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Edited by James Kirby, Advocate.

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A separate Index has been prepared to the Reports of Cases decided in Lower Canada, and also to the Selections from the English Law Reports. The following is the

MODE OF CITATION OF "THE LAW REPORTS."

Appellate Series.—House of Lords, Law Rep. H. L.
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PROPOSED CHANGES IN THE ACT RESPECTING THE BAR.

A step has at last been taken towards amending the Act incorporating the Lower Canada Bar. At a special meeting of the Montreal section, on the 16th May, a Committee was appointed to take into consideration certain resolutions which had been submitted, and to make any necessary or desirable alterations in the Act and by-laws at present in force. This Committee, of which Mr. R. MACKAY was chairman, reported, on the 9th June, to a general meeting of the bar, which was adjourned till the 16th, for the consideration of the report. The gist of the proposed changes may be stated as follows: To raise the standard of qualification for candidates desirous of being admitted to the study and practice of the profession; to increase the fees payable on admission to study and to practice; to purge the bar of felons, criminals, and others, who, by disgraceful and unworthy conduct, reflect disgrace upon the profession; to take away the right of attacking the judgments of councils of sections, by *certiorari*, or appeal to the civil courts, and to restrict appeals solely to the general council; to substitute a semi-annual examination of candidates for a monthly one, as at present; to make the treasurer the direct receiver of all fees payable to the bar, and otherwise to provide checks for the proper administration of the finances.

Some of these changes, it will be perceived, are of considerable importance, and it was, therefore, with regret that we observed such a small attendance of members at the general meetings called to discuss the report. On the 16th June, the only senior members of the profession present were Mr. A. ROBERTSON, Q. C., Batonnier, Mr. DOUTRE, Q. C., Mr. MACKAY, Mr. RITCHIE, Mr. CASSIDY, Q. C., Mr. W. DORION, and Mr. DORMAN. At the adjourned meeting, on the 18th, there were present, during the first half of the session, only Messrs. ROBERTSON, Q. C., DOUTRE, Q. C., and MACKAY, from among the senior members of the profession. Subsequently Messrs. LAFLAMME, Q. C., RITCHIE, POMINVILLE, W. ROBERTSON, and others, participated in the discussion. We mention these names to show that although there are few members of the bar who have not advocated reform, yet when a move is made in the desired direction, a lack of zeal is manifested in carrying out the projected improvements. There was not much difference of opinion on the changes suggested in the report, with a few exceptions which we shall here notice. First, as to the frequency of examinations, it was represented, and we think with reason, that a semi-annual examination may often subject worthy and thoroughly prepared candidates, whose term of studentship expires immediately after an examination, to a delay of nearly six months, before they have an opportunity of presenting themselves. Besides this, as the time and attention of the examiners are generally fully occupied with their professional engagements, it may be difficult to get gentlemen to sit day after day, perhaps for a whole week, engaged in the tedious task of examining some thirty or forty candidates for admission to practice, and investigating the qualifications of those desirous of being admitted to study. The proposition for a semi-annual examination, however, was carried by 11 to 5.

That part of the report which proposed that the Prothonotary should keep an independent register of diplomas, as a check upon the treasurer, was struck out entirely, but all moneys due to the council of the section are in future to be paid directly to the treasurer, and not through the secretary. As to qualification of candidates, it has been resolved, that students must be articled to a practising advocate during four consecutive and entire years, and also follow a complete course at an incorporated college or university during three years. This makes the *minimum* term of studentship four years, instead of three, as at present. Some amendments were proposed with the object of fixing a *minimum* number of lectures on each subject, but these stipulations were, by a large majority, voted uncalled for, and derogatory to the dignity of the colleges, which should be

left to govern these matters as in their wisdom they see fit. Indeed, for our own part, we are disposed to go farther, and say that it is injudicious to define too strictly the courses and lectures to be followed by young men preparing for the bar. For there are some who, with the most ample opportunities and the greatest amount of 'cramming', will retain their original stolidity, while others, with the most scanty opportunities, and attention distracted by other occupations, are, nevertheless, of such intellectual calibre, and are possessed with such an insatiable and devouring thirst for the acquisition of knowledge, that in solid results they will far outstrip their contemporaries. Holding these sentiments, it was with no little astonishment we observed in the report, an affidavit to be made by every candidate for admission to practice, to the effect that during the four years of his studentship he had pursued his studies *jour par jour*, without interruption, and "*que pendant les* "*quatre années de sa cléricature, il ne s'est pas* "*occupé à* D'AUTRE OBJET SOIT LUCRATIF OU "GRATUIT *qu'à l'étude de la profession d'avo*-"*cat.*" There is an old saying, 'that all work and no play makes Jack a dull boy,' and, according to the foregoing affidavit, the luckless student could not absent himself for a day from the office, could not relieve the tedium of legal study by improving his acquaintance with classics, with modern languages, or with science, nor could he divert his mind with music, or drawing, or painting, nor, which in many cases would be more important, do anything towards earning his own livelihood, during the entire period of four years. We have no doubt that the affidavit was drawn up with the best intentions, to prevent students from acting (as it was stated that they sometimes do) as *recors*, or in other unworthy capacities. But it is necessary to take heed, in framing rules, to keep up the *dignity* of the profession, that we do not degenerate into what is snobbish and ridiculous. It is well known that many of those who have cast the brightest lustre on the English bar, have won their way from low estates. Take, for instance, the following paragraph, which sometime ago went the round of the press, and which, with some inaccuracies, is, we think, substantially correct:—

"Lords Eldon and Stowell—sons of a barge-maker and small coal dealer at Newcastle. Lord Tenterden—son of a barber at Canterbury; he received a very poor education, but obtained the means to go to college; while there, he enjoyed, from a company in the city of London, an exhibition of £3 per year until he took his degree. Lord Gifford—prior to his being called to the bar, was many years a poor clerk to a solicitor near Exeter. Lord Langdale, the master of the rolls, was many years a poor practising surgeon. Sir John Williams, one of the judges of the Queen's bench—son of a very poor horse dealer in Yorkshire. Lord Truro, son of a very poor man in Cornwall, married a first cousin of Queen Victoria. Mr. Baron Gurney—his mother kept a small bookstore for pamphlets in a court in the city of London. Lord Campbell, the present Lord Chancellor, was for many years reporter to the *Morning Chronicle*. Lord St. Leonards—son of a barber, and was formerly a clerk. Chief Justice Saunders, whose precepts to this day form the best text book to pleaders, was a beggar boy, first taken notice of by an attorney, who employed him in his office. Lord Kenyon—boot black and errand boy. Lord Hardwicke—an errand boy. George Canning—son of a poor strolling player."

And the same is true of American and French lawyers. This view of the case was endorsed by the meeting, which rejected the part of the affidavit cited by a large majority.

As to the fees payable by candidates, the fee for admission to study was increased from *five* to *twenty* dollars, and the fee for admission to practice, from *fourteen* to *fifty* dollars. This is a good change, not because it is desirable to open the door of the profession only to the rich, but because the increase is not sufficient to be any real impediment to those seriously bent on following the law as their profession, while it will be sufficient to bring in a large addition to the revenue available for the purchase of books, &c. Thus every *fifty* candidates admitted to study, will add $1000 to the fund of the section, and every *twenty* admitted to practice, a like sum.

The annual contribution is to remain for the present at $6, but stringent provisions have been adopted, for the purpose of striking off the roll of members any one who allows the fee to remain unpaid during three consecutive years;—a salutary rule, which will require firmness and resolution on the part of the council to enforce it.

Such are the leading changes proposed. There may be differences of opinion on some points, but on the whole, the act as amended will be an improvement on the old one, and we trust to see it speedily become law. The thanks of the profession are due to those who worked on the committee, including Mr. G. W. STEPHENS, and the secretary, Mr. GONZALVE DOUTRE, who took a special interest in the task, and suggested several of the improvements. The bill has, we understand, been confided to the care of Atty. General Cartier.

INTEREST AND USURY.

It is with regret that we observe several attempts have been made to repudiate liability to banks, on the ground of usury. We published one instance, p. 72, 1 L. C. Law Journal; and, since the date of that decision, there have been several other cases which have been decided by the jury adversely to the banks, on the ground that the extra ½ or ¼ per cent. charged by the banks was usurious.

The clause of the statute under which this extra rate is sought to be imposed, (C. S. C. c. 58, s. 5,) reads as follows:—"Any bank or banking institution, carrying on business as such in this Province, may, in discounting, at any of its places or seats of business, branches, agencies or offices of discount and deposit, any note, bill or other negotiable security or paper, payable at any other of its own places or seats of business, branches, agencies or offices of discount and deposit within this Province, receive or retain, in addition to the discount, any amount not exceeding the following rates per centum, according to the time it has to run, on the amount of such note, bill or other negotiable security or paper, to defray the expenses attending the collection of such bill, note or other negotiable security or paper, that is to say, under thirty days, one-eighth of one per cent.; thirty days and over, but under sixty days, one-fourth of one per cent.; sixty days and over, but under ninety days, three-eighths of one per cent.; ninety days and over, one-half of one per cent."

Juries have differed, and found sometimes for the plaintiff and sometimes for the defendant. We trust that by the decision of the Court of Appeals, it may be decided that such discount is not usurious. Even assuming that this per centage is not chargeable within the letter of the law, it is impossible to feel any sympathy with attempts to evade liability manifestly made in bad faith.

Perhaps, however, it is rather to be desired that the decision of the Courts should be the reverse, and that the law should be rigorously interpreted against the banks. For this would undoubtedly lead to a determined effort to efface from the statute book those injudicious restrictions on the loan of money, which yet remain. The discussion of the subject would be renewed, and further discussion would probably dissipate many of the existing crude conceptions on the subject of interest. The public would become sensible of the fact, that the price, or remuneration, of loans of money, like the price of most other articles, is determined by the law of supply and demand. If there be a large amount of money to be lent, while the requirements of borrowers are inconsiderable, the price will tend downwards; but if the amount to be lent is small, and the demands of the borrowers great and urgent, the price of money will as naturally tend upwards; the proportion between the amount to be lent and the demands of the borrowers being regulated, in a great measure, by the amount of wealth and the amount of enterprise. The amount to be lent, or the loanable capital, is of course diminished by increased facilities for the safe employment of capital in other ways, as by investment in joint stock companies with limited liability, in Government securities, or in foreign markets. The capitalist will not lend unless he can make the same *net* profit by lending that he would if he employed his money in other ways; and it requires little reflection to perceive, that if the Government fixes a rate lower than this, or if, as in ancient times, opprobrium is cast upon the lender,

the person whose necessities compel him to borrow, will find the terms on which he can do so only the harder. For if the law forbids the capitalist to accept what he conceives to be a fair rate, he is impelled to adopt one of two courses; either, to desist from lending at all, (and thus still further diminish the amount of "loanable capital" in the community,) or he will resolve to incur the risk of penalties by lending at a rate above what is legalized; and, in order to indemnify himself for this risk, he will demand a rate higher than what would have satisfied him, had the transaction been under the sanction of law.

