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ENGLISH PLEADINGS.

The Judicature Act made a clean sweep of the system of special pleading once so famous and so formidable in England. Under the provisions of that Act no particular form of pleading is necessary. Those who come before the Courts are directed to set out their ground of action concisely and clearly. But notwithstanding the freedom enjoyed under the Statute, there is a tendency at times to relapse into the prolixity of the discarded system of pleading. In a recent case of *Davy* v. *Garrett*, before the Lords Justices, the appeal referred solely to a question of pleading. The plaintiffs, Davy & Co., in stating the causes of action against the defendants, delivered a claim of forty-three pages in length, in which they went into numerous transactions in detail, and set out the whole or parts of some thirty letters, and other documents. One of the defendants objected that this elaborate pleading was prolix and embarrassing, and offended against the rules of the Judicature Act, by which it is expressly ordered that every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved; while by another rule it is ordered that any expense caused by unnecessary prolixity of pleading shall be borne by the party offending. Vice-Chancellor Hall deemed the pleading admissible on the ground that the circumstances of the case were special and peculiar, and it was almost impossible to say what might or might not be relevant or necessary. The Judge remarked that it is not easy to please a defendant. If the statement of claim is too long, he calls it prolix; if it is very brief, and the case goes to trial, he will object that he has not had notice of the precise nature of the claim against him.

The defendants, however, appealed, and the effect of the recent decision of the Lords Justices is that the Vice-Chancellor has been overruled, and the forty-three paged pleading struck from the record. In delivering judgment, Lord Justice James referred in pointed terms to the necessity of guarding against abuses. "The Court must take care," his Lordship said, "that pleadings shall not be allowed to degenerate into the offensive practice formerly in force. We must not be driven to confess, as Oliver Cromwell did, with a sigh, in reference to his ineffectual attempts to reform the law and procedure of this country, that the sons of Zeruiah are too hard for us. I, for my part, do not mean to succumb to their devices." His Lordship, no doubt, speaks with the knowledge acquired by long experience of the traps and snares that once beset the path of the pleader, and his views will secure approval. It may be remarked, however, that, judging from the statistics given in our last issue, simplification of procedure has in no way diminished the length of trials.

CONVENTIONAL PRESCRIPTION.

The case of *Bell* v. *Hartford Fire Insurance Co.*, which is noted in the present issue, presented a question of some novelty. To an action on a policy, the defendants pleaded the conventional prescription of the policy, in which it was provided that no suit shall be "sustainable "unless commenced within twelve months "next after the loss shall have occurred." The plaintiff answered that the conventional prescription was interrupted in consequence of the Company having tendered a certain sum in settlement. Judge Dunkin refrained from stating a rule as to the liability of conventional prescription to interruption. His Honor remarked that it may or may not be interrupted, according to the precise circumstances of each case. But in the present instance the Company was protected by a clause very strongly drawn, making the mere lapse of time conclusive evidence against the validity of the claim. Under these circumstances, it was held, the tender of money, at once refused, did not interrupt the prescription.

RIGHTS OF RAILWAY BONDHOLDERS.

We print in this issue an important judgment rendered by Chief Justice Meredith in the case of *Wyatt* v. *Senecal*, affecting the rights of railway bondholders. The case is also of general interest to hypothecary creditors where any considerable part of their security depends on immoveables by destination. The learned Chief Justice sustained the proceeding in revendication taken by a bondholder to prevent rolling stock from being removed from the railway.

REPORTS AND NOTES OF CASES.

SUPERIOR COURT.

Quebec, Feb. 8, 1878.

MEREDITH, C. J.

WYATT v. SENECAL.

Railway Bondholders, Rights of—Saisie-Conservatoire.

Held, that a holder of railway bonds has the right, by conservatory process, to prevent rolling stock which is hypothecated for the payment of the bonds, from being removed from the road.

MEREDITH, C. J. This case comes before the Court upon a motion to quash the writ of *saisie-revendication* therein issued.

The declaration alleges that the plaintiff is the holder of certain bonds duly issued by the Levis & Kennebec Railway Company in virtue of various acts of the Legislature of this Province; that by law, and by the tenor of the said bonds, the railway belonging to the said Company, and all the rolling stock, and equipment thereof, became, were, and are mortgaged and hypothecated in favour of the said plaintiff, for the amount of the said bonds, and of the interest due, and to become due thereon.

The declaration further alleges, that for some time previous to the institution of this action, the defendants were in possession of the said railroad, and of all the rolling stock belonging to the same,—and that the defendants, with intent to defraud the plaintiff and to deprive him of his just rights as a mortgagee of the said road, had caused part of the rolling stock, to wit, nine platform cars, to be moved from the said railway, and to be placed on the Grand Trunk Railway at the St. Henri Station, with the intention of causing them to be sent to the Acton Station, on the Grand Trunk Railway, at a distance of more than 100 miles from the Levis & Kennebec Railway.

Upon an affidavit alleging these facts, the plaintiff obtained a writ of *Saisie-Revendication*, under which the said platform cars have been seized; and the defendants now move that the writ, so obtained, may be quashed, on the ground that, even according to the allegations of the plaintiff's declaration, the plaintiff was not entitled to a writ of *Saisie-Revendication*, and more particularly that the present case is not one of those in which a writ of *Saisie-Revendication* is allowed by Article 866 of the Code of Procedure, which is in the following words: "Whoever has a right to revendicate a moveable, may obtain a writ, for the purpose of having it attached, upon production of an affidavit, setting forth his right and describing the moveable so as to identify it. This right of attachment in revendication may be exercised by the owner, the pledgee, the depositary, the usufructuary, the institute in substitutions, and the substitute."

