedy being an application to the superior ecclesiastical authority.

2. The courts have no jurisdiction to revise the proceedings of commissioners for the civil recognition of parishes, this being a matter within the sole jurisdiction of the executive of the province, and the commissioners being merely a commission charged to make such inquiry and report as may enable the lieutenant-governor to act with proper knowledge of the facts.—*Samoisette et al. & Brassard et al.*, Montreal, Lacoste, C.J., Baby, Bossé, Hall and Wurtele, JJ., December 23, 1892.

Grand Jury—Récusation du tableau—Récusation par tête (" *to the polls*").

Jugé, la procédure criminelle dans cette Province ne reconnait pas aux accusés le droit de récuser le Grand Jury, ni par voie de récusation du tableau (*challenge to the array*), ni par voie de récusation individuelle (*challenge to the polls*).—*Regina* v. *Mercier et al.*, au Criminel, Bossé et Blanchet, JJ., Québec, 12 octobre, 1892.

SUPERIOR COURT ABSTRACT.

Jury trial— Verdict against evidence—Non-suit.

Held: 1. Absence of evidence to support a verdict is not ground for rendering judgment *non obstante veredicto.*

2. The judge presiding at the trial has no power to non-suit a plaintiff, save in the two cases provided for by Arts. 394, 395,

C. C. P., that is, either where the plaintiff does not appear at the time and place fixed for the trial, or where, having so appeared, he at any time during the trial and before verdict withdraws from court or abandons his suit, the effect of such non-suit being in either case to dismiss plaintiff's action, but permit his beginning anew.—*Turnbull* v. *Travellers' Insurance Co.*, Montreal, in Review, Loranger, Ouimet, Doherty, JJ., November 30, 1892.

Expropriations—Cité de Montréal—Rôle des Commissaires—Etat produit par la Cité.

Jugé, que dans les expropriations sous la charte de la cité de Montréal, les commissaires jouent le rôle d'experts jurés, et ils peuvent accorder à l'indemnitaire moins que le montant porté à l'état produit de la part de la cité.

Que cet état ne constitue pas une reconnaissance par la cité de Montréal, mais n'est que l'expression de l'opinion de leurs témoins.—*Cité de Montréal et Dumaine*, C. S. (en Révision), Johnson, Davidson et Pagnuelo, JJ., Montréal, 30 décembre, 1892

Banque—Taux de l'intérêt—Répétition de l'indu—Question d'ordre public.

Jugé, que les banques ne peuvent charger sur les billets qui leur sont présentés pour escompte qu'un intérêt de sept par cent par an.

Que la prohibition de la loi, en cette matière, étant d'ordre public, celui qui a payé à une banque un intérêt dépassant le taux fixé par la loi, a droit de répéter de la banque le montant de l'excédant.—*La Banque de St. Hyacinthe*, v. *L. Sarrazin et al.*, Pagnuelo, J., C. S., St. Hyacinthe, juin, 1892.

Propres de communauté—Succession—Co-héritier—Acquisition de parts immobilières—Renonciation à succession—Enregistrement—Arts. 1279 *et* 2126, *C. C.*

Jugé, 1. La renonciation à une succession qui n'a pas été enregistrée est sans effet à l'égard des tiers, et notamment des créanciers du renonçant.

2. L'acquisition par des conjoints des droits mobiliers et immobiliers des co-héritiers de l'un d'eux dans une succession di-

recte, attribue à ce dernier, comme propres, les parts d'immeubles acquises, sauf indemnité envers la communauté, s'il y a lieu, et ce, à plus forte raison, lorsque, dans l'acte d'acquisition, les portions d'immeubles sont désignées.—*Gagnon et Valentine, es qual., et Gagnon, es qual.*, Oppt., en Révision, Casault, Caron et Andrews, JJ., Québec, 31 mars, 1892.

Cautionnement pour frais.

