Day Book

POST OFFICE.

QUEBEC, 24th November, 1863.

Arrival and Departure of the Mails at Quebec.

DUE.	MAILS.	CLOSE
Dependant on the Arrival of Mail Steamers.	‡ England, viâ Portland, per Canadian Line	3.00 P.M. Friday.
	England, viâ New York, per Cunard Line	3.30 P.M, every alternate Monday.
	England, Halifax, N. S., Newfoundland, and West India Islands, viâ Boston per Cunard Line	2.30 P.M. do do do.
4.00 P.M. Tuesday and Saturday	England, Halifax, N. S., Newfoundland, Bathurst, Miramichi, Shediac & Pictou	8.00 A.M. Wednesday and Saturday.
	Gaspé, Bay of Chaleurs and Dalhousie, Campbeltown, Bathurst, Miramichi, Shediac & Pictou	
4.00 P.M. Monday, Thursday and Saturday	Gaspé, Bay of Chaleurs and Dalhousie, Campbeltown, &c., overland	8.00 A.M. Tuesday, Thursday and Saturday.
9.00 A.M. Thursday and Sunday	Woodstock and Edmunston, per rail to Riviere du Loup, and on overland	3.30 P.M. Friday.
4.00 P.M Daily except Sunday	New Brunswick, Nova Scotia and Prince Edward Island, per rail to Portland, and Steamer to St, John, N. B	8 00 A.M. Daily.
9.00 A.M. do. do	* South Shore (East) to River du Loup, per Rail, and east to Cacouna, Rimouski, Métis, Matane, &c	2 30 P.M. Daily.
	South Shore (East) Point Levy East, Beaumont and St. Michel	
	Montreal City	
	Canada West and Western United States	3.30 P.M. Daily.
	New York	
9.00 A.M. Daily except Monday †	Boston	
	Post Offices on the Line of Railway between Quebec and Richmond	
	Do do do Richmond and Montreal	
	Do do do Richmond and Island Pond	4.00 P.M. Daily.
7.00 A.M. Daily	Three Rivers, Sorel, Batiscan, Labaie, Nicolet, &c	4 00 P.M. Daily.
8.00 A.M. Daily	North Shore (West) St. Foy, Point-aux-Trembles, Cap Sante, Portneuf, &c	9.00 A.M. Monday, Wednesday, and Friday.
8.00 AM. Monday, Thursday and Saturday	North Shore (East), Chateau Richer, St. Paul's Bay, Les Eboulements, Murray Bay, &c	9.00 A.M. do do do.
8.00 A.M. do do do	Saguenay District, Tadousac, Bajotville, Grand Baie, Chicoutimi, &c	3.30 P.M. Daily.
9.00 A.M. Daily except Monday	Megantic, Leeds, New Ireland, Lower Ireland, Harvey Hill Mines, Black River Station, &c	3.30 P.M. Tuesday, Thursday and Saturday.
9 00 A.M. Monday, Wednesday and Friday	St. Giles, St. Sylvester, &c	2.30 P.M. Monday, Wednesday and Friday.
3.00 P.M. Tuesdays, Thursdays and Saturdays	South Shore (West), Gentilly, Bécancour, Platon, Ste. Croix, St. Pierre les Becquets, &c	8.00 A.M. Daily.
4.00 P.M. Daily	Frampton East, Frampton West, St. Anselme, St Henry, Ste. Claire, St. Henedine, Ste. Marguerite, &c	11.30 A.M. Daily.
7 00 A.M. do.	Ste. Marie, St. Isidore, St. Joseph and St. Francois	8 00 A.M. Saturday.
4.00 P.M. Friday	Cranbourne	10.00 A.M. Wednesday and Saturday.
4 00 P.M. Tuesday and Friday	Valcartier, Indian Lorette, Bourg Louis, St. Catherine, St. Raymond &c	1.00 P.M. Monday and Thursday.
8.00 A.M. Wednesday and Saturday	Island of Orleans, Ste. Famille, St Francois, St. Pierre, St. Laurent and St. Jean	9.00 A.M. and 2.30 P.M. Daily
9.00 A.M. and 3.00 P.M. Daily	Spencer Cove, Levis, New Liverpool and St. Jean Chrysostome	2.00 P.M. Tuesday and Friday.
10.00 A.M. Tuesday and Friday	Charlesbourg, Laval, and Lake Beauport	2.00 P.M. Saturday.
10.00 A.M. Saturday	Stoneham	4.00 P.M. Daily.
9.00 A.M. Daily	Cap Rouge	8.00 A.M. Tuesday, Thursday and Saturday.
4.00 P.M. Tuesday, Thursday and Saturday	Ste. Anne des Monts	8.00 A.M. Daily.
4.00 P.M. Daily	South Quebec	

‡ A supplementary bag for late letters will be closed at 4.30 P.M. | * A supplementary bag will be closed at 9.00, A.M. | † A supplementary bag will be closed 4.30, P.M.

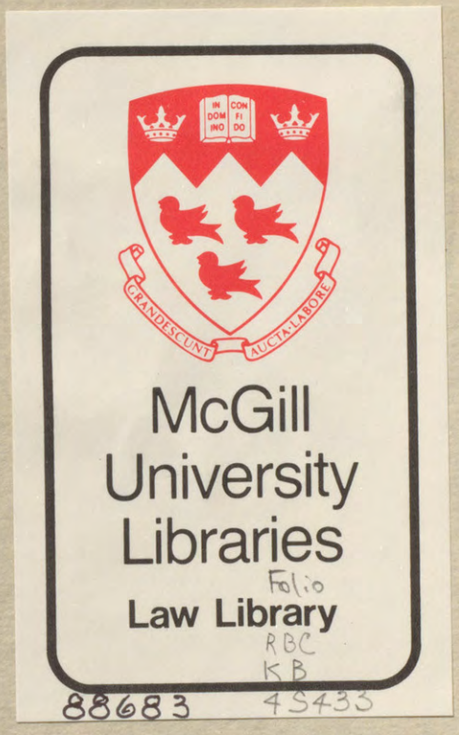
RATES OF POSTAGE UNDER ½ OZ.

CANADA.—If pre-paid by Stamps 5 cts.—if sent unpaid 7 cts.
UNITED STATES.—If pre-paid by Stamps 10 cts.—pre-payment optional.
GREAT BRITAIN.—Canadian Line,—pre-paid by Stamps 12½ cts.—if sent unpaid 25 cts.
GREAT BRITAIN.—Cunard Line,—pre-paid by Stamps 17 cts,—if sent unpaid 30 cts.

Book Postage must be pre-paid—under ¼ lb., 7 cts.; over ¼ lb. and under ½ lb. 12½ cts.
FRANCE—Must be pre-paid in full: by Canadian Line, 17 cts. under ½ ounce; by Cunard Line, 21 cts. under ½ ounce
British Colonies and Foreign Countries must be pre-paid.
☞ Registered Letters must be posted 15 minutes before the closing of each Mail.

JOHN SEWELL,
POSTMASTER.

Quebec, November 24, 1863.



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JOHN E. C. BRIERLEY
3644 PEEL STREET
MONTREAL 2, QUEBEC

9 June '79.

Mike

This more properly belongs in the Library than in my study. You can see it is

a form book
a journal
a scrapbook* of
decisions etc.

all in one, and apparently posted over an extensive entry of accounts dating from 1814-15

It appears to date from the 1850's or 1860's. I suspect it belonged to John Stewart (of Quebec?)

* contains extracts of the legislative proceedings regarding the coming into force of the Quebec &c in 1866 and some of the debates thereon.

It was given to me by a student from the Ottawa region, some years ago.

JEB.

Legal Intelligence.

VICE ADMIRALTY COURT.—LOWER CANADA.

Tuesday, the 22nd July, 1862.

ROYAL MIDDY—*Davison.*

This was a claim of salvage, by Joseph Roy dit Desjardins, the owner and master of the schooner *Emedine*, against the three masted schooner *Royal Middy* and her cargo, under the circumstances mentioned in the following judgment of the court:—

THE COURT. (*Hon. Henry Black.*) The *Royal Middy*, of the burden of 404 tons or thereabouts, owned by William Duthie Baxter Janes, of Montreal, and commanded by Robert Davison, sailed from Montreal for Dublin, in Ireland, on the 23rd October last, with a cargo of Indian corn. Between the second and the ninth of November, being then in the lower part of the River St. Lawrence, she met with strong gales and head winds, and shipped several heavy seas,—losing her foremast, main topmast and jib boom, and other spars, having her rigging a good deal torn and shattered, and being therebydisabled and unmanageable,—and found herself, on the 6th of November, off the west point of the Island of Anticosti, which bore north-east by north about ten miles from her. A jury-mast was then rigged, and she stood to the southward, and on the 7th was anchored about three-fourths of a mile from the south shore. On the 8th, about one in the afternoon, the master, his wife, the second mate and two seamen went ashore in the ship's boat, taking with them the best of the master's baggage. The vessel was then so close to the land, that the witnesses say if it had come on to blow, she must have gone ashore on the rocks. The master and the men endeavoured to return through the surf to the vessel, but could not accomplish it; the men, after being twice washed ashore, refusing to try any more. On the 9th, at about two or three o'clock, A.M., the wind having come off the land, the mate, who was left on board, proposed to the remainder of the crew to try and save the ship and cargo. The men agreed, and the starboard anchor was raised, and the port one slipped, and they succeeded in getting out to sea. As the day advanced the weather became worse than it had been since their departure from Quebec. It blew hard, and the vessel became quite unmanageable, the sea beat over her constantly, she made a great deal of water, and the men, who could scarcely leave the pumps, expected she would go down every moment. Being about twenty miles from the south shore, with a signal of distress flying, a vessel passed and was applied to for assistance to tow the *Royal Middy* to some safe anchorage, but she declined as being herself in a bad state, but offered to take the men, which they declined. Soon afterwards they saw, about nine miles to leeward, the *Emedine*, which answered their signal of distress, and came to them after tacking several times, the wind being then strong, and the *Emedine* having two reefs in her sails.