But, it has been urged, usury is prohibited by Scripture, and passages, such as Lev. xxv. 36, Deut. xxiii. 19, Ps. xv. 5, Ezek. xviii. 8, and Luke vi. 35, are cited in support of the view. It is abundantly evident, however, that usury meant formerly any interest exacted by the lender from the borrower solely as the price of the loan; so that this argument, if applicable at all, would prohibit any interest whatever from being received. Among the ancients, in fact, it was commonly held that the loan of money at interest was an illicit way of acquiring wealth. "All money is sterile by nature," said Aristotle, and therefore profit cannot be expected from it. This idea long remained rooted in men's minds. The lender was held up to public detestation on the stage. All lending at interest was held to be unlawful and dishonest, and one of the reasons that has been assigned for the ruthless persecution of the Jews, is the fact that the occupation of lending was for a long time chiefly exercised by them.

At length, however, the utter ignorance of the laws that regulate the increase of wealth began to be dissipated. It gradually came to be understood that borrowing, in one form or another, is necessary for many industrial and commercial enterprises. About the beginning of the 16th century, the distinction between interest and usury was introduced, and Calvin, among other theologians, maintained that usury was only wrong, when it was exacted in an oppressive manner from the poor.

At the present time there are few, we presume, who feel any hesitation about taking interest. States have become borrowers, and vast national debts have grown up. Public opinion has undergone a great change; yet traces of the old feeling still linger. Banks are, in this Province, prohibited from charging more than seven per cent., and an effort was made during the last session of Parliament to re-impose the usury laws. There appear to be some who can not, or will not understand, that government interference has only a mischievous effect; that for the loan of capital a remuneration must be paid, depending on the amount of capital offered and demanded in the way of loan; and that, apart from this, the rate for each particular loan must vary according to the reputed solvency of the borrower, and the security offered for the safe and punctual return of the principal as well as interest.

Since the above was written, we have had a remarkable example, in the late financial panic in England, of the fluctuation in the rate of remuneration demanded and readily paid for loans, and of the salutary effect of leaving banks unfettered in this respect. On the 14th May, the Bank of England raised the rate for discount to ten per cent., and for advances on stock to twelve per cent.

JUDICIAL LABOUR.

It is obvious to any one at all acquainted with the working of our Courts, that there is a great disparity between the amount of business allotted to the respective judges. The heaviest labour probably falls upon the Judges of the Superior Court at Montreal. Of these there are four (Smith, Badgley, Berthelot and Monk, JJ.) residing in the city, who have to despatch the large and annually increasing business of the Superior Court; the heavy additional labour of the new Court of Revision; to undergo the arduous toil of the Circuit Court; to attend *enquête;* to sit in three divisions of the Superior Court; to preside over Jury trials; to hear numerous applications in Chambers, for writs of *Habeas Corpus, Mandamus,* &c.; to go out to the country and hold terms of the Circuit and Criminal Courts in the outlying districts; to supply vacancies in the Appeal side of the Court of Queen's Bench at Montreal and Quebec, &c.

On the other hand, the Court of Appeals, composed of five Judges, holds annually four terms at Quebec and four at Montreal, besides two Criminal Terms at each of these places. The applications in Chambers are comparatively few in number, and the evidence and summary of arguments in the cases brought before them are printed, so that the labour of perusal is lightened. Thus a large part of the year is unoccupied, save with "deliberation."

These facts are suggestive. We do not, however, contend that the labours of these last mentioned judges should be increased. It may be very fitting and proper that there shall be judicial posts in which dignified ease may be enjoyed. Opinions, too, pronounced after three or six months' deliberation, may reasonably be expected (though the expectation is not always realized) to establish fixed principles of jurisprudence.

With more appearance of reason may it be urged, though we are not quite prepared to say that such is the fact, that the multiplicity of business devolving upon the Judges of the Superior Court, must often prevent the deliberation requisite for the proper despatch of judicial duties. Decisions, it may be said, though rendered after a long *délibéré*, will frequently be based upon the first hasty impression formed at the argument, without a careful examination of the record. We were recently shown a deposition which by some carelessness had been tied up at both ends, so that it could not be read without being unfastened at one corner. The cause was a contested one, and at the time we saw it, judgment had just been rendered, showing, apparently, that the entire deposition had escaped the notice of the judge.

The inordinate length to which depositions frequently run, under our *enquête* system, adds immensely to the labour of the Judges. It was stated a short time ago by Mr. Justice Badgley, that a deposition extending over seventy-five sheets, which he had been obliged to peruse, for the purpose of deciding whether a particular question might be asked, could easily, without the slightest detriment to the value of the deposition, have been brought within the compass of ten or twelve pages, and that he would not have permitted it to extend beyond that, could he have controlled the notes of evidence. A fact like this, which by no means stands alone, adds additional weight to the remarks of Q. C., (a writer well qualified to speak with authority on the subject,) on our *enquête* system, in the January number of the JOURNAL.

COURT OF APPEALS.—MARCH TERM.

The number of appeals decided during this term was seventeen, judgment being confirmed in seven cases, and reversed in ten cases. It may not be uninteresting to see how the bench was divided on these cases. We find that in *seven* cases there was an expressed dissent from the judgment of the majority; in *five* cases there being one dissenting judge, and in two cases two dissenting judges. This is exclusive of the case of the Queen and Ellice, in which judgment was reversed as to interest, awarded in favour of Ellice. In this case there were also two dissenting judges,—one dissenting *in toto*, and the other being disposed to modify the award.

Next, as to unanimous judgments. We find that the Court was unanimous in nine cases, chiefly of an unimportant character. In four of these cases the judgment of the Court below was confirmed, but in the other *five* the judgment of the Court below was unanimously reversed.

THE CHIEF JUSTICESHIP OF THE SUPERIOR COURT.

This responsible office has to be filled up by the Crown, and we trust that due care and deliberation will be had in the selection of the occupant. High judicial posts, to which arduous duties are attached, should not be filled up as a mere political reward or piece of preferment to the nominee. Judicial ability and capacity for work, united with *high* and *honorable* character, are the important considerations. We do earnestly hope that an end has been made of those improper appointments, which have brought disgrace on the Bench and have been a grievous injury to the profession.

Since the above was in type, we have learned that the Chief Justiceship has been offered to and accepted by the Hon. Mr. Justice MEREDITH. This is an excellent appointment and highly satisfactory to the profession as well as to the public generally. We understand that Judge MEREDITH will reside at Montreal.

We have also been informed that Mr. Justice BADGLEY will be appointed a Judge of the Court of Queen's Bench, to fill up the vacancy occasioned by the withdrawal of Judge MEREDITH. This, we believe, would also be a good appointment, if carried out.

THE HABEAS CORPUS ACT.

The following is the Bill for the suspension of the writ of Habeas Corpus:—

An Act to authorize the apprehension and detention until the eighth day of June, one thousand eight hundred and sixty-seven, of such persons as shall be suspected of committing acts of hostility or conspiring against Her Majesty's Person and Government.— [Assented to 8th June, 1866.]

Whereas certain evil disposed persons being subjects or citizens of Foreign countries at peace with Her Majesty, have lawlessly invaded this Province, with hostile intent, and whereas other similar lawless invasions of and hostile incursions into the Province are threatened; Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. All and every person and persons who is, are or shall be within Prison in this Province at, upon, or after the day of the passing of this Act, by warrant of commitment signed by any two Justices of the Peace, or under capture or arrest made with or without Warrant, by any of the officers, non-commissioned officers or men of Her Majesty's Regular, Militia or Volunteer Militia Forces, or by any of the officers, warrant officers or men of Her Majesty's Navy, and charged—

With being or continuing in arms against Her Majesty within this Province;

Or with any act of hostility therein;

Or with having entered this Province with design or intent to levy war against Her Majesty, or to commit any felony therein;

Or with levying war against Her Majesty in company with any of the subjects or citizens of any Foreign State or country then at peace with Her Majesty;

Or with entering this Province in company with any such subjects or citizens with intent to levy war on Her Majesty, or to commit any act of felony therein;

Or with joining himself to any person or persons whatsoever, with the design or intent to aid and assist him or them whether subjects or aliens, who have entered or may enter this Province with design or intent to levy war on Her Majesty, or to commit any felony within the same:

Or charged with High Treason or treasonable practices, or suspicion of High Treason, or treasonable practices;

May be detained in safe custody without bail or mainprize until the eighth day of June, one thousand eight hundred and sixty-seven; and no Judge or Justice of the Peace shall bail or try any such person or persons so committed, captured or arrested without order from Her Majesty's Executive Council, until the eighth day of June, one thousand eight hundred and sixty-seven, any Law or Statute to the contrary notwithstanding; provided, that if within fourteen days after the date of any warrant of commitment, the same or a copy thereof certified by the party in whose custody such person is detained, be not countersigned by a clerk of the Executive Council, then any person or persons detained in custody under any such warrant of commitment for any of the causes aforesaid by virtue of this Act, may apply to be and may be admitted to Bail.

2. In cases where any person or persons have been before the passing of this Act or shall be during the time this Act shall continue in force, arrested, committed or detained, in custody by force of a warrant of commitment of any two Justices of the Peace for any of the causes in the preceding section mentioned, it shall and may be lawful for any person or persons to whom such warrant or warrants have been or shall be directed, to detain such person or persons so arrested or committed, in his or their custody, in any place whatever within this Province, and such person or persons to whom such warrant or warrants have

been or shall be directed, shall be deemed and taken to be to all intents and purposes lawfully authorized to detain in safe custody, and to be the lawful Gaolers and keepers of such persons so arrested, committed or detained; and such place or places, where such person or persons so arrested, committed or detained, are or shall be detained in custody, shall be deemed and taken to all intents and purposes to be lawful prisons and gaols for the detention and safe custody of such person and persons respectively; and it shall and may be lawful to and for Her Majesty's Executive Council, by warrant signed by a clerk of the said Executive Council, to change the person or persons by whom and the place in which such person or persons so arrested, committed or detained, shall be detained in safe custody.