Jugé, qu'une ordonnance d'un Juge en chambre, condamnant le demandeur à fournir cautionnement pour frais, parcequ'il n'a pas sa résidence dans la province (Art. 29, C.C.), peut être révisée par le tribunal, et le demandeur déchargé de cette obligation.—*De Angelis* v. *Masson et al.*, C. S., Mathieu, J., Montréal, 27 octobre, 1892.

Sale—Malicious seizure—Damages.

Held, 1. That an agreement by which the defendant transferred to plaintiff a barge for $300, whereof $50 were payable in July following, $50 in September, and the balance in annual instalments of $50, and which stipulated that in default of payment of the instalments as they became due the defendant would be at liberty to take back the barge, is a sale and not a lease.

2. That a *saisie-gagerie* seizing the barge under such pretended lease, was issued maliciously and without probable cause; and vindictive as well as real damages may be allowed in such case.—*Lamirande* v. *Cartier*, in Review, Taschereau, Loranger, Doherty, JJ., Montreal, January 30, 1892.

Révision—Montant des dommages—Bail—Obligations du locateur—Fuite d'eau.

Jugé, 1. La Cour de Révision peut modifier les jugements qui lui sont soumis quant au montant des dommages accordés, lorsque la nature de l'action en rend la détermination précise possible. La règle établie par la Cour Suprême (vol. VI., p. 482, *Levi et Reed*, &c.) que "l'appréciation du tribunal de première instance doit être finale, hors le cas où la condamnation est excessive au point de constituer une erreur évident ou une injustice," ne s'applique qu'aux actions, comme celles d'injures, où la détermination des dommages est laissée à sa discrétion.

2. Le locateur est responsable des dommages causés au locataire de la partie inférieure d'un édifice, par une fuite d'eau dans l'étage supérieure.—*Bernard* v. *Coté*, C. S. (en révision), Casault, Caron, Andrews, JJ., Québec, 31 mars, 1892.

Assignation—Compagnie étrangère incorporée.

Jugé, Que dans le cas d'une assignation faite à une compagnie ayant son principal bureau d'affaires dans la province d'Ontario, en parlant à son agent, sur une exception à la forme niant la qualité de l'agent à qui l'huissier a parlé, c'est au demandeur à prouver cette agence.—*Schultze* v. *Thorold Felt Goods Co.*, C. S., Mathieu, J., Montréal, 14 novembre, 1892.

Vente—Obligation—Enregistrement.

Jugé, Que, par la disposition du dernier alinéa de l'article 2098, C. C., prise conjointement avec l'article 2043, C. C., l'hypothèque consentie par le possesseur à titre de propriétaire, et enregistrée avant. l'enregistrement de son titre, prime l'hypothèque du vendeur qui n'a enregistré qu'après cette hypothèque et après les trente jours de la date du titre.—*Huet dit Dulude* v. *Alphonse Laporte dit Denis*, et *N. J. Laporte dit Denis*, créancier colloqué, et *Alexandre Laporte dit Denis*, créancier-contestant, C.S.,Mathieu, J., Montréal, 8 novembre, 1892.

Jury trial in civil cases—Absence of jurymen—Postponement—Alias venire facias.

The postponement of the trial on account of the absence of certain jurymen, is not a sufficient reason for the striking of a new jury; but in such case the issue of an *alias* writ of *venire facias* will be ordered, to summon anew, for a later day, the jury already struck.—*Ouellet* v. *City of London Fire Ins. Co.*, Quebec, Andrews, J., June 30, 1892.

Capias—Secretion—Chose jugée—Costs.

Where a capias is based on a judgment, the question of indebtedness as fixed by the judgment is *chose jugée*, and the defendant is precluded from questioning the correctness of the amount so found to be due by him.