The *Emedine* is a schooner of ninety-six tons burden, and had sailed on the first of November from Halifax, Nova Scotia, for Quebec and Montreal, with about four hundred barrels of herring and mackerel, of the value of about eight hundred pounds. Her crew consisted of a master, mate and four seamen. She was abreast of Cape Rosier when she met the *Royal Middy*. After several tacks she came within a short distance of the *Royal Middy*, and spoke her, asking her people what assistance they required, and being answered that they wanted the *Emedine* to tow the *Royal Middy* to a safe anchorage. As the people of the *Royal Middy* could not come on board the *Emedine* on account of there being no oars to their boat, the master of the *Emedine* went on board of the *Royal Middy*, and encountered some danger in so doing, in consequence of the state of the weather and the sea, which was then sweeping over the *Royal Middy's* deck. The promoter (the master and owner of the *Emedine*,) went into the cabin of the *Royal Middy* with the mate, who was then in charge, and who asked him what he would charge to tow the *Royal Middy* to a safe anchorage; to which the promoter answered that his vessel was not insured, that by assisting the *Royal Middy* to a safe anchorage he might lose his vessel, or be compelled to discontinue his voyage to Quebec, that he had a cargo on board, and that the delay might expose him to damages towards the owners of the cargo. It was finally settled that the *Emedine* should take the *Royal Middy* in tow, and endeavour to take her to a safe anchorage, but no price was agreed on, the master of the *Emedine* saying that he would leave it to the generosity of the owners of the *Royal Middy*. The *Emedine* then got a hawser on board the *Royal Middy*, but it was found that she had no proper hawser—her's being used for the jury-mast—he sent one from the *Emedine*, and at the same time sent a pair of oars; and having made the hawser fast on board the *Royal Middy*, at about half-past seven o'clock, P.M., of the 9th, all things being made ready, he steered towards Cape Rosier light, towing the *Royal Middy* after him. They had considerable trouble, during the night the weather was rough, and it snowed heavily on the following morning, so that though close to the land, it could not be seen, and the lead was constantly used; and the wind changing, they were compelled to come to anchor about two or three o'clock, P.M., of the 10th, at a place called Sandy Beach, at the entrance of Gaspé Basin, where they remained until about two o'clock, P.M., of the 11th, when the wind having shifted they entered Gaspé Basin, and came to anchor in six or seven fathoms water, between seven and eight o'clock in the evening, about a cable's length from the wharf at which the *Royal Middy* wintered. The weather became worse afterwards, and the frost set in, so that the *Emedine* was compelled to remain in Gaspé Basin, and to winter there, it being impossible to continue her voyage to Quebec without risking the total loss of the vessel and cargo. The promoter was afterwards sued by the owner of the cargo for $5000, as damages alleged to have been sustained in consequence of his having failed to bring the cargo to Quebec in the autumn. It was not until the 13th or 14th of November, that the master of the *Royal Middy* joined that vessel in Gaspé Basin, having proceeded to that place over land from the point at which he, with his wife, second mate and two seamen had landed.

It is admitted on behalf of the *Royal Middy*, that the services rendered by the *Emedine* were salvage services, the vessel being then damaged and in distress; but it is alleged that the services were rendered without any interruption of her voyage, or while she was actually on her way to the port to which she towed the *Royal Middy*, and to which it is alleged she was proceeding for safety, having sprung a leak through bad weather and feeling unable to continue her voyage to Quebec; that the service involved neither enterprise nor danger to the *Emedine* or her crew; and that the *Royal Middy* was not in imminent danger when taken in tow by the *Emedine*, but was proceeding towards and near a safe port; that no skill or labour was exerted by the people of the *Emedine*, and that the time occupied in the service performed was very short. But the assertion that the *Emedine* was about to proceed to Gaspé Basin, or that the promoter had any thought or intention of discontinuing his voyage to Quebec is not proved in any way, and is positively denied by him, although he admits that being above the harbour of Malbaie, and fearing boisterous weather, he intended to go and anchor for the night in that place. The risk of the lives of the crew of the *Emedine*, or of the loss of that vessel herself, was probably not very great, but the risk of detention, and of the loss of the voyage, was certainly very considerable at the time the service was undertaken; and this loss was eventually incurred, the *Emedine* having been obliged to winter in Gaspé Basin. The degree of danger and distress from which the *Royal Middy* was rescued was undoubtedly very great. She was disabled in her masts and rigging, very leaky, without oars for her remaining boat, and deprived of her master, second mate, and two of the seamen, forming probably a considerable portion of her crew. From this danger she was rescued by the *Emedine*. The value of the property thus saved is admitted to have been six thousand seven hundred pounds currency, that is £3000, as the value of the vessel, and £3700 as that of the cargo. The principle upon which salvage is awarded is that the remuneration should be liberal, looking not merely to the exact *quantum* of service performed in the particular case, but to the general interests of navigation and commerce, which are obviously greatly protected by encouraging exertions of this nature. If in this case I award £400 currency, to the *Emedine*, this will be about six per cent on the value of the *Royal Middy* and cargo, which in my judgment will be a fair and liberal remuneration for the services rendered, and I award that sum, with expenses.

Messrs. CARON, JONES and HEARN, *for Salvor.*
Messrs. HOLT & IRVINE, *for Royal Middy.*

Legal Intelligence.

IN THE PRIVY COUNCIL.

5th July, 1862.

In appeal from the Court of Queen's Bench: Appeal side, Lower Canada.

BENJAMIN GRANT.....*Appellant,*
and
THE ÆTNA INS'CE CO.....*Respondents.*

JUDGMENT.

Lord Kingsdown, in giving judgment, said: This was an appeal from a judgment of the Court of Queen's Bench of Lower Canada, affirming a judgment of the Superior Court of Lower Canada in favor of the present Respondents, in an action brought by the present Appellant against the Respondents on a policy of insurance, dated 30th July, 1858.

The policy was in these terms: "By this Policy of Insurance the Ætna Insurance Company, in consideration of one hundred and twenty dollars to them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, do insure Benjamin Grant against loss and damage by fire to the amount of four thousand dollars, viz: two thousand four hundred dollars on the hull and cabins, twelve hundred dollars on the engines and boilers, and four hundred dollars on the tackle and furniture of the steamer *Malakoff*, now lying in Tait's dock, Montreal, and intended to navigate the St. Lawrence and Lakes, from Hamilton to Quebec, principally as a freight boat, and to be laid up for the winter in a place approved by this Company, who will not be liable for explosions either by steam or gunpowder."

The policy was to be in force from the 30th July, 1858, till 30th July, 1859. The boat never left Tait's wharf, and was burnt there on the 25th June, 1859.

The action was brought on the policy, and among other facts found by the Jury, they found that the representations in the policy that the ship was intended to navigate the St. Lawrence and Lakes was immaterial, and that no additional risk was incurred by her remaining in Tait's dock, and the verdict found for the appellant a certain amount of damages.

On application being made to the Court, however, the verdict was ordered to be set aside, and a verdict to be entered for the defendants in the action, on the ground that the words which I have read amounted to warranty that the ship should navigate the St. Lawrence and Lakes from Hamilton to Quebec, and that she never did so.

That judgment was afterwards affirmed by the Court of Queen's Bench, and from that affirmance the present appeal is brought.

It was contended before us that the words used in the policy do not contain any warranty, but that if they do, it was merely a warranty of an intention which was *bona fide* entertained at the time.

Their Lordships are of opinion that the whole question depends upon the meaning to be attributed to the language used in the policy. If those words report an engagement that the ship shall navigate in the manner there mentioned, then they must be considered as amounting to a warranty, and, the engagement not having been performed, whether material or immaterial, the Insurers would be discharged. But their Lordships think that that is not the effect of the words used, or the intention of the parties. They think that the words used amount only to this, that the assured says, "My ship is now lying in Tait's dock. My intention is to navigate the St. Lawrence and Lakes, but I do not contract to do so; and if I do so navigate her, I engage that she shall be laid up for the winter in a place to be approved by the Company." Such a construction gives a natural meaning to the words used, and imputes a rational intention to the parties.

Judgement was thereupon given for the Appellant, carrying costs in Queen's Bench, and Privy Council, but without prejudice to the right of a new trial, in accordance with a motion made in the Superior Court, shortly before the rendering of Judgement in favor of the movers, which Judgment made the motion valueless until now, when the Superior Court is left to rule as it sees fit

Quebec 2d Septem 1814

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. Col Taschereau on full to " "	17. 2 9			
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SALVAGE — A LEGAL DECISION.

INTERESTING TO CANADIAN SHIPPERS.

1862.

A case of some importance to Canadian shippers was lately decided in the District Court of the northern district of New York. The suit was brought by the Western Transportation Company, the owners, and Captain Thorp and others, the master and part of the crew of the propellor *Illinois*, against the Canadian schooner *Great Western of Dundas*, and was prosecuted for salvage, under these circumstances:

The schooner *Great Western*, a Canadian vessel of 192 tons burthen, whilst on a voyage from Kincardine to Montreal, collided with the American schooner *Milwaukee Belle*, of 368 tons burthen. The collision occurred in Canadian waters, about 25 miles E.N.E from Rondeau, on the northern shore of Lake Erie, on the 5th of June, 1861, about a quarter past two o'clock in the morning; the night was very dark and rainy.

The *Great Western* was struck on her bow, and a good deal, though not much, injured as was at first supposed. The damage to the *Belle* was considerable.

Immediately after the collision the pumps of the *Western* were tried, and it was found she had taken in considerable water, and the vessels having separated the *Belle* commenced ranging ahead of the *Western*. The officers of the latter then requested the master of the *Belle* to throw them a hauser and take them in tow. A hauser was accordingly sent on board the *Western* and made fast to the foremast, and her mate (following most of the crew who had without orders already gone on board the *Belle*, in the belief that the *Western* was so much injured and taking water so rapidly that there was danger of her going immediately down) endeavored to make the hauser fast to a timber head of the *Belle*. The master of the *Western* followed his mate on board the *Belle*, and desired the master of the latter vessel to take the former in tow. This was assented to; but in the darkness and confusion the mate and those assisting him failed to get more than a single turn of the hauser around the timber head, and the hauser slipped and was not made fast to the *Belle*. The vessels then separated, the master and the whole of the crew of the *Western* being on board the *Belle*.

The master of the *Western* then requested the master of the *Belle* to keep near the *Western* until daylight; this he at first consented to do, but on examining the state of his own vessel, declined. The *Belle* then proceeded up the lake.