An Act to protect the inhabitants of Lower Canada against lawless aggressions from subjects of Foreign Countries at peace with Her Majesty.—[Assented to 8th June, 1866.]

For the protection of the inhabitants of Lower Canada against lawless aggressions from subjects of Foreign Countries at Peace with Her Majesty; Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. In case any person, being a citizen or subject of any Foreign State or Country at peace with Her Majesty, be or continues in arms against Her Majesty, within Lower Canada, or commits any act of hostility therein, or enters Lower Canada with design or intent to levy war against Her Majesty, or to commit any felony therein, for which any person would, by the laws of Lower Canada be liable to suffer death, then the Governor may order the assembling of a Militia General Court Martial for the trial of such person agreeably to the Militia Laws; and upon being found guilty by such Court Martial of offending against this Act, such person shall be sentenced by such Court Martial to suffer death, or such other punishment as shall be awarded by the Court.

2. If any subject of Her Majesty, within Lower Canada, levies war against Her Majesty, in company with any of the subjects or citizens of any Foreign State or Country then at peace with Her Majesty, or enters Lower Canada in company with any such subjects or citizens with intent to levy war on Her Majesty, or to commit any such act of felony as aforesaid, or if, with the design or intent to aid and assist, he joins himself to any person or persons whatsoever, whether subjects or aliens, who have entered Lower Canada with design or intent to levy war on Her Majesty, or to commit any such felony within the same; then such subject of Her Majesty may be tried and punished by a Militia Court Martial, in like manner as any citizen or subject of a Foreign State or country at peace with Her Majesty, is liable under this act to be tried and punished.

3. Every citizen or subject of any foreign state or country who offends against the provisions of this Act, is guilty of felony, and may, notwithstanding the provisions hereinbefore contained, be prosecuted and tried before "The Court of Queen's Bench" in the exercise of its criminal jurisdiction in and for any district in Lower Canada, in the same manner as if the offence had been committed in such District, and upon conviction shall suffer death as a felon.

THE ENGLISH LAW COURTS.

From the (United States) Law Reporter for November, 1844.

[The following, kindly furnished from the scrap-book of a Senior Queen's Counsel, may be read with advantage in Canada.]

Fertile as London is in places and persons of interest to an intelligent foreigner, there are, perhaps, no places more interesting to an American lawyer than the English courts, and no persons whom he more desires to see than the high functionaries engaged in the administration of the English law.

Perhaps the most striking and noticeable characteristic of the proceedings of the English courts, is the rapid and yet not hurried manner in which the business is despatched. There is no confusion, no bustle; but there is no pause. When a cause is called on for trial, it must be at once tried or disposed of in some way. You rarely, if ever, see the counsel for

one party rise at such a moment, with a pocket full of affidavits, and proceed to read them very much at his leisure, consuming the time of the court, and keeping the business waiting. "Are you ready for the plaintiff, brother Sharp?" asks the judge. "Yes, my lord," replies the barrister. "Is the counsel for the defendant ready?" No one answers. "Let a default be entered. Brown v. Smith stands next." And Brown v. Smith is on trial in a moment. The first witness takes the stand. The leader for the plaintiff rises at the same moment, and proceeds to interrogate him briskly and pointedly, and never sits till he is done with him. Meanwhile the junior is taking minutes, and there is no waiting for mending of pens, folding of papers, opening and shutting of tobacco boxes, chatting with clients or the miscellaneous hangers-on of a court room, or laboriously reducing to writing every syllable uttered by the witness. As soon as the plaintiff's counsel has finished his interrogatories, the defendant's counsel is on his feet, and at work with great vigour; and the instant he concludes, the sharp cry of the usher, "Step down, Sir," is uttered, and the witness vanishes in a second, and another takes his place.

The arguments of counsel, whether addressed to the court on questions of law or to a jury, are remarkable for brevity and point. There is no wandering from the questions at issue, no waste of labour upon irrelevant or inconsequential points, no personalities, no bombast, no high-flown flourishes of rhetoric, no long-winded and pointless stories, no wearisome iteration and re-iteration of the commonplace axioms of the legal profession.—Nothing can exceed the summary manner in which motions and questions of law are disposed of. It is the "ne plus ultra" of despatch, consistent with thoroughness and accuracy. In citing authorities, a barrister would as soon think of reading the litany as reading an entire case. The book, page and title of the action is given, and the sentence relied upon read, in general without more, the court being supposed to recollect the facts, and to be familiar with the reasonings. Of course, at times you hear the facts stated, but always succinctly and very briefly. The art of condensing into a nutshell a statement of facts which an American lawyer would feel justified in spending half an hour in narrating, seems to be perfectly understood and almost universally practised. The court are fully awake, and the barristers speak as if the motto were ever in their minds, "Millions are behind us." If you would be impressed with the value of half hours and minutes, spend a day in Westminster Hall.

As a specimen of the manner of conducting criminal trials, take the following:—

CENTRAL CRIMINAL COURT. OLD BAILEY.

Before the Recorder (Law) and Mr. Alderman Gibbs.

Charles Edwards, clerk, aged twenty-six, and William Johnson, sweep, aged twenty-one, were indicted for stealing one piece of cloth, value seventeen pounds, the property of Samuel Summers, in his dwelling-house. Johnson pleaded guilty, Edwards not guilty. The prosecutor swore to the cloth. One witness testified that he had seen the prisoner, Edwards, in the neighbourhood of the prosecutor's shop. A cabman testified that Edwards bespoke a cab of him; that while he was arranging the harness, Johnson, the other prisoner, came up with the cloth and got into the cab with Edwards; that immediately the hue and cry was raised, and both of them were arrested. This was all the testimony.

In defence of himself, Edwards (who seemed to be a Frenchman) remarked in broken English, that he knew nothing of Johnson, or of the cloth, and that he was very much surprised to find a man jumping into a cab which he had hired, and still more so to find himself held responsible for that man's crime. Johnson confirmed Edward's statement in every particular.

Recorder.—"Gentlemen of the jury—It is for you to say whether you believe the prisoner's story or not, and to return your verdict accordingly."

The jury, without leaving their seats, found the prisoner "guilty."

Recorder.—"What have you to say in arrest of judgment or mitigation of sentence?"

Johnson.—"I should like to have time to send for my employer, who will give me a good character."

Edwards.—"Me am un etranger, and does know not de laws English—never have see Johnson before dis time, and knows nothing about de cloth," &c. &c.

Recorder.—"I am satisfied that you are confederates. The theft was a very artful one, and it is necessary that property should be protected from artful rogues. You are each sentenced to transportation for ten years."

The trial occupied about half an hour. *Quære*—If Johnson had got into an omnibus, would every passenger in it have been liable to an indictment for larceny?

John Higgins, chandler, aged twenty-five years, was indicted for stealing one mare, valued at twenty pounds, the property of George Rough. The prosecutor swore to his property, and two or three witnesses testified to attempts by the prisoner to sell the animal, and to contradictory accounts given by him of the way he got possession of her. The charge to the jury was substantially a repetition of the foregoing, and their verdict was the same.

Recorder, (after asking the usual question.) "John Higgins, you might formerly have been capitally sentenced. The offence was evidently premeditated. Property of this kind must be protected. You are therefore sentenced to transportation for ten years."

This trial occupied about twenty minutes.

These cases are cited, not as exemplifications of a wise administration of justice, but simply as random, and therefore impartial illustrations of the air with which business is transacted. It is very possible that each of the foregoing trials would have resulted in a verdict of guilty had they occurred in Boston or New York, but in either city, it is probable that time would have intervened between the verdict and sentence sufficient to enable the parties to show cause, if they could, why their sentence should be mitigated. But the trials themselves would perhaps have taken half a day each, and had fluent counsel been engaged, might have lasted half a week. We are a people of many words, and love sincerely to hear the sound of our own voices, and to enjoy the surprise of discovering with what ease we can string sentences together, and the reputation of having spoken for six hours or ten hours at one time and upon a single provocation. In England, however, whether at the bar or in the legislature, it is quite the reverse. The rule seems to be to use as few words as possible, and every one of them to the point.

In respect to elocution and all that comes within the phrase, "manner of speaking," the English bar can claim no superiority over our own, if indeed it be not decidedly inferior. An American is surprised to hear so few persons speak what he calls good English. The counsel for the plaintiff addresses the jury with an Irish brogue so thick and rich that you can scarce understand what he is saying; while his antagonist replies in accents which so clearly indicate the "land o'cakes," that you can almost see its lakes and mountains. The different local dialects of England are not unrepresented, but Yorkshire responds to Devonshire, and Cornwall to Northumberland, and London to all of them, in the course of a single sittting. The gestures, too, are for the most part inelegant and awkward, the language less fluent and ready, the general air more laborious than we are accustomed to observe in our own advocates of the same relative eminence. It would seem, indeed, that very little attention had been given to the cultivation of a good style of speaking, and the utmost unconsciousness on the subject appears to prevail. So long as what he says bears upon the point, and takes the ear of the court or jury, as the case may be, the advocate seems to deem it of comparatively trifling importance how he says it. On he goes, cutting and slashing away at the Queen's English, nominative cases seeking in vain for agreeing verbs, parenthesis within parenthesis, broken sentences remorselessly left to gather up their *disjecta membra* as they can, but all the while never forgets a fact or point that makes for his own case, or which can be turned to advantage against his adversary. The argument is never lost sight of. With many of our speakers, on the contrary, it would be difficult to collect the fragmentary morsels of argument which float upon the rushing tide of their mellifluous eloquence, and we often feel inclined to repeat, in reference to their efforts, the criticism of the clown, who had read through the dictionary,—"the words are

very good, but I don't quite understand the story."