A sale by a restaurant-keeper of his effects and business and the leasehold of his restaurant, will not sustain a charge of secretion, if it be established by him that he acted with the concurrence of his lessors, his principal creditors, who had the right at any moment to sell him out and take the proceeds by privilege for rent due, and who received the price in payment of their claim. But where the defendant acts thus, without the knowledge of his other creditors, no costs will be allowed him on the quashing of a *capias* issued by one of them.—*Cushing* v. *Fortin*. Montreal, Davidson, J., June 27, 1892. Confirmed in Review, Johnson, C.J., Tait and Doherty, JJ., November 30, 1892.

Will—Captation—Suggestion.

The testator, aged 66, and for many years clerk of the Crown and of the Peace at Montreal, being seriously ill with rheumatism and Bright's disease, and being warned by his physician to settle his temporal affairs, instructed his notary to prepare a will in accordance with memoranda written with his own hand. He kept the draft under examination for several days, and made a number of alterations. The will contained several bequests, but left the bulk of his fortune to his sister and her sons, defendants. Recovering partially from his illness, the testator lived 21 months after the execution of the will, and during the greater part of this time attended his office, and was competent for the performance of his duties. He also attended as usual to his private affairs. His sister, the defendant, had lived with him for some time before and after the date of the will, but it did not appear that she had brought any pressure or influence to bear upon him, or that he was not free to alter the dispositions of the will, if he so desired.

Held, that the proper inference from these facts was that the will was the expression of the testator's voluntary wishes, and should be maintained.—*Schiller* v. *Schiller*, Montreal, Davidson, J., June 30, 1892.

Libel—Allegations in petition—Justification.

The defendants, for the purpose of obtaining the liberation of L., brother of two of them, who was under arrest on a false charge of lunacy, presented a petition to a judge, supported by

affidavits, containing statements respecting plaintiff, which were relevant to the purpose of the petition, and were moreover substantially true, and had been generally known for two months previously. The petition was maintained, and the magistrate's commitment quashed. In an action of damages based on the statements contained in the petition and affidavits:

Held, that the defendants having acted in good faith and on a privileged occasion, and their allegations being relevant and made with probable cause, the plea of justification was established, and the action should be dismissed.—*Legault* v. *Legault*, Montreal, Davidson, J., June 30, 1892.

Shipping—Charter party—Date fixed for sailing—Breach.

A cattle shipper engaged the cattle space of a steamship for the transportation of cattle from Montreal to England, one of the stipulations of the contract being, "vessel to sail about 15th of May next." The ship's agent gave notice on May 16, that the vessel would be ready to load on May 21.

Held, that there was a failure to comply with the conditions of the contract, and that the shipper was justified in treating the agreement as cancelled and in refusing to load.

2. An action may be brought on a contract by the principals though the contract was made by their agents in their own name and without disclosing their principals.—*Mackill* v. *Morgan et al.*, Montreal, Davidson, J., June 30, 1892.

Sale—Apparent defect—Examination of goods by buyer—Reasonable diligence.

Where herring was sold without warranty, subject to inspection, and the buyer, after obtaining delivery on the 18th November, deferred all examination of the fish until the 30th November, and did not make a complete inspection until the end of December following, *held*, that he was not entitled to recover the price of fish then found to be rusty, rust on fish being an apparent defect, which might have been discovered by inspection if the fish had been examined at the time of delivery.—*Fraser* v. *Magor*, Montreal, Pagnuelo, J., October 25, 1892.

Carrier—Right of retention for payment of carriage—Art. 1679, *C. C.*

A carrier who has put the thing transported in the particular place specified in the contract of carriage, is not considered to have thereby dispossessed himself of it; and his right of retention under Art. 1679, C. C., until he is paid for the carriage, still exists, and may be asserted by conservatory seizure against parties claiming title by purchase.—*Groulx* v. *Wilson*, Montreal, in Review, Johnson, C.J., Gill and Mathieu, JJ., October 8, 1892.

Delay for appealing to the Supreme Court—Long vacation—Discretion of Judge—Acquiescence.