About two o'clock in the afternoon of the same day, the *Western* was discovered by the officers of the propellor *Illinois*; she was about 15 or 20 miles south easterly from Rondeau Point, and was probably from 6 to 10 miles south-easterly of the line of the proper course of the *Illinois*, and off the ordinary track of vessels proceeding to Buffalo, to which port the *Illinois* was bound. The *Illinois* at once proceeded to the *Western*, and the mate and four men were at once sent on board the wreck; they found her deserted and in an unnavigable and dangerous condition. The pumps of the *Western* were rigged and worked; some further assistance was sent from the *Illinois*, and after pumping two or three hours she was considered safe to tow. She was then, between four and five o'clock in the afternoon, taken in tow by the *Illinois*, and the two vessels reached Port Stanley between 11 and 12 o'clock the same evening.

The *Illinois*, as before stated, was a propeller, of about 500 tons burthen, and was worth with her cargo, $38,000. It was necessary, on account of the nature of her cargo, that she should proceed immediately to her destination. When she arrived at Buffalo her owners sent the propeller *Mary Stewart* to tow the *Western* to Buffalo. The *Mary Stewart* returned to Buffalo on the morning of the 8th, having the *Western* in tow.

The value of the *Western* when brought to Buffalo, was about $4,600, and the net proceeds of the sale of her cargo after paying all expenses amounted to $3,600.

It was not denied on the part of the owner of the *Western* that the services rendered to her were in their nature and character salvage services; but it was insisted that they were rendered without personal risk or extraordinary effort, and that, therefore, the libellants were not entitled to ask more than a very slight salvage compensation.

It was also strenuously insisted that the Court had no jurisdiction to award any salvage to the libellants, and that the case must be therefore dismissed for want of jurisdiction.

The Court decided both questions adversely to the owners of the *Western* and in favor of the owners and crew of the *Illinois* and awarded them for services in saving the *Western* $840, and for salvage of her cargo $657, in all $1,497, exclusive of cost, which they also recover. The amount awarded is 22½ of the total value of the vessel and cargo.

It should be remarked that all the parties entitled to salvage were not before the Court; the claims of the owners of the *Illinois* and the master and six of the crew, being alone decided by this suit. Other parties it was suggested by the Court (probably others of the crew) are also entitled to salvage.

SUPERIOR COURT.

BEFORE HON. MR. JUSTICE TASCHEREAU.

Richard Lee vs. Thomas Burns.—This was a petition presented to the Court complaining of the defendant, for holding his seat and continuing to act as Councillor for St. Peter's Ward, in the City Council, in the room and place of Mr Dinning who was alleged, in the petition, to be the legal representative of that Ward in the City Council, in virtue of the election which took place in December, 1860, at which election, it was alleged in the petition, Mr Dinning had a majority of votes over Mr. Burns, the sitting Councillor, and that by law Mr. Dinning, having a majority of votes, was entitled to the seat instead of Mr Burns. The defendant pleaded that by law it was necessary that a nomination should precede the election, at which nomination the electors were bound, by a requisition, in writing, to name not only the candidate they were desirous of having as their representative, but also the capacity they wished him to serve in, and that at the nomination which took place, according to law, preceding the election in question to fill the two vacancies which existed, —that is, the vacancy occasioned by the expiration of the three years, or term of office of the then retiring Councillor, Mr. Burns, and the vacancy caused by the resignation of Mr. Robert Shaw; that three candidates were proposed and nominated, in writing, by the electors, in the following manner: The requisition in favor of Mr. Burns was, that he be elected for the three ensuing years to replace the retiring Councillor; and that in favor of Mr. Dinning was, that he be elected to fill the vacancy occasioned by the resignation of Mr Shaw; and that in favor of the third candidate, Mr. Bourget, was, that he be elected to fill either of the two vacancies. That at the election which subsequently took place, Mr Dinning had 273 votes, Mr. Burns 260, and Mr. Bourget 151, and that in pursuance of the requisitions addressed as above, by the electors, to the presiding officer at the election, the Revisors had reported and the Council had declared Mr. Burns, according to the terms of the requisition of the electors in his favor, duly elected for the three ensuing years in the place of the retiring Councillor, and Mr. Dinning duly elected to fill the vacancy occasioned by the resignation of Mr. Shaw, according to the terms of the requisition of the electors in his favor; and that, consequently, Mr. Burns had a right to retain his seat as the Councillor for St Peter's ward for the three ensuing years.

Hon. Mr. Justice TASCHEREAU, in rendering judgment, yesterday morning, and after reciting the facts of the case, remarked, that the elections for the two vacancies, although had on the same day, and at the same time and place, were two separate and distinct elections, each being for a particular purpose, as expressed in the written requisitions of the electors. That by law it was provided that a nomination should take place previously to the election, and that at this nomination, by a requisition on writing, the electors must not only declare whom they wish to represent them in the City Council, but must also state the mode and manner in which they wish them to represent them; this requisition, therefore, stamps the character of the candidature; and whatever votes are recorded, must be considered as recorded in accordance with the wishes of the electors as expressed in the requisition. At this election the requisition in favor of Mr. Burns was to represent the Ward for the three ensuing years; *that* in favor of Mr. Dinning was merely to fill the vacancy caused by the resignation of Mr. Shaw; and, yet, because Mr. Dinning had a majority of votes over Mr. Burns, it is pretended that he is entitled to

We give below a report of the recent case of precedence.

It will be seen that the proceedings are entirely *ex-parte*. The case stated is only that of Judge Bedard; Judges Day and Smith did not submit their case to the judicial committee at all; nor was any notice ever served upon them; nor did any argument take place upon the case. So that, the point is not yet decided,—the only point in issue,—whether a Judge can cease to be a Judge in his own Court, and receive Letters-Patent appointing him a Judge in another and independent Court, with the seniority he held, before he ceased to be a Judge in the former one.

PRIVY COUNCIL.

[*Present* Lord BROUGHAM, *Lord* LANGDALE, M. R., *The Right Hon.* STEPHEN LUSHINGTON, D. C. L., *Judge of the Admiralty Court, and the Right Hon.* T. PEMBERTON LEIGH.]

Re BEDARD.

Judges,—Precedence.

A Judge of a District in Canada was appointed Judge of another District, by Letters-patent granting him Precedence over other Judges, whose Commissions of Judges were of later Date than his:—Held that he could take such Precedence.

By the Provincial statute of Canada, (34 Geo. 3, c. 6) A Court of Queen's Bench is erected there, to consist of a chief judge and of three puisné judges, in each of five districts. In the 41 Geo. 3 c. 7, the expression "senior judge" is used. By the 7 Vict. c. 15, the Crown is restricted from removing the judges, except upon address from both Houses of the Colonial Legislature, and an appeal from the removal to her Majesty in council is provided. It was stated to have been the practice, that whenever judges of one district were appointed, as provided by statute, by the governor, to sit *ad hoc* in another district, they took their seats according to the date of their former commissions as judges in their own districts, and not according to the date of the commissions ad hoc. In 1836, Elzear Bedard was appointed a judge for the district of Quebec. Day and Smith were the judges for the district of Montreal and her Majesty granted and declared that Elzear Bedard should have and take rank and precedence in the Court of Queen's Bench for the district of Montreal next after the chief justice thereof, and before the Hon. Charles Dewey Day, Smith being junior to Day. On the 1st July, 1848, was entered on the register of the Court of Queen's Bench for the district of Montreal, a determination by the judges of the court, that the majority of the judges were of opinion, that the rank of a judge being an incident of his office, it was not in the power of the Crown to deprive him of that and that Mr Justice Day, and Mr. Justice Smith, being the senior judges on the Bench, must rank and take precedence accordingly, notwithstanding the clause contained in Mr. Justice Bedard's commission which grant in the letters-patent the judges were of opinion was void and of no effect, as being contrary to law. Bedard presented his petition to the Queen, praying this determination might be declared void; and her council referred the petition to the Judicial Committee.

The Solicitor-General (with him *The Attorney-General*) now appeared for Bedard.—[Notice had been served on the judges who opposed Bedard's claim, but no one appeared for them.)—The Crown can give precedence at pleasure, except so far as it is controlled by the 31 Hen. 8, c 10. (1 Black. Com., p. 272). "All degrees of nobility and honour are derived from the King as their fountain." (Id., p. 396; Chit. Pract., p. 107). The Queen has certainly a right to give precedence amongst Queen's council; besides, Bedard would take precedence as a senior judge, independently of the letters-patent. (4 Com. Dig., p. 579; 1 Sid. p. 408; Cro Car. anno 4, p. 107). In 1808, Mr. Justice Bayley was appointed a judge of the Court of Queen' Bench, and, on being removed to the Court of Exchequer in 1830, he took precedence as chief puisne baron. Mr. Justice Vaughan was removed in 1834 from the Court of Exchequer to the Court of Common Pleas, and took precedence over Mr. Justice Bosanquet. It seems, however, from several cases and the case of Mr. Justice Williams in 1834, that on being removed from an inferior to a superior court, no precedence was given.

THEIR LORDSHIPS decided to report in favour of Mr. Bedard's claim.

for 24 Septem 1814

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Dubuc 24 September 1814

. John Stewart Esqr Dr. to Sundries for 24 Sept.						
. To D. Col Taschereau pr Commandg	4	19	7 10/14			
pr 28 days pay		24	17 6	29	17	1 10/14
. To Major Laforce pr 28 days Pay		15	7	23	7	6
. To Major Panet pr 28 " "		"	"	23	7	6
. To Lt. W Jones pr 28 " "		14	9½	22	3	9
. To Surgr Painchaud pr 28 " "		11	1½	16	13	9
. To Adjt Burke pr 28 " "		8	3½	12	8	9
. To Asst Surg Fortier pr 28 " "		7	3½	10	18	9
. To Qr M. Coates pr 28 " "		6	3½	9	8	9
. To Capt Panet pr 28 " "		10	3½	15	8	9
. To Capt Mackay pr 28 " "		"	"	15	8	9
. To Capt Delagorgendiere pr 28 " "		"	"	15	8	9
. To Capt Jonnancour pr 28 " "		"	"	15	8	9
. To Capt Finlay pr 28 " "		"	"	15	8	9
. To Capt Ganeby pr 28 " "		"	"	15	8	9
. To Capt Faribault pr 28 " "		"	"	15	8	9
. To Capt Hinchs pr 28 " "		4	5	6	7	6
. To Capt Rolette pr 28 " "		10	3½	15	8	9
. To Capt Lepinton pr 28 " "		"	"	15	8	9
. To Lieut Fortier pr 28 " "		6	3½	9	8	9
. To Lieut Lamie pr 28 " "		"	"	9	8	9
. To Lieut Chemeau pr 28 " "		"	"	9	8	9
. To Lieut Mackay pr 28 " "		"	"	9	8	9
. To Lieut Faribault pr 28 " "		"	"	9	8	9
. To Lieut Mount pr 28 " "		"	"	9	8	9
. To Lieut Methott pr 28 " "		"	"	9	8	9
. To Lieut Gabeneau pr 28 " "		"	"	9	8	9
. To Lieut Laurent pr 28 " "		"	"	9	8	9
. To Lieut Johnston pr 28 " "		"	"	9	8	9
. To Lieut Burke pr 28 " "		"	"	9	8	9
Carried forward				£397	18	4 10/14

COURT OF APPEALS.