Nor are the bar alone entitled to the credit of brevity and conciseness. The same characteristics distinguish the bench, and in an equally high degree. When the court takes time to consider, the case is indisputably one of some intricacy. Motions involving the rights and franchises of cities, boroughs and gigantic corporations, affecting immense sums of money, determining questions of the deepest public and private interest, and hinging often upon very nice points of technical law, are settled instantly upon the termination of the arguments, and judgment pronounced extemporaneously, and in the fewest possible sentences. No time is taken to draw up diffuse disquisitions upon every single point of law, which may have been mooted in the course of a hearing. Nor is it deemed necessary that the judge, on every occasion, should exercise his learning and attainments by fortifying each successive point, doubtful or not, with a long array of authorities. But he seems to feel that his time belongs to the public, and that he has no right to employ it but in their service. Business presses and must be done,—not talked about, but performed, finished. Great interests always stand waiting; great in the amount of property involved, the number of persons affected, and the legal principles at issue. Expedition, therefore, which is generally a convenience, a virtue, is there a necessity. Yet is this expedition attained not by whipping and spurring, not by sharp and brilliant anticipations of what witnesses or counsel could say, not by arbitrarily cutting cases short and summarily silencing remark. The necessities of society, if nothing better, have taught all concerned in the adminstration of the law their true places and functions, and they seem to conspire harmoniously in effecting the grand results for which laws are made and courts of justice established. The "patience and gravity of hearing" which Bacon commends, his successors well illustrate. The natural consequence is, that they are addressed by the bar with uniform courtesy and respect, and listened to with marked deference. Business is thus done pleasantly as well as expeditiously; and good temper and good manners may be learned not less than good law. Of course, these remarks are to be understood *generally*. Particular exceptions doubtless exist, but they do not deserve to be noted, as they do not mar the total impression upon the mind of a stranger.

On the whole, no lawyer can visit the courts of Westminster Hall, and watch the course of business day after day, without being as forcibly impressed with the learning, labour and ability of the men who fill the high judicial stations of England, as with the magnitude and intrinsic importance of the causes which come before them for decision. Nor can he well depart without feeling that a wise and able administration of the law is one of the chief glories of an enlightened state, and that no expenditure can be deemed excessive which may be necessary to secure the highest character and ability for the performance of the arduous duties of the judge. The English judges have "permanent and honourable salaries," and therefore they are what they are. To the citizen of Massachusetts, the reflection can hardly fail to occur that, in his own state, the amount of judicial compensation is carefully calculated and grudgingly doled out, and the retrenchment of a few hundred dollars in this item of public expenditure, is thought to constitute a valid title to public gratitude on the part of its perpetrators. It is, however, somewhat consolatory to know that badly as our judges may be treated, and poorly as they may be paid, the judicial office has thus far fallen upon men of sufficient weight of character to resist these sinister influences, and that nowhere, perhaps, is justice more ably, wisely, uncorruptly and mercifully administered than in the Commonwealth of Massachusetts.

LAW JOURNAL REPORTS.

COURT OF QUEEN'S BENCH—APPEAL SIDE—JUDGMENTS.

MONTREAL, 2nd March, 1866.

LEGAULT, Appellant, and LEGAULT, Respondent.

Held, That an appeal cannot be brought *in forma pauperis* to the Court of Queen's Bench.

This was a motion for the revision of an order in Chambers, allowing an appeal to be

brought *in forma pauperis*, from a judgment of the Superior Court.

AYLWIN, J., said that during an experience of forty years he had never heard of an appeal to that Court *in forma pauperis*. Appeals would be multiplied, and the greatest inconveniences would result from such a practice.

MONDELET, J., dissenting, was of opinion that the door of the Court should not be closed to the poor, who could not bear the expenses attending an appeal in the regular way.

Order rejected. Mondelet, J., dissenting.

GROULX, Appellant, and THE CORPORATION OF PARISH OF ST. LAURENT, Respondents.

Held, That there is no appeal from a judgment rendered under the Municipal Act of 1860.

This was an appeal from a judgment of the Circuit Court, Montreal, rendered 25th April, 1865, condemning the defendant to pay $120, for neglect of duties as inspector of roads and bridges.

The Court was of opinion that the judgment complained of, being rendered by the Circuit Court, under the dispositions of the Municipal Act of Lower Canada of 1860, which takes away from the Court of Appeals all jurisdiction over judgments pronounced by the Circuit Court under that Act, there was no appeal.

Appeal dismissed.

Moreau, Ouimet and *Chapeleau* for Appellant; *D. Girouard* for Respondents.

MONTREAL, March 6th, 1866.

PRESENT—DUVAL, C. J., AYLWIN, MEREDITH, MONDELET, and JOHNSON *ad hoc*, JJ.

Right Hon. EDWARD ELLICE, (appellant in the Court below,) appellant; and HER MAJESTY THE QUEEN, (respondent in the Court below,) respondent: and E. Contra.

Damages—Provincial Arbitrators.

Action to recover damages caused by the erection of certain Public Works.

This case originally came before the Provincial Arbitrators, on a claim by the Seignior of Beauharnois, for damages caused to his property in the Seigniory of Beauharnois, and in the adjacent township of Godmanchester, by certain dams erected by the Commissioners of Public Works at the head of the Beauharnois canal. On the 4th June, 1859, the arbitrators rendered an award allowing nothing to claimant, and an appeal was made under the statute, 22 Vic., c. 3, sec. 60, to the Superior Court, Montreal, which Court rendered a judgment for £8,575 in favour of the claimant. From this judgment the claimant appealed, and an appeal was also taken on behalf of Her Majesty.

The judgment of the Superior Court, which was rendered by Mr. Justice Badgley, has now been confirmed by the Court of Appeals, except that the latter court has gone farther, and granted the claimant interest on the £8,575 from the date of the judgment appealed from. The details of the case are very voluminous, but the following *resumé* will serve to show the main points in dispute.

Upon the completion of the Beauharnois Canal by the Provincial government, in 1849, the Commissioners of Public Works, under whose charge that work had been carried on, were compelled to raise the head of the water at its upper entrance in order to render the Canal efficient for public use; and, for the attainment of this object, caused two permanent dams to be erected, one connecting the upper point of Grande Isle with Clark's Island lying above it, both Islands at no great distance from the mouth of the canal, thereby forming, as it were, one continuous dam of considerable length; and the other lower down descending the river, connecting Grande Isle with the Seigniory—the south shore of the St. Lawrence. The result was perceptible as the dams rose above the ordinary river level, and the object desired was fully accomplished by their construction. By means of these works, the entire channel of the St. Lawrence from shore to shore was narrowed two-sevenths of its extent, and in addition, the southern branch, which had before flowed between Grande Isle and the southern bank of the river (the north shore of the seigniory) was entirely shut off. The head of water thus obtained did considerable damage to individuals by submerging all the lands that could be reached by the increased high water level. The dams were commenced in the spring of 1849, when the water was very low, and were completed in the autumn

of the following year, 1850, by which time numerous complaints and claims for damages were transmitted to the government by the owners of the submerged lands, chiefly in the Seigniory and the adjacent townships. Amongst the number were the Seigniors of Beauharnois, as such Seigniors and proprietors of the adjoining township of Godmanchester. This claim, made up by Mr. Brown, the seignorial agent, was transmitted to the Commissioners of Public Works in September, 1850, and was filed in their office. It was accompanied by a request for a voluntary agreement to be entered into between the Seigniors and the Commissioners for its amicable adjustment, or if that were not allowed, for the submission of the claim as required by law to the decision of the Provincial Arbitrators appointed for such purpose under the Public Works Act. The required reference was postponed by the Commissioners from time to time, and finally was only submitted by them to the arbitrators in 1858. In the interval, however, the pressure upon the Government for compensation for the submerged lands by the numerous parties interested, became so great that the Government appointed special commissioners to examine into the ground of the claims, and to effect their final settlement, which was accomplished to a considerable extent by payment of the various sums established by the official Commissioners as compensation for the losses caused by the submersions. In 1855, the Commissioners of Public Works undertook the construction of a dyke or embankment upon the lands of the claimant, intended to be a protection to the lands liable to be submerged. This work was undertaken without the consent of claimant; and after a prolonged correspondence, the Commissioners notified the Seignior's agent that no decision would be given on his claim for damages till the completion of the dyke. Finally, in November, 1858, eight years after the filing of the claim, and three years after the construction of the dyke, the case was submitted by the Commissioners to the Provincial Arbitrators. The claim made consisted of seven items; 1st, 7,400 arpents submerged in Catherinestown, Seigniory of Beauharnois, at 30s. per arpent, £11,100. 2nd, 1,500 arpents submerged in township of Godmanchester, at 20s. per arpent, £1,500. 3rd, Land for village, 26 arpents, at £50, £1,300. 4th, Land taken for Public Works in Grande Isle, 14½ at £10, £145 17s 6d. 5th, Land deteriorated from desiccation, 1,383, at 10s. (deterioration in value), £691 10s. 0d. 6th, Diminution of power at saw mill, &c., £500. 7th, Estimated loss of *lods et ventes* £1,000; forming a total of £16,-237 7s. 6d. By the award of the Provincial arbitrators, the whole claim was thrown out, it being considered that any loss which might have been suffered by the Seignior of Beauharnois was covered by the increased value of his property. From this award Ellice appealed, and the Superior Court confirmed the award as regards items 1, 2, 3, and 6, allowing the appellant the sum of £8,575 instead of £14,400 claimed for these items, and totally disallowing the claim for items 4, 5 and 7. Each party appealed from this judgment. The main points submitted on behalf of the Queen were: 1st, that neither the claimant nor his *auteurs* were proprietors of the Seigniory at the time the damages were said to have been suffered, or at any time prior thereto. 2nd. That no damages were suffered either in the lands in Catherinestown, nor in those in Godmanchester, nor at St. Timothée Mill; but that on the contrary, the lands in Catherinestown were largely benefited by the construction of the dyke.

Aylwin, J., dissenting, adverted at length to the form of the proceedings, and stated his opinion to be that the whole proceedings were an absolute nullity, for the following among other reasons: The Crown had been foreclosed from answering the petition of claimant in the Superior Court, and there could be no foreclosure against the Queen; the proceedings were not instituted in the name of Her Majesty's Attorney General. On the part of the Crown there was not one syllable in writing where so much was necessary to be stated. Upon the merits of the appeal, his honour also thought that judgment should be reversed. He was of opinion that the arbitrators should have been ordered to amend their report. There was nothing stated in the judgment as to a certain right of passage; and nothing to secure the property to the Crown in the event

of it again becoming available by desiccation.

Meredith, J., concurred with the majority of the Court on the law points raised on the part of the Crown. He differed only as to the value of part of the land submerged. He considered $5 per arpent to be a reasonable indemnity for the land outside of the embankment, which could never be any use again; but for land inside the embankment he thought $5 too much, and that $3 was enough. He agreed with Mr. Justice Badgley in thinking the form of the report of the Provincial Arbitrators very objectionable; but it would not be just to expose the parties to the inconvenience which would be caused by now ordering the award to be amended.