The plaintiff, it must be admitted, is not an "owner, depositary, usufructuary, institute or substitute" within the meaning of that article. It is true, however, that under the Quebec Railway Act of 1869, railways have the power of pledging their property; but the plaintiff never had possession of the platform cars now seized, and therefore cannot, either under the Common Law or under the Code, have the rights of a pledgee.

On the other hand, there can be no doubt that the plaintiff has a hypothec for his bonds; and I believe it is not denied that that hypothec extends to the rolling stock. Moreover, under the 4th Section of the 36th Victoria, Chapter 45, the bonds "constitute a privileged claim on "the moveable property of the said Company."

Such being the case, the plaintiff contends he must have some means of protecting the privilege and hypothec which he holds under the law.

The defendants answer that the plaintiff can protect his hypothecary right now sought to be enforced by a writ of capias under Article 800. But the plaintiff replies that the effect of a writ of capias would be simply to keep the defendants within the Province, and that that would be of no advantage to him,—and that, at any rate, any remedy he may have against the defendants' persons ought not to interfere with his remedy for the protection of the property in which the law gives him an interest.

This is the first case, so far as I know, in which the question now to be decided has been discussed; and it is certainly by no means free from difficulty. It does, however, appear to me that the right which in the present case the plaintiff has as an hypothecary creditor, was in effect very nearly the same as the privilege which an unpaid vendor who had sold on credit was allowed under the 177th Article of our Custom.

The unpaid vendor, who had sold for ready money, had a right to proceed under Article 176 as owner; his position, therefore, would be quite different from that of the present plaintiff, who is not and does not claim to be the owner.

But the unpaid vendor, under a credit sale, had merely a privilege on the proceeds of the sale of his goods, in the same way as the plaintiff would have a privilege upon the proceeds of the hypothecated property if it were brought to sale. The unpaid vendor, under a credit sale, was not an owner, pledgee, depositary, usufructuary, institute, or substitute, within the meaning of Article 866 of our Code of Procedure, and yet he was constantly allowed to protect his privilege by a *saisie-conservatoire*, which in this district was called a *saisie-revendication*, and which differed but little, if at all, in legal effect, from the process now before the Court.

In three cases reported (2 L. C. J., p. 101), it appears to have been decided by Mr. Justice Mondelet and Mr. Justice Smith that an unpaid vendor, who had sold on credit, might seize the goods sold, in the hands of the vendor, who had become insolvent.—(Lower Canada Jurist, vol. 2, p. 101.)

A decision to the same effect was rendered by Mr. Justice Badgley in *Le Duc* v. *Tourigny* (5 Jur. 123), and by Mr. Justice Monk in *Baldwin* v. *Binmore* (6 Jur. 297)—the process being spoken of in the two cases last mentioned as a *saisie-conservatoire*.

In the following years, in this district, in the case of *Poston* v. *Gagnon* (12 L. C. Rep. 252), the plaintiff, an unpaid vendor, who had sold on credit, sued out a *saisie-revendication*; and the only question which seems to have been discussed, was as to whether the plaintiff had a right to a *saisie-revendication* without an affidavit.

Sir A. A. Dorion, in rendering the judgment of the Court of Appeals in *Henderson* v. *Tremblay* (21 Jur. p. 24), referred approvingly to the judgments in *Torrance* v. *Thomas*, *Leduc* v. *Tourigny*, and *Baldwin* v. *Binmore*, above cited, observing:—"Les tribunaux du pays ont souvent permis aux parties interessées de pratiquer des *saisies-conservatoires* pour protéger, dans des cas analogues, des droits qu'elles étaient exposées à perdre."

The judgment of the Court of Appeals in *Henderson* v. *Tremblay*, itself, has an important bearing on this case.

The plaintiff in that case, as an unpaid vendor, had sued out a *saisie-revendication*; the Court of Appeals declared that the sale was on credit, and therefore that the plaintiff was not in a position to exercise the right of revendication, but they at the same time said, that although the attachment by the plaintiff was "in the nature of a *saisie-revendication*, it would "nevertheless avail to him as a *saisie-conserva-toire*."

The contention of the plaintiff is that if, as the defendants maintain, he be not entitled to a *saisie-revendication*, under Article 866, then that he must have a remedy under Article 21, which declares that "whenever the Code does "not contain any provision for enforcing or "maintaining some particular right or just "claim, or any rule applicable thereto, any "proceeding adopted which is not inconsistent "with law, or the provisions of this Code, is "received and held to be valid."

The plaintiff further contends that the remedy which he has adopted protects his rights without interfering with the rights of any other person,—and such seems to me to be the case, for the effect of the writ, so far as we now can see, is merely to prevent the carrying away of property hypothecated in favour of the plaintiff; and as to the name given to the writ, I do not think it ought to materially affect the question to be decided.

It is to be recollected that when the judgments of the Superior Court, of which I have spoken, were rendered, the defendants could urge, and did urge, the provision of the 27th George III., declaring that attachment before judgment should be allowed in certain cases only; and that the case of the unpaid vendor, who had given credit, was not one of those cases. Also that we had not, at the time of the rendering of those judgments, any general provision, such as is to be found in Article 21 of the Code of Procedure already cited; and if our courts, without any provision of law, such as that last mentioned, and notwithstanding the 27th George III., allowed the unpaid vendor the benefit of a *saisie-conservatoire* for the protection of his privilege, it seems to me that the courts now ought to allow the plaintiff, as a privileged and hypothecary creditor, a like

remedy for the protection of his rights. For these reasons, although the case (which, so far as I know, now presents itself for the first time,) is not free from difficulty, I deem it my duty to reject the motions of the defendants to quash the *saisie-revendication*.