From Quebec.

9th March, 1849.

Present:—

The Hon. Mr. Chief Justice ROLLAND, President.
" " MONDELET,
" " DAY,
" " SMITH.

John Henderson, Appellant,
and
James Dean, Respondent.

The Judges in Appeal being equally divided in opinion, the judgment of the Court of Queen's Bench stands confirmed, under the 7th sect of the 7th Vict., c. 18.

G. O. STUART, Esq., for Appellant.
A. STUART, Esq., for Respondent.

Sir James Stuart, Appellant,
and
Pierre Trepanier, *et ux*, Respondents.

This appeal was from a judgment maintaining an opposition *afin de distraire*, made by E. Fiset, wife of Pierre Trepanier, contested by Sir James Stuart, at whose suit the goods and chattels, as belonging to Pierre Trepanier, were seized and taken into execution. The Opposition was made by Eleonore Fiset, as being separated from her husband as to property, *séparée de biens*, by judicial authority. The Appellant joined issue upon that allegation. The Opposant proved that she had been separated in due form of law, but failed in establishing that this separation had ever been executed, which formality is absolutely required by law. It is true that a judgment founded upon the usual allegations of the wife in those actions, of improvidence, &c., on the part of the husband, was obtained by the Respondent, but it also appeared that the parties lived together afterwards, without any inventory having been made by the Respondent, or the judgment carried into effect in any manner or way. The costs for which execution issued on the judgment of separation, were *distraits* in favor of the Plaintiff's Attorney, hence no execution could be taken ont by the Plaintiff, for the costs. This proceeding could not reasonably be interpreted as an execution of the *jugement en séparation*. Several years are allowed to elapse without any proceeding being adopted on the part of the wife to put the judgment into execution, therefore it is presumable that she has abandoned all intentions of doing so. "Lebrun" was quoted by his Honor the Chief Justice; that writer makes it imperative that a seizure and *procès verbal* of the husband's property should be made, that the public may be aware of the fact of the separation. Pothier, Traité de la communauté, No. 527—"La sentence de séparation peut être detruite par le rétablissement de la communauté." No. 518—"La séparation doit être executé sans fraude."

"Bien, que l'ancienne législation n'ait pas fixé un délai fatal pour l'exécution des jugements de séparation de biens et de ceux de liquidation, *néanmoins elle prescrivait, à peine de nullité, de poursuivre cette exécution dans un délai raisonnable, et tel que la femme ne peut pas être présumée avoir rénoncé au benefice de ces jugemens.*" Dalloz—Séparation de biens, No. 122.—(From Appellant's printed Case.)

The judgment of the Court below was reversed with costs of both Courts, to the Appellant. The Chief Justice stated that this judgment might be considered as the settled opinion of this Court on the question of executions of judgments "*en séparation de biens.*"

OKILL STUART, Esq., for Appellant.
N. F. BELLEAU, Esq., for Respdt.

Thaddeus Kelly, Appellant,
and
Henry Montgomery, Respondent:

His Honor the Chief Justice differed from the judgment about to be rendered, confirming that of the court below. There was nothing in the proceedings in this record, upon which he could frame a judgment at all. The declaration contained the common counts. The bill of particulars was for services, without specifying the nature or the quality of them, and the judgment of the court below was not *motivé* in the remotest sense of the word; however none of these objections were noticed by the Appellant, on the contrary, by his perpetual peremptory exception he seemed to understand that for which the Respondent had brought his action. The Ordinance of 1667 which is law in this country and cannot be changed by the rules of practice of any court, required the *demande* to be *libellée*, and the wisdom of that law was obvious on the present occasion, as he (the C.J.) must declare his inability to ground any judgment whatever on the declaration or bill of particulars in this record. He would be of opinion that both parties should be put out of court, the Respondent not having disclosed the nature of his *demande*, and the Appellant having participated in the error, by pleading thereto.

Mr. Justice Mondelet delivered the judgment of the court. The parties had left the matters in controversy between them, to arbitrators who had decided in favor of the Respondent. They being styled *experts* instead of *arbitrators* could not vitiate the judgment of the court below, which was affirmed with costs.

Mr. Justice Day concurred in the judgment, at the same time expressing himself of the same opinion with the Chief Justice, on the obligation imposed by law upon Plaintiffs, to set forth their alleged causes of action, as required by the Ordinance of 1667, but there was sufficient on the record, to justify the court in not disturbing the judgment of the court below.

J. P. Bradley, Esq., for Appellant; Messrs. Lelievre & Angers, for Respondent.

William Corbett, (defdt. court below,) Appellant,
and
Jacques Beaudouin, (pltff. court below,) Respondent.

The matter in contestation in this case being small, the court feel great disinclination to interfere with the judgment of the Court of Queen's Bench rendered against the Appellant in favor of the Respondent for £16 7s 6d. The Respondent issued a *capias ad respondendum* against the Appellant, having previously sworn that the latter was indebted to him in the sum of £34 17s 6d., when it appears a much smaller sum was due him. A plea of payment was filed by the Appellant which has been fully substantiated in evidence; and the fact of the evident bad faith of the Respondent to be seen in his affidavit wherein he swears a larger sum to be due him than that mentioned in his bill of particulars compels this court to reverse the judgment of the court below, with costs to the Appellant.

Dunbar Ross, Esq., for Appellant; Messrs. Lelievre and Angers for Respondent.

Robert Buchanan, Appellant,
and
William Wall, Respondent.

This is an Appeal from a judgment of the Court below, condemning the Appellant to pay the Respondent the sum of £33, with interest and costs.

There is contradictory evidence, but this Court does not consider itself called upon, in a case like the present, to differ from the Court below. Judgment affirmed with costs against the Appellant.

C. G. HOLT, Esq., for Appellant.
J. P. BRADLEY, Esq., for Respondent.

James Glover Heath, Appellant,
and
Henry Jessopp, Collector H. M. Customs, &c., Respondent.

The contestation in this case turned altogether on the question, whether the sugar on which the duty was charged was refined or raw sugar—that it was of the former quality the Court below had been of opinion, and this Court coincides in that judgment, which is confirmed with costs to Respondent.

JOHN DUVAL, Esq., for Applt.
Hon. A. W. COCHRAN, for Respdt.

Law Intelligence.

(Reported for the Quebec Gazette.)

WRECK.—SEAMEN'S WAGES.

VICE-ADMIRALTY COURT:—LOWER CANADA.

Friday, 19th April, 1850.

ISABELLA.—Dixon.

This was an action brought for the recovery of wages due to three of the promoters on a voyage from Milford to Quebec, and by the eight remaining promoters for wages on the return voyage from Quebec to London, interrupted by the stranding and abandonment of the vessel in the River St. Lawrence in the month of December last, a few days after her sailing from the Port of Quebec. The vessel sailed from Milford on the 17th of September, on a voyage to Quebec, and thence back to London, and the seamen signed articles accordingly. She arrived at Quebec, in ballast, about the 9th of November, and after taking in a cargo, and remaining at the port of Quebec about fifteen days, sailed on her return voyage on the 24th of the same month. In consequence of some misunderstanding between the master and the crew, the vessel put back to Quebec, and sailed again on the 5th of December. On her voyage down the St. Lawrence, she was overtaken by a storm, as she was lying off Cacona, at anchor, of such violence as to part her anchors, and oblige the master to run her ashore in Cacona Bay, where she remained until the 14th, and then drifted away with the ice. The vessel continued to drift until she struck on Apple Island, in the River St. Lawrence, at which place she was moored with a hawser chain and a tow line, under the directions of the mate. The master and nine of the crew had left her in the jolly boat and pinnace, while lying in Cacona Bay, and the rest of the hands came off in the long-boat, from Apple Island. The vessel broke from her moorings on the 23rd of December, knocked her bottom out, drove up inside of Green Island, and became a complete wreck; and some days after she again drifted from Green Island and grounded on Basque Island.

The objections taken to the claim of the promoters, were. 1st. That no wages were due on the outward voyage from Milford to Quebec, because the vessel coming in ballast, earned no freight. 2ndly. That the vessel was wrecked in the River St. Lawrence, on her return voyage, and abandoned by the Master as a total loss.

JUDGMENT.

THE COURT—(*Hon. Henry Black.*)—The claim of the seamen of wages for their services on the outward voyage from Milford to Quebec, is not, in my opinion, affected by the vessel's sailing in ballast. The vessel arriving in safety at the port of destination of the outward voyage, wages accrued to the seamen for the whole period of that voyage, and one-half of the period that the vessel remained in this Port (*a*), notwithstanding that the outward voyage was made by the ship in ballast (*b*). The act of the owners in sending the ship out without a cargo, or in ballast, cannot affect the right of the seamen to remuneration for their services, under the contract of hiring. The services of the seamen entitled them to their wages for that portion of the voyage which they had completed. Quebec was to the ship a port of destination, which in this respect is the same as a port of delivery (*c*). The intermediate period between the arrival and departure on her voyage homeward, is apportioned by equal moieties, the one moiety of this time appertaining to the outward, and the other to the homeward voyage (*d*). The right of the seamen to the wages on the outward voyage, could only be divested by some act of misconduct on their part, whereby they would, by law, incur a forfeiture of them, and none such is alleged or appears. Two English cases in the common law courts (*e*), seem at first sight to militate against the claim of the promoters; but upon a close examination of these cases, it will be found that the Courts felt themselves bound, by the express terms of the agreements, to say that there was but one voyage; whereas the voyage in the present case, consisted of two parts, the outward and homeward voyage,—and no special agreement appears to consolidate them (*f*).