Mondelet, J., had come to the conclusion that the judgment appealed from should be maintained. He was not disposed to take up objections that neither the appellant nor the respondent had laid before the Court, but regarded the case as one that should be adjusted upon a fair and equitable basis. Upon the whole he coincided with the Court below in the conclusions arrived at.

Duval, C. J., said, one of the objections was that the report was irregular; that the arbitrators had not entered into particulars and had not assigned a reason for each adjudication. It would be strange if this, which was a complaint in the mouth of Ellice, were made a ground for dismissing his appeal. Upon the very face of the report there was an error. It was said that any loss sustained by claimant was covered by the increased value of his property. But this was not sufficient to justify the depriving a man of his property; for the same reasoning would apply to the land taken for the Grand Trunk Railway between Quebec and Montreal. In expropriating, there were two questions; first, the value of the property, independent of advantage or disadvantage; and 2nd, the amount of damage, of which a bill of particulars should have been stated in the award. There was no difference of opinion between Mr. Justice Meredith and himself, except on a question of fact, as to the value of part of the property. The evidence on this point was very contradictory, and upon the whole, he saw no reason to disturb the estimates of Mr. Justice Badgley, who had given his opinion on each item of the claim. On the question of claimant's title, his honour observed that the Government had acknowledged his title throughout the whole of the correspondence which had taken place. No other claimant of the property had appeared since 1850 up to the present day, and no objection had ever been made by Government till almost the last moment. With respect to the Queen being foreclosed, there was nothing required in answer to claimant's petition except to say that there was no error in the award. The judgments appealed from would be confirmed, but the claimant, Ellice, would also be awarded interest on the sum of £8,575 from the date of the judgment rendered by the Superior Court.

Costs on both appeals in favour of Ellice.

A. & W. Robertson, for claimant; *T. K. Ramsay*, represented the Attorney-General, L. C.

(Leave to appeal to England was obtained.)

Present—Aylwin, Meredith, Drummond and Mondelet, JJ.

Montreal, 8th March, 1866.

Black *et al.* (defendants in the Court below), Appellants; and Lefebvre (plaintiff in the Court below), Respondent.

Action of damages occasioned by a collision.—*Held*, that under the circumstances there was negligence on the part of the plaintiff, and he could not recover damages.

Meredith, J.—This was an action of damages by the proprietor of a barge, called the *Quebec*, against the defendants, as the owners of the steamboat *Whitby*. The pretension of the plaintiff is, that the persons in charge of the *Whitby* negligently and maliciously caused that vessel to strike against the plaintiff's barge. The defendants contend that the collision was occasioned by the gross negligence of those in charge of the barge; that they were lying across the channel so as to make a collision inevitable; and that the *Whitby* did everything in her power to avoid the collision. The accident occurred near the entrance of the Lachine canal, at a place where the canal is about 300 feet in width; but the pretension of the appellants is that the channel, for vessels of the draft of the *Whitby*, at the place in question, is narrow, (about 100 feet in

width,) and that it is never departed from by vessels of the class of the steamer in question. It is proved that the canal is not adapted to vessels drawing more than nine feet of water; that the *Whitby* had a cargo on board worth $15,000, and was drawing nine feet of water, and, therefore, could not safely leave the deep channel, (whatever may have been its width); and it is admitted that the barge was lying right across the channel. The main question in the case is as to whether the *Whitby* could have stopped, so as to avoid a collision, or without danger have passed to the left, that is, to the rear of the wood barge; because, however much the persons in charge of the barge may have been in the wrong, if she was run down wilfully by the *Whitby*, the owners of that vessel are clearly liable. Before, however, coming to the consideration of these questions, it is proper to see how it was the barge came to be lying across the channel.

It appears that when the barge had got four or five arpents above the entrance of the canal the wind fell, and, then, that the barge drifted down with the current to the part of the channel where the collision occurred. So helpless were the people in the barge, that although they were right across the channel, and although they saw the *Whitby* a mile off, yet they could not get out of her way.

When asked to explain this, and to account for not having used oars or poles, Ferdinand Lalonde, one of the sailors on board the barge, says, "*Nous avions des rames mais pas des taulets* (rowlocks) *pour les mettre. C'est ce qui fait que nous nous sommes servis de perches, mais elles étaient trop courtes; nous ne pouvions atteindre le fond; c'est le courant qui nous a viré et mis de travers.*" F. A. Johnson proves that poles could, if of proper length, have been used with effect. And the captain of the barge says, "*Nous ne nous sommes pas servis des rames parceque nous n'avions pas de rowlocks. On était assez occupé par la voile qui nous aidait plus que les rames.*"

As they were lying motionless, I do not understand how the captain can think the sail was helping them. To me it seems that sails without wind, oars without rowlocks, and poles so short that they could not touch the bottom, were all equally useless; and that, under these circumstances, the vessel should be found lying helpless across the channel, was not surprising. There was one other way by which this might have been avoided, namely, by throwing out the anchor when the barge was drifting down with the current; which necessarily would have brought the bow or head of the vessel to the current, and in this way she would certainly have blocked up a smaller portion of the channel than she did when lying across it.

The captain when asked why he did not throw out his anchor, answered:—"*Parcequ'on ne peut pas toujours rester à l'ancre; car du moment qu'on a vu le steamboat* Whitby *il était trop tard pour jetter l'ancre. On était à la place où il nous a frappé. Le steamboat était à un mille de distance quand on l'a vu.*"

But we know that the barge had drifted down four or five arpents, and it is plain that the current, if sufficient to carry the vessel down, would have been sufficient, if the anchor had been thrown out, to turn her bow to the current. And here it may be observed, that the persons in charge of the barge were very inexperienced. It was the first season for the captain as such, and he, when examined, was only 21 years of age; and the two *navigateurs*, as they term themselves, who were assisting him, were, when examined as witnesses, of the ages respectively of 19 and 16. The inexperience of the crew on board the barge may have been one of the causes which prevented them from taking any efficient means for her preservation; but, be this as it may, I think it beyond doubt, that the situation of the barge, at the time of the collision, was altogether inexcusable.

Still we have to enquire, could the steamer have stopped in time to avoid the collision, or could she, consistently with prudence, have passed to the rear of the barge, because if either of these courses was open to her, the owners must pay for the damages to the barge.

I have gone over the evidence with much care, and am satisfied, from the position in which the barge lay, with reference to the entrance of the canal, and the current there, that it was not possible to stop the steamer in time to avoid the collision.

The evidence as to the other point—the possibility of the steamer going to the rear of the barge—is conflicting; but even if we take as our guide the opinions of the masters of vessels and pilots, (and this is the most favourable view for the respondent,) I think the weight of evidence is decidedly in favour of the appellant. In addition to mere opinions the appellants have proved some facts, which appear to me of great importance, as showing that the steamer could not prudently have deviated from her course to avoid the collision. There was doubtless a wide expanse of water to the rear of the barge, but the question is, was it of sufficient depth for vessels such as the *Whitby* drawing nine feet of water? Thos. Johnson, who says he has been navigating the rivers and lakes for the last fifteen years, and who has the command of a propeller of about the same size as the *Whitby*, says:—"I struck the bottom with my vessel at the entrance of the canal, not far from the lighthouse, but a little below it, last fall, (he thinks in November,) by keeping a little to the left, with a draft of 8 ft. 9 in." Now, according to the witnesses for the respondent, the steamer ought to have done that which caused Johnson's boat to strike; and yet he says he was fortunate in not having a hole knocked into the bottom of the boat.

Charles Crawley, who has been navigating the rivers and lakes for the last 21 years, and has had command of almost all kinds of vessels used in the navigation, says:—"I have struck there several times myself by keeping a little too much to the left; on one occasion, I remember, with the *Brantford*, drawing about 8½ ft. of water. On another occasion, with a smaller boat of the same draft of water, that is, the *Banshee* propeller. John Hanna says:—"The first trip I made, about 8 or 9 years ago, coming down loaded, drawing about 9 ft. 3 in., we struck very hard opposite the old depot." The evidence of Thomas F. Dutton, an experienced steamboat master, is to the same effect, and appears to me to be well deserving of attention. He says:—"I do not believe that a downward vessel like the *Whitby*, could avoid such a barge, without damaging herself; that is, if she attempted to go to the left there, she would get into shoal water, and get among boulders. I know that there are boulders there to the left and shoal water too. I once had a steamer, 45 feet in width over all, attached to the pier, some distance below the lighthouse, probably 300 feet. I know that I was obliged to detach my steamer and go on, to permit a loaded propeller to pass down, as there was no room for her outside of my boat, without getting into the shallow water and among boulders; and I consider it equally dangerous all the way up to the buoy. It is particularly dangerous for a propeller to attempt to turn to one side in descending, because when she takes a sheer her rudder loses all command over her. You cannot bring her head back immediately to the deep channel. She goes ahead, and in such a situation would run among the boulders and into shoal water. I have found propellers aground myself, and helped them to get off; but more than 300 feet below the lighthouse I have known the mailboat "*Banshee*," when loaded, but not drawing more than seven feet of water, get aground exactly abreast of the lighthouse, and half way between it and the old Lachine depot."

The evidence of these witnesses is confirmed by that of Mr. Alexander Bisset, who has been superintendent of the Lachine canal for the last 19 years: "The downward vessel has the right of way, and should keep to the right. It is the business of upward bound vessels, particularly when unladen, to avoid her, by also keeping to the right. The position of the vessel, marked barge on said plan, is one which it would be against all sound reason for an upward bound vessel to occupy, and if it were 95 feet long, it would be impossible for a downward heavily laden steamer to avoid her, without running great risk, by turning to the left out of her proper channel. This risk would seem to me to be very great; the chances are, that by so going to the left, such a steamer would come into contact with boulders and shoals, and be seriously injured. In case she were further down, it would still be dangerous, in fact equally dangerous, unless she was far enough down to enable the steamer to stop from reaching her—that is, if she kept a like position in the channel."