Motions rejected.

Hon. G. Irvine, Q.C., for plaintiff.
Mr. Bossé, Q. C., for defendant.

Montreal, Jan. 31, 1878.

DUNKIN, J.

BELL v. HARTFORD FIRE INSURANCE CO.

Conventional Prescription—Interruption—Tender.

Held, that a tender (not accepted) of money by an insurance company in settlement of a loss is not an interruption of the conventional prescription of one year under the policy.

The plaintiff sued to recover a loss under a contract of fire insurance. An interim receipt had been granted, but the fire occurred before the policy issued. The Company, defendant, among other grounds of defence, set forth that the interim receipt was given subject to all the conditions of a future policy; that of these one was that no proceeding for recovery of a claim should avail unless commenced within twelve months after the loss, "and should any suit or action be commenced later, the lapse of time shall be taken and admitted as conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding"; and prescription was pleaded accordingly.

The plaintiff answered this plea by saying that the Company, on the 18th April, 1874, (within the year after the loss, and also within a year before action brought) tendered him $587.15, and that the term of the conventional prescription set up by the first plea was thereby extended so as to count from that date, and therefore did not avail as against this suit.

On this point, the following remarks were made by

DUNKIN, J. As to the first question, the Court is not prepared to say that conventional prescription is not liable to interruption. It may be or may not be, according to the precise circumstances of each case. The clause here invoked as creative of it is very strongly drawn —"no suit shall be sustainable unless commenced within 12 months next after the loss shall have occurred"; and if commenced later "the lapse of time shall be taken and admitted as conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding." Interruption against this is claimed simply by reason of a tender of money made unconditionally, and as unconditionally at once refused. Such tender was an indiscretion from the present point of view of the Company defendant. But it took place months before the expiration of the year, and neither caused nor tended to cause delay as to prosecution of the claim. On the whole, the Court fails to see in it any interruption of the prescription here in issue.

Action dismissed.

Judah, Wurtele & Branchaud for plaintiff.
Carter & Keller for defendants.

Montreal, Feb. 5, 1878.

RAINVILLE, J.

HILYARD v. HARMBURGER.

Affidavit under Sec. 105, Insolvent Act of 1875—Prothonotary.

The affidavit required for a writ of attachment under the Insolvent Act may be sworn before the Prothonotary or his Deputy, notwithstanding the omission to include this officer in the enumeration in Section 105 of the Act.

Keller for plaintiff.
Kerr & Carter for defendant.

COURT OF QUEEN'S BENCH.

Montreal, Jan. 29, 1878.

Present: DORION, C. J., MONK, RAMSAY, TESSIER, and CROSS, JJ.

ROBERTSON et al. (plffs. below), Appellants; and LAJOIE (deft. below), Respondent.

Warehouse Receipts—Warehousemen—Pleading.

Held, 1. That a document in the following form was a warehouse receipt, and not a mere delivery order:—

"Received from Ritchie, Gregg, Gillespie & Co., on storage, in yard Grey Nun Street, the following merchandize, viz.:—

"(300) Three hundred tons No. 1 Clyde Pig Iron, storage free till opening of navigation,

"Deliverable only on the surrender of this receipt properly endorsed.

"Montreal, 5th March, 1873."

THOMAS ROBERTSON & Co.

2. That the parties signing such warehouse receipt, unpaid vendors of the iron, could not pretend that it was not a warehouse receipt inasmuch as they were not warehousemen, as against a holder of such receipt in good faith.

3. That such warehouse receipt may be transferred by endorsement as collateral security for a debt contracted at the time, in good faith, the pledgee having no notice that the pledgor is not authorized to pledge, the proof of such knowledge being on the party signing the receipt.

4. That an obligation contracted at the time may be made to cover future advances, but not past indebtedness.

The Chief Justice and Mr. Justice Cross, although agreeing with the majority of the Court as to this view of the law, would have reversed the judgment inasmuch as the declaration alleged it was for advances, without setting forth that it was for advances subsequent to the transfer of the warehouse receipts.

The majority of the Court were of opinion that the declaration was defective, but as the declaration had not been specially demurred to on this ground, and as the defendants had allowed the plaintiff on the issues to prove the fact that advances to a much greater amount than the value of the iron mentioned in the receipts had been made by Nelson Davis to Ritchie, Gregg, Gillespie & Co., subsequently to the transfer of these receipts, the defect in the declaration was covered. The majority of the Court, therefore, maintained the judgment of the Court below, and dismissed the appeal with costs.

Judgment confirmed.

H. L. Snowdon for Appellants.

Abbott & Co. for Respondent.

HEARLE (plaintiff below), Appellant; and RHIND (defendant below), Respondent.

Revendication—Service of Declaration—Warehouse Receipts given by other than a Warehouseman.

1. It is not necessary that a copy of the declaration in an action of revendication should be served at the prothonotary's office by a bailiff; it is sufficient that a copy be left at the office.

2. Warehouse Receipts granted without authority by the President and Secretary of a company not doing business as warehousemen are invalid.

This was an action in revendication, by which the appellant as endorsee of five warehouse receipts given by the Moisic Iron Company to John McDougall, claimed 1100 tons of iron of the value of $29,500. Two of the receipts were signed by W. M. Molson as President of the Company, and three by Roberts as Secretary.