Upon the second objection, it is to be observed that the claim of the promoters is not for salvage, but for wages, and the question arises as to the effect of the abandonment of the ship by the master and crew, upon the claim, on the part of the crew, for wages accruing on the outward voyage. The storm which occasioned the wreck, appears to have been a very violent one, and there is nothing to shew that all proper measures were not taken for the safety of the vessel, when the accident happened. I have it not in my power, to form a judgment upon this point, from the evidence in the cause, nor does it seem necessary that I should, as it lay exclusively with the master to leave the vessel or not, as in his judgment seemed best. The promoters do not seem to have been guilty of any of the acts of misconduct which the law punishes by the forfeiture of wages; and the abandonment of the ship by the master had not, I think, the effect of divesting the mariners of their lien upon the ship, and whatever remained of the ship for their wages. The decision of Mr. Justice STORY, in the case of the *Two Catherines*, (*g*) goes a great way to settle the present case. In that case, the ship sailed from Newport to Gibraltar, discharged the cargo there, proceeded to Ivica, in ballast, and thence with a cargo homeward to Providence. She was wrecked in the Narragansett Bay, and by great exertions of her master and crew, considerable portions of the ship and cargo were saved. The seamen claimed wages from Gibraltar to Ivica, (the wages to Gibraltar having been paid,) and from Ivica to Providence, asserting a right to wages, and if that could not be sustained, claiming a right to salvage equivalent to wages. The claim was resisted by an Insurance Company, to whom the things saved had been abandoned as for a total loss. The distinguished jurist before whom the case was argued, awarded the amount claimed on the voyage from Gibraltar to Ivica, as wages, and further as salvage, the wages of the seamen for the homeward voyage. In the case of the *Neptune* (*h*), too, the wages awarded by Lord STOWELL, were wages which accrued on the voyage in which that vessel was wrecked, and were ordered to be paid out of the proceeds of the materials saved, so far as the fragments would form a fund, though there was no freight earned by the owners. There is, however, this difference between the two cases of the *Neptune* and the *Two Catherines*, and the present case, that in the former two cases, the materials of the ships were saved by the exertions of the crew. In this case, nine of the crew came off with the master in the jolly-boat and pinnace, and of the twelve who remained with the mate, nine appear to have refused to obey his lawful authority and orders. The ser-

Quebec 24th September 1814

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To Capt. Delagorgendiere Subsistence from 25 Aug to 24 Sept.	60 .. 4			
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To Capt Tonnancourt Comp. & Subsist. from 25 Aug to 24 Sept.	67 16 2 1/4			
Less 1 Day ea for P. Fund	2 1 9 3/4			
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	4 13 10 17/28		70	8 3 3/28
To Capt Finlays Comp. & Subsistence from 25 Aug't to 24 Septem.	65 6 6 1/2			
Less 1 day ea for P. Fund	2 2 7 1/2			
	63 3 11 7/14			
	4 10 3 7/14		67	14 2 7/14
To Capt. Garneys Comp. & Subsistence from 25 Aug't to 24 Septem.	74 16 2 1/2			
Less 1 day ea for P. Fund	2 8 5 1/2			
	72 7 9 13/14			
	5 3 4 13/14		77	11 1 13/14
To Capt. Faubault Comp. & Subsist. from 25 Aug't to 24 Septem.	67 2 0 1/2			
Less 1 day ea for P. Fund	2 2 7 1/2			
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	4 12 9 11/14		69	12 2 11/14
To Capt Hinckley Comp. & Subsist. from 25 Aug't to 24 Sept.	74 11 10 1/2			
Less 1 day ea for P. Fund	2 8 1 1/2			
	72 3 9			
	5 3 1 7/14		77	6 10 7/14
To Capt. Rolette Comp. & Subsist. from 25 Aug't to 24 Sept.	88 10 10 1/2			
Less 1 day ea for P. Fund	2 7 1 1/2			
	85 13 9			
	6 2 4 13/14		91	16 1 13/14
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vices of the remaining three, consisted only in the mooring of the ship in as convenient a place as might be, for safety during the winter, and in assisting the mate and people employed by him from the shore, in securing the ship's stores, sails and running rigging, having then abandoned her. I do not, however, think that the difference between the two cases referred to, and the present one, is material. As has already been said, the claim is for the wages on the outward voyage,—not for salvage, or for wages as salvage, on the homeward voyage. Their claim would be postponed to any claim for salvage, but is a strict legal right, accompanied by lien, and cannot be divested but by some act producing forfeiture. The different nature of the claim for wages on the voyage during which the wreck occurs, from the claim for wages on the previous voyage, is very distinctly put by Baron *Locré* (*i*). The article of the Marine Ordinance of Louis XIV., giving to mariners a lien on the materials saved by them from the wreck (*j*), would seem at first to confer the right only upon the seamen who actually did save the materials. But *Boulay Paty* (*k*), after examining and weighing the opinions of the different writers on this head (*l*), concludes with shewing that the seamen who have not been concerned in saving the materials, have a claim upon them for wages, to be postponed, however, to the claim of those who have assisted in saving the wreck or materials, which latter seem to be treated as salvors. I accordingly decree to John E. Cooke, Gilbert King, and Henry Scowen, the amount of their wages upon the voyage from Milford to Quebec, and for one moiety of the time that the vessel lay at Quebec, reserving to Gilbert King such other recourse as he may be entitled to, out of the remains of the ship, when the proceeds come to be distributed by the Court.

The case of the remaining promoters, Charles Scott, John Smith, Job Swim, George Williams, Thomas Huzzy, Evan Lewis, Thomas James, and William Williams, stands upon an entirely different footing from that of their companions. Their claim is for the few days which elapsed between the time of their shipping at Quebec, and the stranding of the vessel and the abandonment of her by the master and crew. Notwithstanding the great principle, that freight is the mother of wages, and the safety of the ship the mother of freight; and that it would therefore seem, that in all cases where the freight was lost by shipwreck, the mariners could have no claim for wages; yet, all the ancient Sea Laws, (*m*) as well as the Ordinance of Philip the Second of Spain, in the year 1513, (*n*) and the marine Ordinance of Louis XIV, (*o*) give to the sailors wages out of the proceeds of what they save of the materials of the ship. There were no English decisions upon this point down to the year 1824, when in the case of the *Neptune*, (*p*) Lord Stowell allowed to the seamen by whose exertions part of the vessel had been saved, the payment of their wages as far as the fragments of the materials would form a fund, although there was no freight earned by the owners.—The wages so allowed are evidently in the nature of salvage, and a reward therefore for the meritorious services of the seamen in saving the wreck or fragments of the wreck. If another rule were adopted the seamen would have no motive for exerting themselves in saving any portion of the wreck, and would be induced, upon the occurrence of a *vis major* depriving them of wages, to give up all care of the ship and cargo at once. (*q*) The rule adopted by Lord Stowell from the ancient maritime law of Europe serves at once to protect the wreck from this danger, and at the same time by confining the salvage to the amount of the wages, holds forth no temptation to the seamen to expose the vessel to perils with a view of deriving from them high salvage, it being more the interest of the seaman to receive his wages in the ordinary tranquil course of navigation, than as a reward for services which must be generally laborious and perilous. But in the case before the Court it is not possible for me to say that the wreck of the ship was saved by the exertions of these individuals with the master and rest of the crew. (*r*) It is quite clear that the vessel having been wrecked in the course of the homeward voyage without earning freight, no wages were due. (*s*) The claim of these parties could only be for wages as salvage on the wreck or fragments of the wreck saved by their exertions; but they having abandoned the wreck cannot be considered as salvors, and I must therefore dismiss their claim, but without condemning them in costs.

Charles Alleyn and A. Campbell, Jun., Esquires, for the promoters.

John J. C. Pentland, Esquire, for the owners and master.

(*a*). Per Holt C. J. apud Lord Raym, 739. (*b*) The *Two Catherines*. 2 Mason's Rep., 328. (*c*). Brown *v.* Benn 2 Lord Raym, 1247. 12 Mod. 409, 442. 1 L. Raym. 639.—(*d*.) Holt C. J. 12 Mod. 108. Hooper *v.* Perley, 11 Mass. Rep. 515. 1 Lord Raym. 739. Viner Tit. Mariners 15, 236.—(*e*). Hernaman *v.* Bawden. 3 Burr. 1844. Appleby *v.* Dods. 8 East. 300.—(*f*). *The Juliana*. 2 Dodson, 504.—(*g*). 2 Mason's Rep. 319 —(*h*). 1 Haggand's Rep. 227.—(*i*). Esprit du Code de Commerce, liv. 2, tit. 5, art. 258, tom. 2, p. 113.—(*j*). Ordonnance de la Marine, tit. 4, art. 3.—(*k*). Cours de Droit Commercial Maritime, tit. 5, sec. 8, tom 2, p. 221, & seq.—(*l*). Valin, Delvincourt and Boucher.—(*m*). Laws of Wisbuy art. 15. Laws of Oleron, art. 3, and Laws of the Hanse Town, art 44. —(*n*). Tit. Average. art. 12 —(*o*). Liv, 3, tit. 4. Des Loyers des Matelots. art 9.—(*p*). 1 Haggard's Rep 227.—(*q*) Mongalvy & Germain. Analyse Raisonnée du Code de Commerce, tom. I. p. 386.—(*r*). See an elaborate opinion on this subject by the accomplished jurist who now presides over the District Court of the United States, for the District of Maine, Judge Ware, in the case of *The Dawn*, Davies. Rep. p. 123.—(*s*). Unless the Seaman produce a Certificate from the Master, as required by the Merchant Seamen's Act, 7 & 8 Vict. c. 112, s. 17.

The Mayor et al. *vs.* John Colford.—This is an action brought by the Mayor and Councillors of the City of Quebec, against John Colford of the said City of Quebec, Tavern-keeper, for the sum of £14 currency; the declaration contains several items of assessment, among which is the sum of £4 cy., amount of assessment alleged to be due by him as a tavern-keeper, within the city of Quebec, for and during the year 1846. To this part of the demand the defendant pleads that the assessment of £4 made in May, 1846, by the Corporation, must be computed from the 1st January, 1847, and not for the year 1846.