Our attention was drawn to the case of

Maitland and Molson, (Stuart's Reports, p. 441,) and to the case of the *Cumberland*, (Stuart's Adm. Rep., p. 75); but I do not find that the judgments in those cases can aid us in the present instance, in which the questions to be adjudicated upon are purely questions of fact; and after giving to those questions the best consideration in my power, I think it certain that the respondent is very blameable for the situation in which his barge was at the time of the collision; and I think the preponderance of evidence is decidedly in favour of the pretension of the appellant, that it was not in the power of those in charge of the steamer to stop her in time to avoid the collision, and that they could not, consistently with prudence, have attempted to pass to the rear of the steamer, by deviating from the channel to the left. For these reasons I think the judgment must be reversed.

Mondelet, J., dissented from the judgment. Aylwin and Drummond, JJ., concurred.

Judgment reversed, Mondelet, J., dissenting.

Cross & Lunn, for Appellants; *Loranger & Loranger*, for Respondent.

Corporation of the Parish of St. Barthelemy, (defendants in the Court below,) Appellants; and Desorcy, (plaintiff below), Respondent.

Question as to the nullity of a certain by-law of the Municipal Council.

This was an appeal from a judgment of the Superior Court for the district of Richelieu, rendered by Mr. Justice Badgley. The action was brought to rescind the sale of certain property belonging to the plaintiff, which had been sold by the Secretary-Treasurer of the Municipal Council of the County of Berthier, in payment of taxes due to the defendants. The plea was, that the sale had taken place in accordance with by-laws made in due form by the defendants. The plaintiff answered, that the by-law of 5th September, 1859, on which the defendants chiefly relied, was illegal on its face. By the judgment of the Court below, the plaintiff's action was maintained on the ground that the by-law of 5th September, 1859, ordering the opening of a certain road, and levying a special tax, was not accompanied by the formalities required by law. In particular, it was alleged that there was no *procès-verbal* previously made, and that those interested in the road were not notified of the proceedings of the Council, as the law required. The defendants appealed from this judgment. The chief points to be determined on the appeal were, 1st, whether the by-law was null on its face; 2d, whether the plaintiff could invoke this nullity in his special answer.

Drummond, J., pronounced the judgment of the Court of Appeals, which confirmed that of the Court below.

Judgment confirmed unanimously.

E. U. Piché, for Appellants; *Olivier & Armstrong*, for Respondent.

Foley *et al.* (defendants in the Court below), Appellants; and Forester *et al.* (plaintiffs in the Court below), Respondents.

Proof in an action *ex parte* on a promissory note.

The action in the Court below was brought against the defendants as makers and endorser of a promissory note.

No proof was adduced on behalf of the plaintiffs; the defendants were foreclosed from pleading, and judgment was rendered *ex parte* in the plaintiffs' favour. The question submitted on the appeal was whether in such a case the plaintiffs should not have made proof of the partnership alleged to exist between them, and also of the partnership alleged to have existed between the defendants. Every signature and writing to or upon a promissory note, is, in a default or *ex parte* case, presumed to be genuine; but it was submitted that extraneous facts, such as the quality of the paper, were not to be taken as proved or admitted in default or *ex parte* cases.

Duval, C. J., said there was no ground whatever for this appeal.

Aylwin, Drummond and Mondelet, JJ., concurred.

Judgment confirmed unanimously.

A. & W. Robertson, for Appellants; *Cross & Lunn*, for Respondents.

Jones *et al.* (defendants in the Court below,) Appellants; and Guyon *dit* Lemoine, (plaintiff in the Court below,) Respondent.

Held, that the Court may discharge a *délibéré*, and order the case to be inscribed on the

rôle d'enquête, for the purpose of allowing the plaintiff to complete his answers to interrogatories *sur faits et articles*, where the interrogatories have not been answered properly at first.

This appeal arose from the following circumstances:—The action was brought under a transfer of an obligation. The plea was, want of consideration, except to the extent of £90. On the 21st June, 1864, the Court, on motion of the defendants, permitted them to examine the plaintiff on *faits et articles* on the 25th June. On that day the plaintiff stated that he was engaged with another suit between himself and one of the defendants, and fearing to absent himself too long from this other case, he contented himself with answering the first two interrogatories, and then to the other 36 interrogatories, the following answer was entered at his request:—"I have no other reply to make but that which I made to the preceding (second) question." Subsequently, the defendants moved that these interrogatories be taken as admitted, inasmuch as the plaintiff had not answered them as he was bound to do. On the 30th Sept., 1864, Mr. Justice Berthelot ordered that the case be discharged from *délibéré*, and inscribed on the *rôle d'enquête*, in order that the plaintiff might answer the interrogatories following the second. The case was then re-heard, and on the 31st Oct., 1864, Mr. Justice Berthelot rendered a final judgment in plaintiff's favour. The defendants had the judgment reviewed, and it was confirmed by Smith and Berthelot, JJ.; Monk, J., dissenting on the ground that the Judge had no power to discharge the case from *délibéré*, for the purpose of enabling the plaintiff to come up and complete his answers. The defendants then appealed.

Mondelet, J., dissenting, said he concurred with Mr. Justice Monk in thinking that the Judge, when he discharged the *délibéré*, had exercised a power which the Court did not possess. There was manifest error in the judgment of the Court below, and it should be reversed.

Duval, C. J., was of opinion that the decision of the Superior Court was correct, and in accordance with law, and must be confirmed.

Aylwin and Drummond, JJ., concurred.

Judgment confirmed, Mondelet, J., dissenting.

Moreau, Ouimet & Chapeleau, for Appellants: *Edmund Barnard*, for Respondent.

Montreal and Champlain Railroad Co. (defendants in the Court below,) Appellants; and Perras, (plaintiff in the Court below,) Respondent.

Railway Company held not liable for animals killed, the accident having occurred when the fences were down during the winter.

This was an appeal from a judgment of the Circuit Court, Montreal, condemning the defendants to pay the plaintiff the value of certain animals killed on the track. The action was brought by a farmer, of the parish of Laprairie, to recover the sum of $120, viz., $70, the value of a mare, and $50, the value of a colt, killed on the railway track, on the 16th Dec., 1862. It was alleged by the plaintiff that the company were bound to keep the fences on each side of the line in good repair; but that owing to the fences being down, the animals above mentioned got on the track and were killed by the cars. The defendants pleaded that in December, when the accident happened, all the fences had been taken down, to prevent the accumulation of snow on the road; and consequently the plaintiff should not have allowed his animals to go at large. The fences were taken down in accordance with an old established custom. It was further stated that there was nothing to show that the animals were killed by the cars. Loranger, J., having rendered judgment in favour of the plaintiff, the defendants appealed.

Drummond, J., dissenting, was of opinion that the judgment should be confirmed. The enclosures had been taken down, and the company were therefore liable for the accident.

Mondelet, J., rendering the judgment of the Court, said that the plaintiff himself was the cause of the accident, and the company could not be held accountable. The judgment must be reversed.

Duval, C. J., Aylwin and Meredith, JJ., concurred.

Judgment reversed, Drummond, J., dissenting.

Cartier, Pominville & Bétournay, for Appellants; *Méderic Lanctot*, for Respondent.

LALONDE, (plaintiff in the Court below), Appellant; and BRUNET, (defendant in the Court below,) Respondent.

Question as to payment of *rente constituée* representing *lods et ventes.*

This was a hypothecary action to recover from the defendant, as *tiers-detenteur* of the half of certain property, the amount of a constituted rent with arrears, in all $390. The defendant pleaded a peremptory exception, setting up that the rent in question was seignorial, and represented the *lods et ventes* which had been commuted; that the commutation price had been paid, and the property cleared from all incumbrance. The defendant's pleas were maintained by the judgment of the Superior Court, rendered by Mr. Justice Berthelot, 27th June, 1862, and the plaintiff's action dismissed. It was from this judgment that the present appeal was brought.

MONDELET, J., dissenting, was of opinion that the judgment should be reversed.

AYLWIN, J., also dissented. It was to be observed that under the terms of the original contract, there was to be no sale whatever, unless it were with the permission of the present appellant. So far from this, there had been three different sales, and the result was to compel the present appellant to lose $300, to which he was fairly entitled. His Honour was of opinion that the judgment should be reversed.

DUVAL, C. J., rendered the judgment of the Court, confirming that appealed from.

MEREDITH, J., concurring, said that before he saw the plaintiff's answers to the defendant's articulation of facts, he was of opinion that the judgment should be modified to the extent that the plaintiff should have security against *trouble,* because he thought it probable that the claim had never been paid, though the interest had been. But on looking at the answers, he saw that this was unnecessary, it being admitted the money had been paid.

Drummond, J., concurred.

Judgment confirmed, Aylwin and Mondelet, JJ., dissenting.

Moreau, Ouimet & Chapeleau for Appellant; *Rouer Roy, Q. C.* for Respondent.

WARDLE, (plaintiff in the Court below,) Appellant; and BETHUNE, *es qualité,* (defendant in the Court below,) Respondent.

Held, that the proceedings of *experts* are null and void, when notice thereof has not been given by them to both parties.

This appeal was from a judgment rendered by the Superior Court, 25th January, 1865, dismissing the plaintiff's action, declaring that the sum due to the plaintiff was more than compensated and extinguished by the damages set up in compensation, which were put down in the report of *experts* at $30,282. The intention of the plaintiff was to carry the case to the Privy Council, but he submitted that the proceedings had by the *experts* must be declared invalid, no notice thereof having been given to the plaintiff or his agent.

DUVAL, C. J. It is impossible to confirm the judgment. The *experts* did not give the plaintiff any notice, and therefore their proceedings are null and void.

Meredith, Drummond and Mondelet, JJ., concurred.

Judgment reversed unanimously.

A. & W. Robertson, for Appellant; *S. Bethune, Q. C.,* for Respondent.

BISSONETTE *et al.,* (defendants in the Court below,) Appellants; and BORNAIS, (plaintiff in the Court below,) Respondent.

Action for false imprisonment against the informant, bailiff making the arrest, and the two committing justices.

Held, that the two justices alone were liable in damages, which were reduced to £25.

This was an appeal from a judgment of the Superior Court, rendered by Mr. Justice Monk, on the 26th January, 1865. The action was brought by the plaintiff to recover the sum of $1000 damages for false imprisonment, under the following circumstances. In June, 1860, Joseph Duquette, a schoolmaster of St. Valentin, laid an information before Anaclet Bissonette, a justice of the peace, alleging that the plaintiff had feloniously conspired against the life of himself, his wife, and children, by attempting to demolish the school-house in which they resided. On this complaint, the plaintiff was arrested and brought before Anaclet Bissonette and his brother Joseph, also a justice of the peace.