Held, 1. That the delay prescribed under section 40 of the Supreme Court Act runs during the long vacation.

2. That where the defendants had been unnecessarily dilatory in applying for the exercise of the discretion of the judge under sec. 42, the reason alleged being that they had overlooked the fact that the above mentioned delay runs during the long vacation, the judge will not allow the appeal.

3. The fact of entering into negotiations as to the execution of a judgment, constitutes an acquiescence in the judgment.—*A. H. Murphy* v. *J. J. Williams*, S. C., Pagnuelo, J., Montreal, December 13, 1892.

Exécution forcée—Vente immobilière—Désignation—Cadastre—Dation en paiement—Délivrance—Action pétitoire.

Jugé: 1. L'acquéreur d'un immeuble qui n'en a pas eu la possession, peut agir au pétitoire en invoquant le titre et la possession de son auteur.

2. La délivrance de l'immeuble n'est requise, pour rendre la dation en paiement parfaite, qu'entre le cédant et l'acquéreur, et les tiers ne sont pas reçus à en invoquer le défaut.

3. La vente par le shérif d'un immeuble sous un numéro cadastral, mais avec une désignation par tenants et aboutissants qui comprend un autre immeuble désigné au cadastre sous un autre numéro, ne donne pas à l'adjudicataire un titre à ce deuxième immeuble.—*Caron* v. *Houle*, en Révision, Casault, Caron, Andrews, JJ., 31 mars, 1892.

Vente mobilière—Tradition—Possession.

Jugé, dans le cas de vente de meubles par un même vendeur à deux personnes différentes, l'acheteur qui est en possession actu-

elle et de bonne foi doit être préféré, même si son titre d'acquisition est postérieur à celui de l'autre acheteur, et lors même que ce dernier aurait eu tradition.—*Drouin* v. *Lefrançois*, Cour de Circuit, Routhier, J., Québec, 6 avril, 1892.

Mandamus—To compel mayor of municipality to sign contract—Resolution of council.

Held, that a *mandamus* will not be granted, to compel the mayor of a municipality to sign a contract with the petitioner in pursuance of a resolution of the council, when it appears that before the proceedings were instituted the resolution authorizing the mayor to sign had been rescinded by the council, and the contract awarded to another company.

2. Even if such subsequent resolution be annullable, it cannot be annulled on a petition for *mandamus* against the mayor of the municipality to compel him to sign the original contract.—*Edison General Electric Co.* v. *Barsalou*, Montreal, Doherty, J., January 7, 1892.

Will—Form of—Legacy—Vagueness and uncertainty.

Held: 1. The 14th Geo. III. cap. 73, sec. 10, in force in February, 1865, and which provides "that it shall be lawful for every person.....to devise .....by will.....executed either according to the laws of Canada or according to the forms prescribed by the laws of England," is not to be read as restricted to wills made in the province, but applies to wills generally wherever made. Therefore, a will made at that time in the State of New York by a person domiciled in this province, in the holograph form, is good and valid.

2. A bequest in the following words: "I hereby will and bequeath all my property, assets or means of any kind, to my brother Frank, who will use one half of them for public Protestant charities in Quebec and Carluke, say the Protestant Hospital Home, French Canadian Mission, and amongst poor relatives as he may judge best, is not void for vagueness or uncertainty.

Semble, there is power in the Court, where a trustee empowered to select beneficiaries under a legacy from a class, fails to do so, to order an equal distribution of the amount of the legacy among those who compose the class.—*Ross* v. *Ross et al.*, S. C., Andrews, J., Quebec, September 26, 1892.

QUEEN'S BENCH DIVISION.

LONDON, November 3, 1892.

TATAM v. REEVE, 67 L. T. Rep. (N.S.) 683.

Gaming—Action for money paid in payment of lost bets upon request of losers.