The question that arises on this issue is whether the By-law of the Corporation, bearing date the 22d May, 1846, by which the tax of £4 is imposed upon tavern-keepers paying a rent not exceeding £50 per annum, shall have a retroactive effect, for if not, it is contended that it cannot affect tavern-keepers of 1846, but that it can only have a prospective construction, and therefore provides for the next year, to wit, 1847.

The words of the 17th section of the By-law are, "That there be imposed and levied on every person "or firm of persons, keeping a tavern, &c., &c., "during any period between the 1st day of January "and the 31st day of December in each year, the "following tax or duties, that is to say; when the "annual rent or value of the house or premises thus "occupied shall amount to £50 cy., or a less sum, a "tax or duty of £4 cy., &c." This By-law is dated 22nd May, 1846.

The proper construction to be put upon this By-law, is that a tax of £4 shall be, *for the future*, imposed upon tavern-keepers paying a rent not exceeding £50. The question now arises from what date is this By-law to take effect? On looking at the 1st clause of said By-law, we find that this tax is an annual rate to be paid from and after the 1st January to 31st December, which is in fact the financial year of the Corporation as fixed by the 22nd clause of 8th Vic., cap. 60.

To put any other construction upon this By-law would be to give it a restrospective effect, which it is not susceptible of, for on examining the bare question of law, a legislative enactment ought to be prospective in its operation and not retroactive, (*a*) and we see no reason why a By-law of a Corporation should receive a less rigid construction than an act of Parliament.

It is in general true that no statute shall be construed to have a retrospective operation without express words to that effect (*b*), either by an enumeration of the cases in which the Act is to have such retrospective operation, or by words which can have no meaning unless such a construction is adopted, (*c*) and not only is this the doctrine of the English law, but it is also founded on the principles of general jurisprudence. A retrospective statute would partake in its character of the mischiefs of an *ex post facto* law, as to all cases of crime and penalties, and in measures relating to contracts or property would violate every sound principle (*d*).

Then, on looking at the equity side of the case, would it be just that after the Defendant has taken out his license as a Tavernkeeper, and incurred the expenses then necessary for that purpose, an additional tax should be imposed upon him without any previous notice? Assuredly not.

We are therefore of opinion that this item of four pounds must be struck out of the demand of the

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Quebec 27 Septr 1814

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Cash imprest " "		3 6 2	6	4 3
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Ens Neugault Mess Pte " "		2.19 4		
Cash imprest " "		5 7 1	8	6 5
Lieut Porter Mess amot " "		4 5.		
Cash imprest to " "		5.3.9	9	8 9
Ens Decoupe Mess amot " "		16 7		
Cash &c pr Bordeau		6.14 7	7	11 2
Lieut Galineau Mess amot " "		2 8.5		
Cash &c imprest " "		7 0 4	9	8 9
30 Sept				
Adjt Burke Mess amot 24 Sept		1 13 9		
Cash &c imprest " "		20.1.6	21	15 3
Lieut Perras Mess amot " "		2 10 1		
Cash imprest " "		6 18 8	9	8 9
Lieut Lacroix Mess amot " "		4.1.		
Cash imprest to " "		4 14 9	8	15 9
			£ 239	11 11

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JUDGES' CHAMBERS.

Before the Honble. Mr. Justice AYLWIN.

On the 19th inst., pursuant to notice, aqplication was made, on behalf of Archibald Stewart, late master of the steamer "Princess Victoria," for a writ of certiorari, to remove before the Court of Queen's Bench, for this District, all and singular the orders and judgments made, by William King M'Cord and Jean Baptiste Trudelle, Esquires, Justices of the Peace for this District, upon a complaint before them made, by one Hyacinthe Lamontagne, against the said applicant, in order that such orders and judgments might be reviewed and examined by that Court.

The applicant's Counsel briefly stated, that the case which gave rise to this application, was one brought before two Justices of the Peace, under the Provincial Statute 6 Will. IV., Ch. 28, Sec. 1, which gave such Justices jurisdiction over complaints for the recovery of wages earned on board of any vessel belonging to or registered in this Province. That there was not a tittle of evidence on the face of the proceedings before these Justices, shewing that the steamer belonged or was registered in this Province; and, that the Justices of the Peace had assumed a power over and had intermeddled with a thing which was not within their jurisdiction. And that any order they could make in such case was an order *coram non judice*, and one which required the restraining power of a Supreme Court.

Counsel was then heard on behalf of Hyacinthe Lamontagne, and opposed the granting of this writ, for many reasons:

That the notice had not been served upon Hyacinthe Lamontagne; and, that no writ of certiorari could be allowed in a case of this description, as this case was not one of a criminal nature, and that the writ of certiorari was a remedy for criminal matters; over which inferior tribunals had jurisdiction. That the notice ought to have been signed by the party applicant, and not by his Attorney. Chitty's Practice, vol. II., p. 377. That the applicant could not complain, because he had given a notice to produce the vessel's papers; and, that according to the recent modification of the rules of evidence in seamen's cases, the seaman was not bound to produce ship's papers. That the applicant having pleaded to the merits, could not urge the defect of jurisdiction, (Judge: If the Magistrates had not before them evidence, that the vessel belonged to the class of case provided for by the Statute, then it was their duty to dismiss the case; although the defendant had not taken the objection). That applications of this description were becoming numerous, and the intention of applicants were more to delay and frustrate the ends of justice, than to obtain redress of supposed wrongs.

Counsel for applicant, in reply, said, the writ of certiorari being purely of English origin, it was necessary that reference should be made to English practice, by which notice to the Justices of the Peace seems to be sufficient, Paley on convictions, p. 288. That, as to this being his proper remedy, he would more conveniently refer to an analogous case, in which the same point was raised and solemnly argued, and a decision come to, allowing the writ, *exparte*, Stewart, Queen's Bench, Oct. Term, 1849. That as to the notice to produce ship's papers, it amounted to nothing, as the complainant could only avail himself of that notice by offering secondary evidence of the register of the steamer, which he had neglected to do. That the rules of evidence, applicable to this case had not undergone any change, and, that a reference to the Imperial Statute, 7 & 8 Victoria, Ch. 112, which is not law here, could receive no consideration in this case. That, under the Imperial Statute, he was aware, that seamen were not called upon to produce ship's papers, but, that that Statute only applied to a particular class of cases, and that this case did not fall within the operation of that Act, That these Justices were exercising a stinted, limited, jurisdiction; and, that it was indispensably necessary, that they should confine themselves within the special jurisdiction confided to them.

JUDGMENT.

The words of the Statute are, that the vessel "*belong to or be registered in this Province.*" The applicant, in support of this application, states, that there was no Evidence that the steamer belonged to or was enregistered in this Province; and, as the word "enregistered" applies to immoveables, and "registered" to ships, the affidavit is insufficient; the prayer of the petition is, therefore, disallowed.

It might appear, upon first blush, that the distinction made between these two words had some real merit, but it vanishes the moment we take for our guide, Walker, Johnson, and other lexicographers, most of whom do not give the word, "enregister," a place in their compilation. The word, "enregister," is to be

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The following important paragraph, to our commercial readers, is copied from the city article of the London *Times* of the 11th ultimo:—

"A decision in an appeal case in the House of Lords yesterday embraced a very important question regarding the security of bills of exchange drawn by foreign houses on their English correspondents in cases where the two firms may respectively happen to comprise one or more of the same members. In the present instance a house in Brazil—Messrs. A. Youle and Co.—drew upon their Liverpool correspondents, Messrs. Deane and Co., and the bills were sold in the usual manner. They were duly accepted in England, but before their maturity Deane and Co. were compelled to suspend, and this brought down the Brazil house. The holders sought, according to custom, to prove against both estates—namely, that of the drawers in Brazil and the acceptors in Liverpool; but their right to do so was denied in the Court of Bankruptcy, owing to the fact that the two partners constituting the house in Liverpool were also partners with Mr Alfred Youle in Brazil. This decision has now been confirmed by the House of Lords, and it must, therefore, in future, be understood that a bill of exchange drawn abroad upon any establishment in London connected by an identity of membership will, in the event of bankruptcy, involve a recourse as limited as if it were simply a promissory note. The result will be to cause the bills of native firms abroad to be preferred to those of English firms drawing upon their own connexions. Indeed, this has already been manifested, the Brazillian Government upon whose account the bills which formed the subject of the present trial were purchased for remittance, having, it is said, since the question was raised, ordered their financial agents to make no more purchases of paper drawn upon Europe by houses thus constituted.

SUPERIOR COURT.

BEFORE JUDGE STUART AND A SPECIAL JURY.

The Superior Court was occupied yesterday, with a case of considerable interest. It will be recollected by our readers that a gas explosion occurred, on the 19th February last, in the house occupied by Mr. T. P. Robarts, and situated in Lachevrotiere street, St. Lewis Suburbs. A large amount of damage was the result of this explosion. On the 21st April last, Mr. Robarts instituted an action against the Quebec Gas Company, for the sum of $6,000 as damages for loss of furniture, personal injury, &c., alleging the accident to have been the result of negligence on the part of the Company. The claim was resisted by the latter, and the case came before a jury yesterday. The greater portion of the day was occupied in hearing plaintiff's witnesses, as to the occurrence of the accident, the damage of furniture and the personal injury to himself. At a late hour, the case for the plaintiff was closed; and the defendants' attornies urged that there was not sufficient to go to the jury, inasmuch as they contended there was no proof that the accident—namely the explosion or expansion of gas—had been caused by any neglect of ordinary precaution on the part of the defendants; and inasmuch, also, as it was not proved, on the other hand, that the plaintiff had acted with proper precaution. The Court, however, maintained that the case should go to the jury; and the defendants accordingly proceeded with their side of the case. The evidence on behalf of the defendants was finally concluded, and the case went to the jury about 9 30 last night. They returned into Court at 10.30 unable to agree; and on being sent out again returned, about 11, still unable to agree on the second question submitted to them—namely as to whether the damage had been caused by the negligence of the defendants, and by what means it had been caused. They were then discharged.

Mr. Lelievre and Mr. Stuart, Q. C., appeared for Mr. Robarts; and Messrs. Holt & Irvine and Vannovous for the Gas Company.