After hearing evidence, the two Bissonettes sent the plaintiff to the Montreal jail, under charge of Mongeau, a bailiff. The plaintiff was immediately liberated by the order of one of the judges of the Superior Court sitting at Montreal, who declared that the alleged offence was unknown to the law. The plaintiff then brought his action against the two justices of the peace, the schoolmaster, and the bailiff. The judgment from which the present appeal was brought, condemned the four defendants *solidairement* to pay the plaintiff the sum of £100 damages.

DUVAL, C. J., said, that the two justices of the peace had not justified their conduct. They gave an order which was illegal; but for the illegality of this order the schoolmaster and bailiff were not responsible. Moreover, the damages awarded were extravagant. The judgment would be reversed, and the action dismissed as to Duquette and Mongeau. The judgment against the two Bissonettes would be reduced to £25; Duquette and Mongeau would have the costs of both Courts in their favor, and the plaintiff must also pay the costs in appeal of the other defendants, because the demand was extravagant and should not have been persisted in.

Meredith, Drummond and Mondelet, JJ., concurred.

Judgment reversed, damages reduced to £25 against A. and J. Bissonnette only.

Leblanc, Cassidy & Leblanc, for Appellants; *Moreau, Ouimet & Chapleau*, for Respondent.

HARNOIS, (plaintiff in the Court below,) Appellant; and ST. JEAN, (defendant in the Court below,) Respondent.

Held, that an action *en séparation de biens* may be instituted in the district wherein the defendant is summoned by personal service, according to C. S. L. C. cap. 82, sec. 26.

This was an appeal from a judgment of the Superior Court in a default case, rendered on the 30th June, 1865, by Mr. Justice Berthelot. The plaintiff brought her action *en séparation de biens*, against her husband. Both parties were domiciled in the district of Richelieu, but the defendant was described as being temporarily in the district of Montreal, where the action was brought, the defendant being personally served in the city of Montreal. The case was dismissed, on the ground that the plaintiff should have brought the action in the district where the parties had their domicile.

DUVAL, C. J., said that the judgment must be reversed. The defendant could be sued in any district where he was personally served.

Aylwin, Meredith, Drummond and Mondelet, JJ., concurred.

E. U. Piché for Appellant.

WATT, (plaintiff in the Court below,) Appellant; and GOULD *et al*, (defendants in the Court below,) and JACQUES *et al*, (intervening parties in the Court below,) Respondents.

Delivery of wheat.—Question as to carrier's right to store under the circumstances.

This was an appeal from a judgment of the Superior Court, rendered by Mr. Justice Smith on the 31st October, 1864. The action was brought to revendicate 9,941 bushels of wheat, seized in the possession of the defendants. The judgment recognized the defendants' right of lien for storage, and also the right of the intervening parties to the sum of $1,680, for the carriage of the wheat from Cleveland, Ohio, to Montreal, and also their right to be paid the freight out of the proceeds of the wheat. It was on these two items of storage and freight that the plaintiff appealed. The wheat arrived at Montreal about one o'clock, on the 16th October, 1862, in the *Avon*. Janes & Co., the consignees, directed the *Avon* to go along side of the *Caledonia*. She went along side early on the 18th, and found her discharging coals. The *Avon* soon after went away, on the ground that the *Caledonia* was not ready to receive the wheat, which was then stored. The whole case turned on this: was the *Caledonia* ready to receive the wheat, and were the intervening parties justified in storing when they did? The Court below having maintained the right of storage against the plaintiff, the present appeal was brought.

MEREDITH, J., said it was to be regretted that both parties had stood so determinedly upon their extreme rights. The amount involved was now several hundred pounds, whereas at first it was only about $100. If the *Avon* had waited a short time, this loss

would have been avoided, but the plaintiff positively refused to pay for her detention. Prompt despatch in loading and discharging was of importance, and had been stipulated for in the contract. The evidence showed that the intervening parties were justified in storing the wheat, the *Caledonia* not being ready to receive her cargo on the 17th. As to the 75 bushels, alleged short delivery, he would have been disposed to modify the judgment to this extent, but all the judges were agreed in saying that the judgment must be confirmed.

Duval, C. J., Aylwin, Drummond and Mondelet, JJ., concurred.

Judgment confirmed unanimously.

Torrance & Morris, for Appellant; *A. Robertson, Q. C.,* for Respondents.

Rolland, (plaintiff in the Court below,) Appellant; and Jodoin, (defendant in the Court below,) Respondent.

Held, that the use of the words *paie tes dettes,* by a creditor to his debtor, on the public street, in the hearing of passers by, gives ground for an action of damages.

This action was brought to recover $8,000, damages for verbal slander.

It appeared that as the plaintiff was walking along Notre Dame Street one evening, the defendant met him and called out to him, Rolland, Rolland. The latter did not stop nor answer. The defendant then exclaimed, according to the plaintiff's assertion, pay your debts, pay your debts, (*paie tes dettes, paie tes dettes.*) It was in consequence of this insult that the action was brought. The defendant denied having used these words. He alleged that he had merely called upon the plaintiff to come and settle his account. At this time the plaintiff was second endorser on two notes held by the defendant to the amount of $3,000. The plaintiff had neglected to pay, wanted delay, and for the purpose of obtaining delay, had appealed from a judgment against him at the suit of the defendant. The debt, however, was afterwards settled in full. The action was dismissed by Smith, J., on the ground that the plaintiff had wholly failed to prove his case. From this judgment the plaintiff appealed.

Drummond, J., dissenting, said it was absurd that a case of this nature should be brought in the Superior Court. The plaintiff might perhaps have been entitled to three or four dollars damages; but the injury was so trifling, that the judge of the Superior Court acted wisely in dismissing the action. Litigation for trifles like this should not be encouraged. He therefore fully approved of the judgment in the Court below.

Meredith, J., said it certainly was matter for regret that this action should have been brought in the Superior Court. There seemed to be nothing very offensive in the words used, yet he did not think it was justifiable for the defendant to tell the plaintiff in the public street to pay his debts. But an action for $8,000, brought in the Superior Court, exposing the defendant to considerable trouble and expense, was quite unnecessary.

Mondelet, J., said that the plaintiff had made proof of his allegations. The expression, used in the open street, was injurious, and wounded the plaintiff's sensibilities. The judgment, therefore, would be reversed, and £20 damages awarded.

Duval, C. J., and Aylwin, J., concurred.

Judgment reversed, Drummond, J., dissenting.

C. & F. X. Archambault, for Appellant; *Lesage & Jetté,* for Respondent.

Beaudry, (defendant in the Court below,) Appellant; and Roy *et al,* (plaintiffs in the Court below,) Respondents.

Action for damages caused by privy being built against *mur mitoyen.*

The action in this case was brought by the plaintiffs, to recover £600 damages, caused by the defendant having built privies against the *mur mitoyen,* the parties being neighbours. The filth from these places had penetrated and flowed through the *mur mitoyen,* causing a disagreeable smell in the plaintiffs' premises. There was also a demand for £52, half the cost of repairs to the *mur mitoyen.* The judgment appealed from by the defendant was rendered in the Superior Court by Smith, J., 30th April, 1864, condemning the defendant to pay £50 as damages, and ordering him to thoroughly repair the *mur mitoyen.*

DUVAL, C. J. This is entirely a question of fact, and we think the judgment must be confirmed with costs.

Aylwin, Drummond and Mondelet, JJ., concurred.

Judgment confirmed unanimously.

C. & F. X. Archambault, for Appellant; *G. Joseph*, for Respondent.

MONTREAL CITY PASSENGER RAILWAY Co. (defendants in the Court below,) Appellants; and BIGNON, (plaintiff in the Court below,) Respondent.

Held, than an action for damages will not lie, where the injury is the result of pure accident, and where no negligence can be imputed to the defendants.

This was an appeal from a judgment of the Superior Court, rendered by Monk, J., on the 30th April, 1864, condemning the company to pay the sum of $600 damages for the death of the plaintiff's son, killed by one of the cars in July, 1862. The action was brought for £500 damages, £200 for the expense of bringing up the child to the time of his death, and £300 for expenses of interment, and for the father's grief at the loss of his child. The accident occurred in St. Joseph Street. The car at the time was going west, at a moderate rate of speed, and had gone a short distance beyond Versailles Street, when the plaintiff's child suddenly ran from behind a cart on to the railway track, directly in front of the car, where he was instantly knocked down, and run over by the car, before the driver could stop it. The defendants contended in the Court below, that they were not liable in any sum whatever, chiefly because the lamentable occurrence was the result of pure accident, in so far as they were concerned; and also because it did not appear to them that, under the circumstances, the plaintiff had a right to demand any pecuniary remuneration for the death of his infant child. Damages could be given only in proportion to the injury resulting from the death to the parties for whom the action has been brought. The defendants, in appealing from the judgment against them, urged that the "injury," the amount of which is to be the measure of damages in an action for the benefit of the survivors, must be a material injury, capable of estimation in money, upon some practical basis, either specific or general, and that damages could not be granted as a mere *solatium* for the feelings of the complainant.

AYLWIN, J. I am not disposed to reverse the judgment. I would hold the Company to the strictest responsibility. I therefore dissent from the judgment of the Court.

DUVAL, C. J. It is beyond a doubt that the driver was not in fault here. He had no opportunity of stopping in time, for he could not see a little boy that suddenly ran in front of the horses. The judgment is therefore reversed.

Mondelet and Drummond, JJ., concurred.

Judgment reversed, Aylwin, J., dissenting.

Abbott & Dorman, for Appellants; *Leblanc, Cassidy & Leblanc*, for Respondent.

PENNOYER, (plaintiff in the Court below,) Appellant; and BUTLER, (opposant in the Court below,) Respondent.

Title to property.—Right to file opposition.

Certain real property having been taken in execution, as belonging to Lothrop Chamberlain, defendant in the Court below, the respondent, by his opposition *afin de distraire*, claimed the land under a deed of sale to himself. This opposition was contested by the Appellant, on the ground that the land did not in reality belong to the opposant, but that he held it for the defendant, whose property it was. It appeared in evidence that the land either belonged to the defendant, or to the old firm of Baxter & Chamberlin, dissolved twenty years previously, of which defendant was a partner. Mr. Justice Short having maintained the opposition, the plaintiff appealed.