The defendants filed an exception to the form, alleging that a copy of the declaration was not served upon them. A certificate of the prothonotary was produced, establishing that a copy of the declaration had been lodged in their office within three days from the service of the writ of summons. The defendants also pleaded to the merits, that they were not warehousemen and could not give warehouse receipts; that their President and Secretary had no authority to grant such receipts; that the receipts were not negotiable instruments.

The Court below, holding that under Arts. 850 and 868, the copy of the declaration in an action of revendication must be served by a bailiff, and that it was not sufficient that it should be lodged in the office by any other party, dismissed the action.

DORION, C. J. Art. 850 of the Code of Civil Procedure provides that in cases of *saisie-arrêt* before judgment the declaration may be served at the same time as the writ, or by leaving a copy thereof at the Prothonotary's office within three days after the seizure has been made. And Art. 868 applies the provisions of Art. 850 to cases of revendication. The same rule is laid down in Art. 804 as to the service of the declaration in cases of capias, although in somewhat different terms. This mode of serving the declaration is not new. The three articles above referred to are taken from the Consol. Stat. L. C., c. 83, s. 57. Under this statute it was formally decided by Mr. Justice Monk in *Raphael* v. *McDonald* (10 L. C. Jurist, 19), by Mr. Justice Badgley in *Brahadi* v. *Bergeron*, and by the Court of Appeals in the same case (10 L. C. Jurist, 18, 117), that the declaration need not be served by a bailiff, but that it is sufficient if it is filed at the prothonotary's office within the three days after the seizure or service of the capias. The majority of this Court have no hesitation in holding that the filing of a copy of the declaration in the prothonotary's office was a sufficient service both under the terms of the Code and the jurisprudence which has sanctioned this practice.

On the merits we are all agreed that the action must be dismissed, as there is no evidence whatsoever that the Moisic Iron Company carried on the business of warehousemen, nor that the President and Secretary of the Company were ever authorized to sign warehouse receipts to pledge the Company's property.

The judgment will, therefore, be confirmed, but not for the reasons assigned by the Court below.

Judgment confirmed.

Doutre & Co. for the Appellant.

Kerr & Carter for the Respondent.

[In Chambers.]

Montreal, Nov. 19, 1877.

Cross, J.

Ex parte John Thompson, for a writ of Habeas Corpus.

Habeas Corpus—Variance between Judgment and Commitment.

1. A judgment condemning the defendant to pay certain costs specified, and concluding with the words "the whole with costs," includes the necessary future costs of executing the judgment, and a commitment including such additional costs is not in excess of the judgment.

2. A habeas corpus will not be granted where the petitioner is detained in a suit for a civil matter, before a Court having jurisdiction over such matter.

The petitioner represented that he was confined in the Common Gaol for the District of Montreal under a Sheriff's warrant, dated 18th April, 1877, based on a judgment of the Superior Court of same date, declaring absolute a rule for coercive imprisonment obtained by Henry Jevons, plaintiff, against the petitioner as defendant, ordering him to be imprisoned until he shall have paid $200.64 of a debt, with interest from the 9th January, and costs of the rule, with $41.10 taxed costs in the cause.

The principal reason adduced in support of the application was that the terms of the commitment were in excess of those of the judgment. The excess specified was that the commitment required the petitioner to pay, in order to be released, the costs of the rule $13.15; costs of writ, $2; and costs of warrant, $4; also costs of arrest, $5.

Cross, J. The strict rules applicable to convictions by magistrates and tribunals of inferior or limited jurisdiction cannot be allowed to govern the present case. The detention of the applicant is for debt, and the process is in a suit for a civil matter. It is contended that the specific cause of detention should have been set forth in the Sheriff's warrant, and that it should have appeared to be one for which the law authorized imprisonment. It is fairly answered that the Court which rendered the judgment, and from which the process issued, is a Superior Court having jurisdiction over the subject matter, in favor of which there is a presumption that its jurisdiction has been rightfully exercised. The warrant and judgment authorize the prisoner's detention for a cause over which the Superior Court had jurisdiction. Whether their judgment was erroneous, or their authority irregularly exercised, cannot at present, in my opinion, be made the the subject of a valid complaint before a Judge of this Court in Chambers.

If, as in the case of Cutler determined in the last Term of the Queen's Bench, Criminal Side, there was no judgment ordering the imprisonment, then I would liberate in the absence of a legal cause of detention. But here it is otherwise. There is a judgment ordering the imprisonment, and the Court had authority over the matter.

As to the reason, that the warrant or commitment is in excess of the judgment, I do not find this to be so in fact. The costs of the writ for *contrainte*, the Sheriff's warrant and the bailiff's fees being included are a necessary incident, a sequence of and comprised within the terms of the judgment of the 18th April which specifies all costs made up to that date, and passing a condemnation specific for everything incurred up to that date, concludes in the words, "the whole with costs." These terms apply to and include the necessary future costs of executing the judgment. The extent of these costs cannot at the time be foreseen nor specified, yet they are a necessary incident to carrying into effect the judgment which would in all like cases have to be borne by the plaintiff, unless they could in this manner be collected from the defendant. The practice of the Civil Courts does not require these costs to be assessed beforehand, nor could they well be so assessed.

Application refused.

Euclide Roy for the petitioner.

St. Pierre for the Crown.

[In Chambers.]

Montreal, Feb., 1878.

Monk, J.

Ex parte Healey, Petitioner for Writ of Habeas Corpus.

Habeas Corpus in Civil Matters.