Quebec 8 October 1814

. Sundries D^r to Cash					
. Capt Rolette Mess ^a/c 24 Sept^r	4 19 2				
Cash ^d/ insull to " "	7 19 3		12	18	5
. Ens Graves Mess ^a/c " "	2. 18. 1				
Cash insull to " "	4 13 2		7	11	3
. Capt Rolette Comp^y ^d/ Estimate 25 Sept^r to 24 October	. . .		92	"	"
. Major Lafoucs Mess ^a/c 24 Sept^r	6 9 11				
Cash ^d/ insull " "	16 7 7		23	7	6
		£	135	17	2

. Cash D^r to J. Stewart Esq^r for 24 October 1814
. ^d/ Subsistence & Warrant
N^o 477 dated 3 Oct^r for 1087 0 0
1/14 add 77. 12 10 11/14 1164 12 10 4/14
13 K

. Sundries D^r to Cash
. Capt Delagorgendiere Comp^y ^d/ Estimate from 25 Sept^r to 24 October 59 15 5
. Capt Faribault Company ^d/ Estimate from 25 Sept^r 24 October 68 7 1
. Capt Mackays Company ^d/ Estimate from 25 Sep^r to 24 October 68 5 9
. Capt Finlays Company ^d/ Estimate from 25 Sept^r to 24 October 65. 4. 3
. do do from 25 Aug^t to 24 Sept^r . . 67 9 3
. Capt Finlays Mess ^a/c " 1. 8. 7
Cash ^d/ insull 24 Sep 29. 16 11 31 5 6
14
. Capt Lepruhons Company ^d/ Estimate from 25 Sep^r to 24 October 93 0 6
£ 453 7 9

CANADA.

LAW INTELLIGENCE.

[*Reported for the Globe*]

THE PROMISSORY NOTE ACT.

RIDOUT, *vs.* MANNING & KNEESHAW.

This was a case under the recent Act, 12th Vic., Chap. 22, to determine whether that Act was in force in Upper Canada or not. The following special facts were agreed upon by the Counsel on both sides, and submitted to the Court.

The following is the note on which action was brought :—

TORONTO, 1st August, 1849.

£82 18s. 5d.

Twelve months after date, I promise to pay Richard Kneeshaw, or order, at the office of Ridout, Brothers & Co., eighty-two pounds, eighteen shillings and five pence, Currency, for value received.

(Signed) ALEXANDER MANNING.

SPECIAL CASE.

The note was presented on the afternoon of the 3rd day of grace, 4th of August, 1849, at the office of the Plaintiff, and was not presented to maker personally or at his place of business or residence ; payment was refused and the note was protested for non-payment ; on the 3rd day next after the day on which the note was protested, notice of protest for non-payment was made by depositing same in the proper post-office, properly directed to the endorser, but not prepaid ; no other notice was given.

The endorser contends that the presentment and notice were both insufficient—that presentment should have been to maker personally, and that notice was too late and was bad, not being *prepaid*.

The maker contends he was entitled to a presentment personally or at his place of business or residence.

The question for the Court is—whether on these facts the Defendants or either of them is liable. If the Court be of opinion that Plaintiffs are to recover, then judgment for the Plaintiffs may be entered as by confession or *nil dicit* against both or either of Defendants, for amount of note and interest. If the Plaintiffs are not entitled to recover against both or either of Defendants, then a non-suit to be entered as to both, or as to whichever Defendant the Court may order.

J. H. HAGARTY,
For the Defendants.
P. M. VANKOUGHNETT.
Attorney and Counsel for Plaintiffs

JUDGMENT.

ROBINSON, *C. D.*

A Statute was passed in the last session of the Legislature of this Province, 12 Vic. ch. 22, intituled "An Act to amend the law regulating Inland Bills of Exchange and Promissory Notes, and the protesting thereof, and Foreign Bills in certain cases." By the last section of the Act it was appointed to take effect from the first day of August following, which is now past.

By a provision contained in the 13th cl., it is enacted that every note payable *generally* shall be presented to the maker either personally or at his residence or usual place of business; and by the 7th cl., it is declared that any note shall be taken to be payable generally, unless it be expressed in the body thereof that the same is payable at a bank or other place *only and not otherwise* or *elsewhere*.

The 16th cl. of that act also provides that notice of protest for non-acceptance or non-payment may be given at any time within three days next after the day on which the protest was made.

These provisions may form the law of Upper Canada in force at the time of the passing this act: by which law, though a note made payable at a particular place, without adding not otherwise or elsewhere, is to be taken as payable generally, yet a presentment at the place so named will be good, and it is not necessary to present it otherwise, though a presentment generally, or in any other manner, such as would suffice if no place had been named would also be sufficient. And by the law of Upper Canada, notice of non-payment must be given or sent, not taken there the day after the presentment.

In the case before us the presentment was made after the 1st of August, at a place where the note in the body of it was made payable, without addition of the words only, and not otherwise or elsewhere, and was not made as the 7th clause of the new Statute requires.

The written notice of non-payment was not mailed till the third day after presentment, and it was not pre-paid when put into the post-office, as the 11th Clause of the Statute requires.

The Plaintiff, it is clear, on this statement, cannot recover, for without the aid of that act, his notice was sent too late, and if the act applies to this case he has not complied with its provisions. 1st, in not having pre-paid his notice 2nd, in not having presented the note, as required by the 13th clause.

He has neither complied with the law of Upper Canada as it stood after the 1st. August, nor with the provisions of the new Statute if that is to be taken as applying to Upper Canada—so that this case must fail as regards the indorser.

But it is represented as being extremely important that an opinion should be given by the Court for the guidance of those engaged in Commerce upon the question, whether the Statute referred to, is confined in its operation to Lower Canada, or extends also to Upper Canada.

I am by no means certain whether the framers of the Act did or did not intend, that it should extend to Upper as well as to Lower Canada. If they did so intend, their intention has not been consistently pursued.

We must form our opinions upon an examination of the Act itself.

In my judgment we should treat it as affecting Lower Canada only ; though it is no where confined to Lower Canada in express words—and tho' there may be indications in one or two passages of a contrary intention.

We must look at the whole purview of it and upon that found our judgment. The evidence, in my opinion, leads most strongly to the conclusion that it was intended to apply only to Lower Canada.

In the preamble it is called an Act to amend the law regulating Inland Bills, &c., *and Foreign Bills in certain cases*—then the 30th clause which applies specially to foreign bills, speaks only of bills drawn abroad upon any person *in Lower Canada*, yet that clause is the general clause for regulating all proceedings in regard to presentment, protesting, noting and notice.

It is clear that would leave foreign bills subject to one law for Lower Canada—and to another law for Upper Canada, in almost every particular, if not in every one.

Then the preamble states the expediency of rendering *more uniform* the protesting of bills and notes and practice therein. Now if they meant by that to give a uniform law throughout Canada they surely would not have confined many of their provisions in regard to these particular points to Lower Canada, as they have done in express terms—for example in the 9th, 19th, 20th, 22nd and 30th clauses. If they had in these clauses assimilated the law of Lower Canada to that which was in force here, then they would have shown that they meant by the word "uniform," uniform throughout Canada. But we see that their provisions would in these very particulars establish in *Lower Canada only* regulations quite different from those which our law prescribes. I infer therefore that they meant only to make the practice uniform in Lower Canada by giving certain positive rules to be observed by all notaries there. Now in the first clause they repeal the L. C. statute 34 Geo. 3 ch. 2, because it is inconsistent with this new law—but they leave various statutes in force in Upper Canada, which it would be equally proper to repeal, if this new statute is to extend to U. C. They make no where the slightest allusion to Upper Canada or to any statute in force there—though they copy many parts of some of those statutes for the purpose, as I infer, only of introducing them into Lower Canada, as amendments. The 9th, 10th and 12th clauses strengthen also my impression that the statute was not intended to operate out of Lower Canada particularly the 12th—for otherwise why should Lower Canada alone be named in that clause. If what is there made law were already the law in Upper Canada that would not account for their confining that clause to Lower Canada, for the bill contains many provisions not so confined in express terms, and which yet are taken from the law of Upper Canada beyond doubt. But this 12th clause would entirely change the law of Upper Canada if it applied here, it is confined to Lower Canada in terms and therefore can not apply here—and the effect therefore is quite inconsistent with the supposed intention that the statute is to operate throughout Canada in order to made the law uniform in both parts of it. So the 19th and 20th clauses are quite repugnant to the idea that this statute is to apply here, for if so, why should the 19th clause have been in words limited as it is to Lower Canada. Any one who framed that clause with Upper Canada in his mind would know that we had no such enactment in force here—and therefore if it were desired to repress such offences as are to be punished under that clause, why should not the provision have been general. The 20th clause shews as clearly also that the Legislature were passing the act for Lower Canada only, for otherwise the effect of that provision would be absurd.

I refer also to the 22nd and 25th clauses—especially the latter—and to the 26th and 31st clauses, as all tending strongly to shew that we should hold the statute to be confined to Lower Canada. That it would introduce much confusion and very inconvenient results, if it were otherwise construed was pointed out in the argument, and we should gladly, I think, avail ourselves of the abundance of evidence afforded by the statute that it was not intended to be in force here. The 25th clause would be a strange provision if we could suppose that this Province was intended also to be subject to this law.

Neither do I believe that the Legislature could have designed the 26th and 31st clauses to apply here—for the first establishes holidays which are some of them unknown in Upper Canada, and the last alters the general period of time for the limitation of actions from six years to five—neither of these, however, would alone be safe to rely upon.

The mention also of *leagues* in the table of fees—a common standard for measurement of distances in L. C., but never adopted with reference to U. C.—and the general introduction of the words Lower Canada into most of the forms given in the schedule are additional arguments to lead to the conclusion that this is a statute only for L. C.

It would be easy if it were necessary to multiply evidences of that intention—and when we see no clear evidence of an intent to embrace Upper Canada, but so many arguments to the contrary on the face of the act, we need not hesitate in my opinion to declare that the Legislature did not intend to introduce among us the inconvenient consequences which would follow the incorporation of all the clauses of this act into our code without any reference to existing [illegible]

the ratio of the introduction of exercise as a manure on the continent of Europe had been the increase of agricultural profit. There its use was now almost universal, while we of England neglect that which, perhaps, as in most other things, we should have led the way in using.