The plaintiff, upon the request of the defendant, paid for the defendant certain sums of money to certain persons. These sums were for bets on horse-races lost by the defendant, as the plaintiff knew.

HELD: *that the plaintiff was not entitled to recover, as the payments were made "in receipt of" agreements rendered null and void by* 8 *and* 9 *Victoria chapter* 109, *and by section* 1 *of the Gaming Act of* 1892, *no action could be maintained for the recovery thereof.*

LORD COLERIDGE, C. J.:—I confess I have no hesitation at all in deciding this case, and it seems to me that judgment must be given for the defendant. If a person with full knowledge of what is called a debt of honor choose to trust another he must do so at his own risk, and with the knowledge that he must suffer if the person he has trusted choose to repudiate his debt. The old act (the 8 and 9 Vict., chap. 109) was discussed in the case of *Read* v. *Anderson*, 10 Q. B. Div. 100; 13 id. 779, in which Lord Esher, M. R., emphatically dissented from the other members of the court. In that case the Court of Appeal decided that when a commission agent was employed to make bets on behalf of his principal, and where it was admitted that if the bets had been made between principals only, the contracts would have been null and void under the statute, yet that an implied contract arose and could be enforced for repayment to the agent of the sums which the agent had paid for his principal. I entirely agree with the dissent of the master of the rolls in that case, for that decision really cut into the Gaming Act (8 and 9 Vict., chap. 109), as it was a decision that a person might do by means of another what he was prohibited from doing himself. However that was the decision of the Court of Appeal, and that was an end of it. Then there was an act of Parliament passed in the present year to amend this act (8 and 9 Vict., chap. 109), and this act enacts that "any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by the 8 and 9 Victoria, chapter 109, or to pay any sum of money by way of commission, fee, reward or otherwise in respect of any such contract, or of any services in relation thereto, or in

connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money." Now the facts here are that the plaintiff was desired by the defendant to pay certain sums of money mentioned in a slip, and the plaintiff did so pay these sums, and as a matter of fact, these sums were for bets made aud lost by the defendant. Now, it was argued that these sums were not paid in respect of bets. I cannot agree with that contention. True, they were not paid "under" an agreement rendered null and void by the 8 and 9 Victoria, chapter 109, as there was no betting between the plaintiff and the defendant, but they were paid "in respect of" these betting agreements. In respect of what were these payments made by the plaintiff, except to discharge the sums which the defendant owed under these betting contracts? I decide this case with the less hesitation, as I think the plaintiff was not ignorant of the purpose of these payments. If the plaintiff had been deceived into making payments in respect of a matter he knew nothing whatever about, one would have hesitated and been sorry to come to the conclusion to which I have come in this case. I think however that the plaintiff knew very well the nature of the transactions, and therefore he must take the risk of the defendant refusing to repay him the sums he has paid. I am of opinion therefore that there should be judgment for the defendant.

WILLS, J.:—I am of the same opinion. The chief argument of the plaintiff's counsel was based on the assumption that the only object of the statute 55 Victoria, chapter 9, was to get rid of the effect of the decision in *Read* v. *Anderson, ubi supra.* If that were the only object of the statute, then it would not touch the present case, as the plaintiff here did not make the bets which he paid, and so the case is not the same as *Read* v. *Anderson, ubi supra.* During the argument I asked the learned counsel for the plaintiff what meaning was to be given to the words "in respect of" as well as the word "under," for the word "under" would have done, and would have been sufficient if the Legislature had thought that the only object was to get rid of *Read* v. *Anderson, ubi supra.* The answer was given by both the learned counsel for the plaintiff that the words "in respect of" were equivalent to "under," and meant no more. I do not think that is so, and it must be that the words "in respect of" mean something different from the word "under." I do not think it makes any difference whether the plaintiff knew or did not

know that these payments were for bets, because whether he knew or did not know, they were equally made "in respect of" an agreement null and void by the 8 and 9 Victoria, chapter 109. If the plaintiff had been misled by the defendant, then it might well be that the defendant would have been estopped from setting up this defence. It is not necessary to decide that point, as on reading the affidavits, I cannot doubt, and I have not the slightest doubt in my mind, that the plaintiff knew what these payments were for. I think therefore that there must be judgment for the defendant.