A writ of Habeas Corpus will not be granted to liberate a prisoner charged with process in a civil suit, even though the writ of execution in virtue of which he was arrested appear to be irregular, if it is within the scope of the jurisdiction of the Court from which it issued.

Ramsay, J. The case was argued before Mr. Justice Monk, who, being indisposed, has requested me to say that he is of opinion that the writ should be refused, and his order to that effect is endorsed on the application. As I was present at the argument, and as he conferred with me on the matter, he has requested me to state his reasons for refusing the writ, and in which I concur. I have also consulted the other Judges of this Court, save Mr. Justice Tessier, with whom I have not been able to confer, on account of his being at Quebec. Those present here agree with me in the opinion expressed in the present case.

This is an application to a Judge in Chambers for a writ of Habeas Corpus. The cause of commitment was alleged to be a warrant of the Sheriff setting up a writ of *contrainte par corps* addressed to the said Sheriff, wherein it was declared and set forth that, "by judgment rendered in the said Superior Court at Montreal, on the 1st day of June, 1876, on a rule for *contrainte par corps*, obtained by the plaintiffs against the defendant in a certain cause No. 2,581, wherein the Delaware, Lackawanna & Western Railway Company, a body politic and corporate, duly incorporated, according to the laws of the State of New York, one of the United States of America, is plaintiff, and Christopher Healey, of the City and District of Montreal, trader, defendant, the said Christopher Healey was condemned to pay and satisfy to plaintiff the sum of $352, currency, with interest thereon from the sixteenth day of November, 1875, day of service of process in this cause, until actual payment and costs of suit, and it was further declared and adjudged that the said defendant was guilty of fraud, by reason of his purchase from plaintiff and non-payment thereof after the delivery of the goods to him; it was ordered under the said judgment that the said Christopher Healey be imprisoned in the common gaol of this district for the term and period of three months, unless such debt and costs be sooner paid." The warrant then relates that this judgment was confirmed in appeal, that the said defendant had failed to pay the debt and interest as ordered by the said judgment, and that the Sheriff is commanded to take the body of the said defendant, "and to detain him in the common gaol of the district for the term and period of three months, unless he pays to said plaintiff the said sum of $352 with interest as aforesaid, and also the sum of one dollar for the writ of *contrainte*." The warrant, therefore, commands the bailiffs and gaoler to whom it is addressed to take the body of the said Christopher Healey, if he be found in the district, "and to detain him in the common gaol of the said district for the term of three months, unless he pays the said plaintiffs the said sum of $352 with interest as aforesaid, also the sum of one dollar for the writ of *contrainte par corps*."

Two grounds are urged by the petitioner in support of his application: first, that the imprisonment is commanded on grounds of alleged fraud, without in any way showing that the petitioner had been guilty of said offence; second, that it is not alleged where the debt referred to in the commitment was contracted, and that there is no ground or reason set forth to warrant the imprisonment.

The rest of the reasons are merely formal.

The judgment was also produced, and it sets forth the purchase by defendant of goods to the value of $352 on credit on a certain day; that on that day defendant knew that he was unable to meet his engagements; that he concealed the fact from the plaintiffs with intent to defraud them, and that he had not paid them. The Court, therefore, condemned the said defendant to pay and satisfy to plaintiffs the said sum of $352 currency, with interest thereon until payment of costs of suit; and further declared defendant to be guilty of a fraud by reason of his said purchase and non-payment after delivery of said goods to him, and ordered that defendant be imprisoned in the common gaol of this district for the term and period of three months, unless the said debt and costs be sooner paid.

At the argument, it was contended—1st, that

the warrant was not in conformity with the judgment, for that it ordered the payment of $1 for subsequent costs; 2nd, that the *contrainte* could not go for interest and costs, but only for the debt; 3rd, that the warrant should have set forth the amount of costs; and 4th, that the commitment being for fraud, it was for a criminal or supposed criminal offence, and consequently that the application was not made under the authority of Sections 20 to 25, Cap. 95, C. S. L. C.

The scope of this argument is somewhat wider than is suggested by the reasons of the petition; but taking the argument as it was offered, it may be as well to dispose of the last point. This is beyond all question an application for a *habeas* under the sections somewhat incorrectly classed as being those relating to *habeas corpus ad subjiciendum* in civil matters. In other words, it is not an application in a case of detention for any criminal or supposed criminal offence. We have therefore to meet the prohibition of Section 25, Cap. 95, C. S. L. C. "Nothing in the five next preceding sections contained (that is, all those relating to so-called civil matters) shall extend to discharge out of prison any person charged in debt or other action, *or with process in any civil suit.*" This is clearly a process in a civil suit. The prisoner is held on the warrant of the Sheriff acting under a writ in execution of the judgment. The fraud justifies this sort of execution; but the imprisonment is not a punishment for the fraud; it is only an execution. As C. J. Jervis said in a similar case, "the object was to get the money by coercing the person of the debtor." Dakins' case, 16 C. B. 92. Whether, then, the process be good or bad we cannot touch it. This was decided in *Barber* v. *O'Hara*, 8 L. C. R., p. 216. There was also the case of *Donaghue*, which was brought before Chief Justice Duval on application for a writ of *habeas corpus*, and the application was renewed before Chief Justice Meredith. Both applications were refused, Chief Justice Duval holding that a writ of *habeas corpus* cannot be granted to liberate a prisoner charged with process in a civil suit, even though the writ of execution in virtue of which he was arrested is irregular, and Chief Justice Meredith said that even if the arrest were irregular, yet if it does not appear to be out of the scope of the jurisdiction of the Court from which it issued, it cannot be declared void, and the prisoner consequently cannot be liberated by *habeas corpus*.