MEREDITH, J., was of opinion that the opposition should have been dismissed. The opposant, being merely an agent, had no right to file an opposition in his own name.

Aylwin, Drummond and Mondelet, JJ., concurred.

Judgment reversed.

Sanborn & Brookes, for Appellant; *Felton & Felton*, for Respondent.

WALKER *et vir*, (plaintiffs in the Court below,) Appellants; and THE CORPORATION OF SOREL, (defendants in the Court below,) Respondents.

Held, that where essential matter is merely imperfectly stated, and not entirely omitted, the defendant should attack the declaration by an exception *à la forme*, and not by a *défense en droit*.

MEREDITH, J. The plaintiff in the Court below brought a petitory action against the respondents, and in her declaration she describes herself as "Dame Mary Walker de la ville de Sorel, dans le district de Richelieu, épouse contractuellement séparée de biens de John George Crébassa, Ecuier, notaire public du même lieu, et le dit John George Crébassa en autant que besoin est pour autoriser sa dite épouse."

The respondent filed a *défense au fonds en droit*, and contended that the allegations of the declaration, as to the separation as to property of the plaintiff from her husband, are insufficient. The judgment of the Court below maintained the *défense en droit*, one of the *considérants* of the judgment being: "Considérant que dans la dite déclaration les demandeurs n'ont allégué et fait voir aucun droit de la demanderesse d'ester en justice et d'instituer la présente action comme séparée de biens d'avec son dit mari, n'alléguant pas la dite séparation et comment elle s'est opérée."

The rule on this subject, as I have always understood it, is this: "That matter essential entirely omitted is the subject of a *défense en droit*, but that matter essential imperfectly stated is the subject of an *exception à la forme*." (3 Rev. de Leg. p. 196.) Applying this rule to the present case, if the respondent had any reason to complain, (a point which we are not called upon to decide,) there should have been filed, not a *défense en droit*, but an *exception à la forme;* and therefore the judgment, maintaining the *défense au fonds en droit*, ought to be reversed.

Aylwin, Drummond, and Mondelet, JJ., concurred.

Judgment reversed.

D. Girouard, for Appellants; *Lafrenaye & Bruneau*, for Respondents.

CREBASSA, (defendant in the Court below,) Appellant; and MASSUE, (plaintiff in the Court below,) Respondent.

Held, that a return made by the Sheriff of *rebellion à justice* is sufficient evidence to justify the Court in making a rule against the defendant, for *contrainte par corps*, absolute, where the defendant does not appear. C. S. L. C. cap. 83, sec. 143–145.

This appeal was from an interlocutory judgment rendered in the Superior Court, 20th May, 1864, on motion of the plaintiff for a rule *nisi* for a *contrainte par corps*, and also from a final judgment rendered by the same Court, 31st May, 1864, declaring the rule absolute, with costs against the defendant, for having committed a *rebellion à justice*, on the 28th April, 1864, as appeared by the return of the sheriff of the district of Richelieu, to the writ of *pluries pluries venditioni exponas de bonis*, addressed, 31st March, 1864, to the sheriff of the district of Richelieu, wherein the defendant resided, and had opposed the sale of his goods and chattels previously seized. The judgment was appealed from on the ground of irregularity in the proceedings, and because judgment had been rendered without any proof. The respondent contended that the Ord. of 1667 had been superseded by the statutory enactments contained in C. S. L. C. cap. 83, sec. 143 to 145. The return of the sheriff in such a case as this was not traversable.

MEREDITH, J., said, it was not denied that the appellant opposed the execution. The defendant had made default, and the return of the sheriff must be considered sufficient evidence. The Court saw no reason to disturb the judgment rendered by the Superior Court.

AYLWIN, J., said, it would be impossible in this matter to proceed according to the Ord. of 1667. He was satisfied that what had been done time and again might be done in this case.

Duval, C. J., concurred.

Mondelet and Drummond, JJ., dissented.

Judgment confirmed.

D. Girouard, for Appellant; *Lafrenaye & Armstrong*, for Respondent.

MONTREAL, March 9th, 1866.

Ex parte JAMES MILTON BROWN.

Extradition—Warrant of Commitment.

Held, that a warrant of commitment, under the Extradition Treaty, which omits to state that the accused was brought before the magistrate, or that the witnesses against him were examined in his presence, is bad upon the face of it, and must be set aside.

In this case a writ of *habeas corpus* had been ordered to issue on the preceding day, returnable *immediate*. The case again came up on the return of the writ.

The grounds of the application are sufficiently apparent from the remarks of the judges, of which the following is a full report.

DUVAL, C. J., said, this case had been so fully argued for several days past that no further light could possibly be thrown upon it. The judges entertained no doubt whatever that the man should be discharged. It was therefore ordered, that it appearing upon the return to the writ, that the warrant of commitment in virtue of which Brown was now detained, was bad, he be discharged from custody, his detention being illegal. The case was certainly one of very great importance. In the first place it was of importance to the liberty of the subject. It was not an ordinary case of depriving a man of his liberty and leaving him in the country, but it was a case of sending him out of the country. It might be said that this man was not a British subject. Still, he was within British territory, and so long as he was in British territory, he owed allegiance to Her Majesty, and owing allegiance he was entitled to protection. If extradited, not only would he be deprived of his liberty, but he would be sent out of the Queen's dominions, and this no court had power to do unless in accordance with the law. It should be well understood that this court was prepared most fully and faithfully to execute the stipulations of the Treaty, and that the Judges would not encourage or suffer any quibbling with its terms. If the Judges saw that a party fairly came within the provisions of the Treaty, it would be in vain for him to attempt to escape by exceptions *à la forme*. The Court would not listen to such exceptions, but would see that justice was done. It was intimated over and over again, that if there was a mere informality in this case, another warrant might be substituted by the magistrate. Nothing of the kind has been done. We must suppose, therefore, that the magistrate had a reason for not doing so. We have to determine as to the warrant before us, and we have no hesitation in saying that it is illegal. Not one of the requirements of the amended Act 24 Vic. cap. 6, has been complied with. The Statute says, first, that the party shall be charged upon oath, and the magistrate thereupon shall have him arrested and brought before him. I believe the majority of the Judges are agreed that if the man is already before the magistrate, it is not necessary to issue a new warrant, because the object of the warrant is the arrest. But if the man is before the magistrate, what is to be done? The magistrate may examine upon oath any persons touching the truth of the charge, and upon such evidence as according to the laws of this Province would justify the apprehension and committal for trial of the person so accused, if the crime had been committed here, it shall be lawful for such magistrate to issue his warrant for the commitment of the person, till surrendered or discharged. Here was a very important proviso, which must be fulfilled. Great Britain had not yielded to the demands of foreign powers. She said: it is not sufficient that this is a crime in your country; it must be a crime in this country. We see the object the Legislature had in view. It must appear upon the warrant of commitment that the accused had been brought before the magistrate, and that the magistrate examined witnesses in his presence in the terms of the said act. We see at once the importance of complying with this; for no one would pretend that a British subject, or even a stranger, could be sent out of the Queen's dominions without having heard what was alleged against him, or having an opportunity of giving any explanation. This was no idle form; it was essential that it should appear on the face of the warrant; and this Court, in the exercise of its controlling and superintending powers, must see whether it had been complied with.

Another question might arise—whether this

Court might not substitute another warrant. No precedent has been cited in support of such a right. In Bissett's case, the Court of Queen's Bench denied the right. On this, however, we pronounce no opinion. The magistrate was fully aware that he had a right to substitute another warrant, and not having done so, it would be wrong for this Court to take an initiatory proceeding in the matter. Therefore the Court, while it reserved any decision on its powers in this respect, would not interfere. Nor would it pronounce any opinion upon the power of a Judge in vacation to substitute his own warrant. The case of the Chesapeake fully confirmed the view taken by the Court in this case. But without reference to precedents, he believed a careful attention to the general principles of law would satisfy any one, though not a lawyer, that the rule laid down by the Court was reasonable, and regard for the liberty of the subject imperatively called upon the Court to enforce that rule. The Court, then, being clearly of opinion that the warrant of commitment was bad and insufficient to detain the prisoner, would order his discharge.

AYLWIN, J., entirely concurred in the opinion of the Chief Justice.

MEREDITH, J., said it was with regret he concurred in the judgment about to be rendered, but he was of opinion that the case did not admit of doubt. The magistrate acted under a special authority, and his commitment ought to show upon the face of it that at least in all matters of importance, he had followed the directions of the statute. In the present case it does not appear, upon the face of the commitment, that the prisoner heard the evidence against him, or even that he was before the magistrate. And were we to hold such a commitment valid, we would in effect say that a person may be surrendered under the Treaty without having had any opportunity of offering an explanation respecting the charge brought against him or knowing even by what evidence that charge was supported.

MONDELET, J., said it was to be regretted that the case should fail; but the responsibility was not upon the judges. They were anxious to carry out the Treaty to the fullest extent; but it must be done according to law. A special power given by a special law must be exercised with much greater caution than powers conferred by the common law. He fully concurred in the remarks of the other judges.

Drummond, J., concurred.

Prisoner ordered to be discharged.

B. Devlin for Petitioner; *T. K. Ramsay* for the Crown.

RECENT ENGLISH DECISIONS.

[Collated from THE LAW REPORTS.]

Negligence — Railway — Level Crossing.— There is no general duty on railway companies to place watchmen at public footways crossing the railway on a level; but it depends upon the circumstances of each case whether the omission of such a precaution amounts to negligence on the part of the company.

A railway was crossed by a public footway on a level, and was protected by gates on each side of the line, and caution boards were placed near the gates. The view of the line from one of the gates was obstructed by the pier of a railway bridge crossing the line; but on the level of the line it could be seen for 300 yards each way. A woman approaching the line by that gate was detained by a luggage train on her side, and immediately on its having passed, crossed the line, and was run down and killed by a train coming along the other line of rails. There was no evidence of negligence in the mode of running the trains:—*Held*, that there was no evidence of negligence on the part of the company, but that there was evidence of negligence on the part of the deceased. Stubley *v.* The London and North Western Railway Co. Ex. p. 13. Baron Bramwell observed: "In crossing the rails at all, this woman was, as people often do, heedlessly going on at the rear of a passing vehicle on her side, without waiting to see whether the other line was clear."—[*To be Continued.*]

PRIVATE EXECUTIONS.—The measure for substituting private for public executions in England has been approved of by a majority of the House of Lords, and probably will soon become law.