MR. JUSTICE SEDGEWICK.

Mr. Robert Sedgewick, Q. C., deputy minister of justice, has been appointed a puisné justice of the Supreme Court of Canada, to fill the vacancy caused by the death of Chief Justice Ritchie and the appointment of Mr. Justice Strong as Chief Justice.

Mr. Sedgewick was born on May 10, 1848, in Aberdeen, Scotland. His father, the Rev. Dr. Sedgewick, was a pastor of the Presbyterian Church. Mr. Robert Sedgewick entered the law office of the late Mr. John Sandfield Macdonald at Cornwall as a student. In 1872 he was called to the Bar of Ontario and in the following year to the Bar of Nova Scotia, taking up practice in Halifax where he became Recorder. In 1880 he was appointed Q. C. He was vice-president of the Nova Scotia Barristers' Society and lecturer on jurisprudence in the Dalhousie Law School. He was president of the Alumni Association of Dalhousie College and one of the governors. In 1888 he was made Deputy Minister of Justice at Ottawa. "During his five years' tenure of office," says an Ottawa letter, "Mr. Sedgewick has been, perhaps, the hardest worked officer in the service of Canada and has discharged the important and onerous duties of the office with full acceptance. All important matters of administration and legislation focus in the Department of Justice, and such was the part taken in their settlement by Mr. Sedgewick that he may be said to have shaped the course of many important matters. He has represented Canada before the Judicial Committee of the Privy Council, and was sent to Washington in connection with Behring Sea matters a few years ago. He had a great deal to do in drafting the act of 1890 respecting bills of exchange and promissory notes and the criminal code of 1892.

Possessed of ability and experience coupled with a training in an office where he often performed the function of a judge, Mr. Sedgewick's appointment to the highest court in the land is regarded as a promotion well earned."

GENERAL NOTES.

THE LAW JOURNAL (LONDON).—The *Law Journal*, at the beginning of the year, has enlarged its page and columns, and assumed a large quarto form. Several improvements in typography and make-up have also been introduced. The *Law Journal*, which has entered on the twenty-eighth year of its existence, is a worthy representative of the English Bar, and deserves the wide support which it has received from the profession.

VERDICT SET ASIDE.—A new trial is seldom ordered on the ground that the verdict was against the weight of evidence, for a jury are not often so utterly wrong-headed as to give a verdict which no reasonable men could properly find. The verdict of a Liverpool special jury in *The Bruce Sailing Ship Company* v. *The London Assurance Association* had, however, last week, the inglorious distinction of being set aside as wholly unreasonable. Then the question arose whether judgment should be entered for the appellants, or the case sent back for a second trial. The respondents' counsel stated that his clients might, if there were a new trial, call some additional witnesses who had appeared at a wreck inquiry in America. With the consent of the parties the depositions of these witnesses were read. The Court thought that the proposed evidence might possibly strengthen the respondents' case, and therefore ordered a new trial. On no other ground, apparently, could the Court have refrained from entering judgment for the appellants, for if a verdict be one which no reasonable jury could find, it obviously would be useless to submit the case to a second jury on the same evidence as before. One other point deserves to be noticed. According to the report of *Solomon* v. *Bitton* (8 Q. B. Div. 171), the granting of a new trial ought not to depend on the question whether the judge who tried the action was dissatisfied with the verdict. In the present case the learned judge had reported against the verdict, and the Court held that his opinion, though, of course, not conclusive, was a matter which they ought to take into consideration in coming to a conclusion. We are glad to find that this is good law. It is certainly good sense.—*Law Journal* (*London*).