Two cases of *Exp. Cutler* and *Exp. Martin* decided in the Court of Queen's Bench, Crown side, last September, were cited. In the first place it is to be observed that they were decided by the Court and not by a judge in Chambers, and this might perhaps alter the question; but it does not appear that they laid down any principle at variance with the view now taken. It was there held that there was no judgment to warrant the detention, and therefore that it was not really a process in a civil suit, but at most the semblance of one.

Several English cases were cited, and particularly *Bracey's* case, 1 Salkeld, 348, and Sancher's case, 1 Ld. Raymond, 323. These cases both turned on the excess of jurisdiction under a special authority. The former was the authority of commissioners of bankruptcy, the second that of an ecclesiastical court. The authority of the Superior Court—the great court of original civil jurisdiction in civil matters, which has a superintending and reforming power, order and control over all courts and magistrates, and all other persons and bodies politic and corporate in the Province, saving only this Court, is not a special but a general power. These cases, therefore, do not apply in any way. The case which has gone furthest in England is that of Dakins, already mentioned; but that was a case of privilege. The petitioner had a right to be discharged owing to a personal privilege, and the Court, therefore, gave relief by way of *habeas*, because he was plainly detained without right, not on a judgment, but by an execution beyond the authority of an inferior tribunal.

Writ refused.

Carter, Q.C., and *Devlin*, for Petitioner.
St. Pierre for the Crown.

RULES OF PRACTICE.

The following Rules of Practice made by the Court of Queen's Bench, Appeal side, at Montreal, on the 16th March last, have not yet been published :—

Present :—DORION, C. J., MONK, RAMSAY, SANBORN, TESSIER, JJ.

REGULAR GENERALES.

On the first day of each term, the Clerk of

Appeals shall lay before the Court a list of all cases pending before the Court, in which no proceedings have been had for more than a year, indicating the name of the parties and of their respective counsel, the nature and date of last proceeding had in such case; and such cases shall be considered to have been deserted, and the Court may without any demand to that effect order the records to be transmitted to the Court below.

This rule to be enforced in cases now pending as well as to future cases from and after the first day of March, one thousand eight hundred and seventy-eight.

In all cases of Appeal and Error, the parties may in lieu of factums, as now required, file a special case setting forth the judgment or judgments appealed from, and so much of the pleadings, evidence, documents and orders in the cause as they may deem necessary to enable the Court to decide the questions at issue, together with such propositions of law or fact as may be relied upon by the parties respectively, and such special case shall be considered as common to both parties, and will entitle the counsel engaged in the case to the same fees as if separate factums had been filed.

The cases or factums shall be printed on paper of eleven inches by eight inches and a half, the type to be small pica leaded face, and every tenth line numbered in the margin.

(Certified,)

L. W. MARCHAND,
Clerk of Appeals.

CURRENT EVENTS.

ENGLAND.

Newspaper Reports.—In the case of *Usill* v. *Hales et al.*, decided by the Common Pleas Division of the English High Court of Justice on the 30th ult., there were three actions for libel brought by the plaintiff, a civil engineer, against the three defendants as printers and publishers of the *Daily News*, the *Standard* and the *Morning Advertiser*. Certain persons who had been employed by the plaintiff in the construction of a railway in Ireland applied to a metropolitan police magistrate for a criminal process against the plaintiff, to recover from the plaintiff the wages due to them. The magistrate dismissed the application on the ground that he had no jurisdiction, and a report of the proceedings was printed and published in the defendants' newspapers, which was the libel complained of.

At the trial the jury found the report in the newspapers to be a fair and impartial report of what took place before the magistrate. The judge ruled the report to be privileged, and his decision was sustained by the Common Pleas Division. The *Solicitors' Journal* says that this case, though likely to be cited as a leading case, and overruling, as Lord Coleridge said, what has been over and over again laid down by great judges, is really only a return to the old lines. In 1796, in *Curry* v. *Walter* (1 Esp. 456; 1 B. & P. 525), an action was brought in respect of "an account published in the newspaper called the *Times*," of an application for a criminal information. It was ruled by Eyre, C. J., and afterward by the Court of Common Pleas, that the action did not lie. This ruling, which was very shortly reported, though approved in *R.* v. *Wright* (8 T. R. 298), soon became a mark for judicial attack. Lord Ellenborough, in *R.* v. *Fisher* (2 Camp. 563), and Lord Tenterden, in *Duncan* v. *Thwaites* (5 D. & R., at p. 479), distinctly disapproved of it. Lord Campbell, in *Lewis* v. *Levy* (E. B. & E. 537), with characteristic caution, expressly left the point open. Lord Chief Justice Cockburn, in *Wason* v. *Walter* (L. R., 4 Q. B., at p. 94), with equally characteristic boldness, predicted that, if any action or indictment founded on an *ex parte* proceeding were to be brought, it would probably be held that the true criterion of the privilege was, not whether the report was or was not *ex parte*, but whether it was a fair and honest report of what had taken place, published simply with a view to the information of the public, and innocent of all intention to do injury to the reputation of the party affected.

Sir Edward Creasy.—Sir Edward Creasy, who recently died in England, was for two years Chief Justice of Ceylon, and had occupied an inferior judicial position in England. He is best known to Americans by his works, "The Rise and Progress of the British Constitution," and "The Fifteen Decisive Battles."

A JUDGE SHOT AT.—A cablegram states that Sir George Jessel, Master of the Rolls, was shot at on the morning of February 22nd, while alighting from a cab at the Rolls Court, by one Dudwell, supposed to be insane, whom the Judge had on a previous occasion ordered to be removed from the Court for causing a disturbance.

UNITED STATES.

THE VALUE OF A LAWYER'S SERVICES.—Judge Freedman, in charging the jury in a case tried last week in the New York Superior Court, made some pertinent remarks upon the interesting subject of the value of a lawyer's services. Litigants, and those who have occasion to apply to the profession for service or advice, are apt to estimate the worth of what is done for them by the time occupied in doing it, and, therefore, are very much dissatisfied when a charge of a considerable amount is made for what apparently occupied only a few hours or a few days of the counsel's time. But, as Judge Freedman says:

"To become proficient in the necessary knowledge relating to all these matters involves years of self-denial, close application and devotion, and a study of almost a life-time. A lawyer's compensation is, therefore, not to be measured merely by the time he actually spends in the discharge of his duties. An advice given in a short interval, but founded upon years of previous acquaintance with the question involved, may, in an important case involving large interests, be worth quite a sum of money."

The popular feeling in reference to lawyers' charges is, however, to some extent encouraged by the action of certain members of the bar who, to secure business, underbid their brethren, and certain others who habitually make no charge for advice, even to those able and willing to pay.—*Albany Law Journal.*

RICHES AND INSANITY.—The connection of riches and insanity has been forcibly made manifest by several cases pending before the courts of New York during the past month or two. The Lord-Hicks case and that of Miss Dickie have given the newspapers an opportunity to attack the laws relating to lunacy and the estates of persons of unsound mind, and to propose all sorts of changes therein for the purpose of protecting those whose property is liable to tempt their immediate relatives to construe eccentric acts into evidences of insanity. That the laws need amendment is undoubtedly true, but they should not be so altered as to take from the immediate relatives of persons believed to be insane all right to appeal to the courts of law and authorities for power to control such persons and their property. While the immediate relatives of an individual may not always be solicitous after his welfare, as a rule they are so, and they certainly are more to be trusted than a stranger who volunteers to interfere. The subject is one of difficulty, and under the best devised systems will occur cases of wrong and oppression.—*Ib.*

WOMEN AS ADVOCATES.—The Washington House of Representatives, Feb. 21, passed the bill admitting women to practise before the Supreme Court of the United States:—Yeas, 169; nays, 87.

TESTIMONY OF ACCOMPLICES.—In *State* v. *Hyer*, 10 Vroom (39 N. J. Law), 598, it is said that although the practice of courts is to advise juries not to convict a defendant on the uncorroborated testimony of an accomplice, yet a conviction founded on such evidence is strictly legal. This doctrine is supported by high authority. In *Atwood and Robbins' case*, 1 Leach's C. C. 464, which was a trial for robbery from the person, the only evidence to identify the prisoners and connect them with the robbery was the testimony of an accomplice, that he and defendants were the persons that committed the crime, and a conviction was held legal. In *Rex* v. *Durham*, 1 Leach's C. C. 478, the case was permitted to go to the jury upon the sole evidence of an alleged accomplice, the judge stating that the twelve judges who sat in the *Atwood and Robbins'* case were unanimously of the opinion that the practice of rejecting an unsupported accomplice was rather a matter of discretion with the court than a rule of law. In *Rex* v. *Jones*, 2 Campb. 431, Lord Ellenborough remarks, "no one can reasonably doubt that a conviction is legal, though it proceed on the evidence of an accomplice. Judges in their discretion will advise a jury not to believe an accomplice unless confirmed." In *Rex* v. *Wilkes*, 7 C. & P. 272, Alderson, B., said to the jury, "you may legally convict on the evidence of an accomplice only, if you can safely rely on his testimony." To the same effect see *Reg.* v. *Farlar*, 8 C. & P. 106. In *Reg.* v. *Stubbs*, 33 E. L. & Eq. R. 552, it is said "it

is not a rule of law that accomplices must be confirmed in order to render a conviction valid, but it is usual in practice for the judge to advise the jury not to convict on such testimony alone, and jurors generally attend to the judge's direction, and require confirmation, but it is only a rule of practice." In 1 Wharton's Cr. Law, § 783, the author states that the preponderance of authority in this country is that a jury may convict a prisoner on the testimony of an accomplice alone, though the court may at its discretion advise them to acquit unless such testimony is corroborated on material points, and numerous authorities from different States are given in support of this statement. In Pennsylvania, the statute establishes a different rule. If the credibility of the accomplice be otherwise impeached, it is ground for new trial. *People* v. *Haynes*, 55 Barb. 450.—*Albany Law Journal.*

The Late Mr. Welles.—Gideon Welles, ex-Secretary of the Navy, who died recently, studied law in the offices of Chief Justice Williams and Judge Ellsworth, of Connecticut, and was admitted to the bar, but he was never engaged in active practice.

Examination of the Accused.—A short time ago a bill was introduced in the English Parliament, the object of which is to permit the questioning, on oath, of persons accused of crime, and the motion for its second reading gave rise to an extended discussion. The arguments advanced for and against the bill were exceedingly able, and show that those members who took part in the debate have made themselves familiar with the subject. The advocates of the measure contended that the result following its adoption would be the surer conviction of the guilty and the greater chance of escape of the innocent. That an innocent prisoner of intelligence would be benefited was admitted, but it was claimed that the proposed law would change the onus of proof from the prosecution, where it now is, to the defence. The bill provides that a refusal of the accused to testify shall not create a presumption against him, but as the inference to be drawn from the prisoner's action must be drawn by a jury, it was alleged that this provision would amount to nothing. The opinion of the chief judge of the New York Court of Appeals that "the change has not given very great satisfaction" here, and that of the Chief Justice of New Jersey, that, while the "system, with respect to the elucidation of truth, has worked well," it has led to a great amount of perjury, was quoted in opposition to the measure. The prospects of the success of the bill seem remarkably good, as it was passed to a second reading by a majority of 109. The result of an experiment of a similar character, made here, has proved satisfactory, and we are confident that very few would wish to have the old rule restored. The law may, indeed, sometimes work harshly in this way. When a prisoner is put upon the stand to testify, the prosecution is able, under pretense of impeaching him as a witness, to introduce testimony in relation to his character. Thus it is dangerous for a person whose reputation has been bad to testify in his own behalf. But if he does not testify, the jury, in a doubtful case, are inclined to infer guilt, though the statute contains a provision that refusal to testify shall raise no presumption. This, however, is considered a minor evil, as it affects only those who have by their course of life deprived themselves of public sympathy. To an innocent person of previous good character, accused of crime, it is a very great advantage and undoubtedly reduces to almost nothing the chances of conviction in such cases. That the guilty are much more frequently convicted than in former times is also very certain.—*Albany Law Journal.*

QUEBEC.

Court of Queen's Bench, Quebec.—Feb. 22, Hon. Atty.-Gen. Angers introduced a bill to amend Chap. 77, C. S. L. C., respecting the Court of Queen's Bench. The object is to enable the Court to sit longer on the Civil Side. To carry out this object it is proposed to appoint a sixth Judge.

RECENT UNITED STATES DECISIONS.

Trial.—The want of any record of an arraignment, even in a capital case, is not error, if the record shows a plea of not guilty; otherwise, if it does not.—*Early* v. *The State*, 1 Tex. N. S. 248.

Trade-mark.—An official inspector of fish, who brands the packages of fish packed by him in the course of his duty with his official brand,

does not thereby gain a private right in such brand as trade-mark.—*Chase* v. *Mayo*, 121 Mass. 343.

Watercourse.—Trespass by a riparian proprietor for carrying away gravel from the bed of the stream. The Court took judicial notice that the stream was not navigable, and *held* that, this being so, the fact that its bed was not included in the United States Survey, nor in terms conveyed to the riparian owner, did not exclude his ownership *ad filum aquæ.*—*Ross* v. *Faust*, 54 Ind. 471.

NEW PUBLICATIONS.

Mr. Joel Prentiss Bishop, the well-known author, has recently published a work on "The Doctrines of the Law of Contracts." In his preface he says:

"This book is the outgrowth of a plan to collect, in simple and compact language, and arrange in an order of my own, the essential doctrines of the law of contracts; referring mainly to the larger books, which the reader was expected to consult as he had occasion, for illustration and the adjudged cases. But on proceeding to do what I had thus undertaken, I found the plan impossible with me, though doubtless it would not be with an author of greater ability. When I felt, in those books, for the ribs in the body of the law of contracts, and for the spinal column, I could not distinguish rib or backbone from muscle.

"Should I abandon altogether what I meant? That I would not do. So I have traveled through the adjudged cases, collected the leading doctrines, and arranged from them what I deemed to be a skeleton of the law of the subject, put with it so much of flesh in the form of illustration as seemed imperative, and draped the whole with as thin a gauze of needless words as I deemed the public taste would bear. My object has been to present the body of the law of contracts, without its bloat, in form to be examined and re-examined, by old and young, the learned and the unlearned,—the student, the practicing lawyer, the judge, the man of business,—as any skeleton is, by all classes of enquirers.

"But why refer to so many cases? Because, first, the foot-notes are in nobody's way,—they do not injure the book for those who do not wish to use them. Secondly, those who have occasion to look beyond the general doctrines, which the text supplies, into their minuter forms, or to see further illustrations of them, have here the directions provided for ready use. Thirdly, practitioners who, in arguing before a court, desire to rely on a proposition in the book, have thus the means in hand for making the proposition good."

DISTURBING THE DEAD.—The New York *Sun* has the following: A survivor of the wreck of the iron-clad *Tecumseh*, who lives in this city, received a letter on Monday from the United States Attorney for the Southern District of Alabama, informing him of the granting of a perpetual injunction against junk dealers, and all other persons, restraining them from interfering with the remains of the iron-clad and two hundred men whose bones lie in her hulk at the bottom of Mobile Bay. The *Tecumseh* was sunk by a torpedo in the channel, off Fort Morgan, Mobile Bay, in the fight under Admiral Farragut on the 5th of May, 1864, and, of the two hundred souls on board, only seven escaped. They found egress through a hatch eighteen inches square, in the turret. The wreck has lain ever since deep down in the quicksand where the vessel sank,—a vast iron coffin for the men who went down in her, no attempt having been made to recover their bodies. Secretary Robeson sold the wreck, last winter, to junk dealers, for old iron. It being necessary to make some six hundred blasts to obtain the iron in pieces, which would have scattered the bones of the patriots in all directions, steps were taken to stop this desecration of the patriots' remains, and a temporary injunction was obtained. An appeal from the proceedings was taken by the junk dealers, and the United States Circuit Court for the District of Alabama has ordered that the injunction be perpetual.

GOING BEYOND THE JURISDICTION.—A creditor in Maysville, Ky., sought to get an attachment on the ground that his debtor had said, "I'm going to sell out and go to hell," thus justifying a belief that he intended to quit the State. The Justice decided that the remark was no indication that the debtor meant to go out of Kentucky.