Dubu 23 October 1814

. Sundries Drs to Cash				
. Capt Panet paid 19 ms	10 . 0 0			
paid Mss to 20 ms	2 . 7 . 9	12	7	9
. Doct Painchaud paid Gibb	. 7 . 6			
paid dft to R. Jones	30 . — . —	30	7	6
. L. Pendegast amo dft to Gibb	9 . 16 "			
Mss amount 20 Ins	2 18 10	12	14	10
. Lieu. Perreau amo dft to Gibb	13 0 . 0			
Mss amount 20 ms	3 . 4 . 9	16	4	9
. Capt Jonancours Company & Etimate for 24 of October . .		68	2	1
. Capt Jonancours Mss amo . . .	6 8 7			
Cash in full to 24 Sept.	9 0 2	15	8	9
. Capt Mackays Mss &c to 20 Septem.		6	18	9
. Lieu Perreau Mss &c to 20 " . .		4	18	9
. Lieu Johnston Mss &c to 20 " . 4 . 3				
Mss amo to 20 Oct.	2 . 1 . 5	2	5	8
. Lieu Mailleny Mss amo to 20 Sept	15 .			
Mss amount to 20 Oct.	1 14 .	2	9	"
. Doct Fortier Mss amo to 20 Sept. . .		4	11	10
24		£ 176	9	8

. John Stewart Esq Dr to Sundries for 24 Oct

. To Col. Taschereau Commanding	3/. 4. 16 5 2/14			
for 27 days Pay	23 . 19 . 8 4/14	28	16	1 13/14
. To Major Lafore for " " "	15/7 D°	22	10	9 9/14
. To " Panet for " " "	"	22	10	9 9/14
. To Lay M. Jones for " " "	14/9½	21	7	10 23/28
. To Surg Painchaud for " " "	11/1½	16	1	9 27/28
. To Q. M. J. Coates for " " "	6/3½	9	2	0 3/28
. To Asst Surg Fortier for " " "	7/3½	10	10	11 7/28
Carried forward		131	0	5 5/14

Law Intelligence.

(Reported for the Quebec Gazette.)

SUPERIOR COURT.

14th October, 1850.

PRESENT:

The Hon. Edward Bowen, Chief Justice,
" " Mr. Justice Duval,
" " " " Meredith.

Robert Shaw,—*Plaintiff.*
J. D. Lefurgy,—*Defendant.*
and
Divers opposants.

Dionne,—*Plaintiff*,—Soucie,—*Defendant*,
and
Divers opposants.—And another case.

In these cases the point to be decided by the Court was; firstly, whether or not a party claiming monies to be paid him by privilege of Bailleur de Fonds, in preference to mere hypothecary creditors, was bound to have registered the deed giving him his privilege before the mere hypothecary creditor should have registered the deed under which he claimed, when the deed conferring the privilege of Bailleurs de Fonds was executed *previously* to the passing of the Registry Ordinance; and secondly, whether the Bailleurs de Fonds was obliged to register his deed before the hypothecary creditor should have registered his claim, when the deed confering the privilege of Bailleurs de Fonds had been executed *after* the passing of that Ordinance.

The Chief Justice observed, that there were three cases (those above mentioned) before the Court, in which questions of much public interest, and upon which a variety of conflicting opinions were entertained, namely, as to the privilege of unpaid Vendors of real estate, called in the French law Bailleurs de Fonds, who had neglected to enregister their deeds of sale under the provisions of the Registry Ordinance, 4, Vic. ch. 30. Two distinct cases in the opinion of the majority of the Court arise, the first, that of the unpaid Vendors, or Bailleurs de Fonds whose contracts of sale were made and executed before the Ordinance became a Law in the Province; and secondly, of unpaid Vendors of real estate, having sold after the Ordinance came into force, neither of whom had enregistered their deeds. Under the first, we are all agreed that the Vendor who neglected to enregister his deed of sale either within the year immediately following the Proclamation fixing the period from and after which the said Ordinance was to take effect, or within the further year to which by a subsequent statute the period for enregistration of "all Wills which shall be made "and published, by any devisor or testa- "trix who shall die after the day last "mentioned, and of all judgments, judicial "acts and proceedings, recognizances, ap- "pointments of tutors or guardians to min- "ors, and of curators to interdicted persons, "and of all privileged and hypothecary "rights and claims, and incumbrances, "from whatever cause they may result, "and whether produced by mere operation "of law or otherwise, which shall be en- "tered into, made, acquired, or obtained af- "ter the day last mentioned, of or concern- "ing or whereby any lands, tenements or "hereditaments, real or immoveable es- "tates in this Province, shall or may be "alienated, conveyed, devised, hypotheca "ted, mortgaged, charged, or in any man- "ner or way affected," was extended, has forfeited his claim of privilege, and is only enabled to be ranked and collocated in distribution as a simple mortgage creditor, having no one to blame but himself for his neglect to obey the plain enactments of the

The second case, however, that of the Vendor of real estate subsequently to the Ordinance coming into force, various incongruous and conflicting opinions prevail, for on this point the learned Judge on my right, Mr. Justice Duval, differs from Mr. Justice Meredith and myself, upon grounds which he will state, and the latter Judge having taken the trouble to extend his opinion in writing, I shall content myself by stating briefly the manner in which I view the case.

The object of the Legislature it may be fairly inferred from the manner in which the privilege of the vendor is mentioned was not to destroy, but to maintain it intact—indeed equity and natural justice would require that he who has parted with his estate for a valuable consideration afterwards to be paid, should by every possible ways and means be secured upon such his estate until the purchase money be fully paid and discharged; but if, contrary to such principle, immediately after the sale, and possibly even before the ink with which it is written, is dry, the purchaser re-sells to another who pays him a valuable consideration, which second purchaser by immediately enregistering his deed, or by granting mortgages thereon to others who enregister their mortgages prior to the original vendor's contract being enregistered, if, I say, the Bailleur de Fonds can thus lose his privilege there would, in my opinion, be no end to the commission of frauds.

When we look to the 31st and 32nd clauses of the said Ordinance, one of two things must appear self-evident, namely, that the period for enregistration of the right or privilege of Bailleurs de Fonds was intentionally not limited by the Legislature, or it is a *casus omissus*; for while totally silent as to any time within which this privilege to maintain it inviolate should be enregistered, all the other privileges falling within the same category and specially enumerated, have times set for enregistration thus, to preserve the privilege of co heirs for the difference or return in money, or a partition of their joint estate, a period of thirty days is allowed, the same time is allowed in the cases of architects, builders, and workmen. If the Legislature considered that no mischief could ensue from the want of enregistration, and therefore did not ordain a fixed time, because any subsequent purchaser or person about to lend money on mortgage of the property, could acquire all publicity requisite, there being now no general mortgages, a search of the Registry Office would shew whether any special one had been created, and the intended purchaser or mortgagee could, by demanding inspection of the party's title at once discover whether the original Vendor, Bailleur de Fonds, had been paid or not, in either case is it for us as a Court of Justice to enact or limit the time, where the law is silent, and thereby deprive the Vendor of his just rights? Or ought we not rather maintain his privilege if possible, the equity of the case being altogether in his favor? I will not add to these brief observations, as the case will be more fully gone into in support of our view on the subject, by Mr. Justice Meredith. I am well aware that some persons whose opinions are entitled to much weight and respect, have in this matter held that If A sells to B, who has not paid his purchase money, that so long as B returns the property, the privilege of A continues, and being enregistered may be enforced, but that if B subsequently and before enregistration sells to C, that the privilege is lost, and the vendor becomes a simple mortgage creditor. I can not subscribe to this doctrine, as it would tend to jeopardize the rights of A, and subject him to the caprice of C, to retain or part with the property, thereby virtually affecting the rights of the vendor. Upon the whole we are of opinion (in the latter case) that the claim of privilege set up by the vendor must, and ought to be maintained, notwithstanding that his contract of sale has not been enregistered.

Duval J., expressed himself at considerable length, and stated that although he agreed with the other members of the Court in so far as regarded the necessity that existed of registering deeds under which Bailleurs de Fonds claimed, executed *before* the passing of the Registry Ordinance, yet he differed from the majority as to the view which they had taken of the other question concerning the necessity of registering similar deeds executed *after*; that in relation to the latter question he was of opinion that in order that the Bailleur de Fonds should be enabled to maintain his privilege or priority before mere hypothecary creditors, he should register the deed giving him the privilege he claimed to exercise.

His Honor reviewed at considerable length the provisions of law which obtain in relation to questions of privilege and priority of creditors in France, and mentioned the dangers and inconveiniences to which purchasers of real property would be subjected, were the claims of parties under deeds conferring privilege of Bailleur de Fonds not compelled to register their titles or claims to, and upon such real property.

Meredith J.—In this case, Shaw *vs.* Lefurgy and Divers Opposants, and in two others, now before the Court, we have to determine; whether the vendor of real estate is liable to lose his privileged claim, for the payment of the price due to him, if he fail to register the deed of sale.

It is hardly possible to over-rate the importance of this question, affecting as it possibly may, every person possessing real estate, or holding security upon that description of property; and the question is not only one of importance, but is admitted by all, to be attended with considerable difficulty. It cannot, therefore, be matter of surprise, if in explaining our views in relation to this question, we find it necessary to extend our observations to a somewhat greater length than is usual in rendering judgment on ordinary occasions.

In disposing of this question, we shall first consider it with reference to deeds of sale made *before* the registry ordinance came into effect, and afterwards with reference to those made *subsequently* to that law coming into effect.

The 4th section of the ordinance in express terms requires the registration of "all privileged and hypothecary rights and claims" which should be in force, upon the day on which the ordinance should come into effect.

The same section prescribes the time within which such registration should be made, (which time was afterwards extended), and declares that any claim not registered within the time so prescribed, should be inoperative against any subsequent *bona fide* purchaser or mortgagor for valuable considerations.

It appears to the court, that the general words "privileged and hypothecary rights and claims," used in this section, include the privileged claims of the vendors of real estate; and that if any doubts could have existed as to the meaning of those words, that such doubt must have been removed by the 31st section of the same law, in which the claim of the unpaid vendor is expressly spoken of, as one of "the privileged "rights and claims which shall and may be en- "registered under this ordinance."

Seeing then, that the registry law has declared that the privileged claims of vendors, in force at the time the registry law came into effect, are among those which the law has required should be registered; seeing also, that the law has declared within what time such registration should be made; and seeing in fine, that the law has further declared, that any such privileged claim not so registered, should be inoperative against any subsequent *bona fide* purchaser or mortgagor for valuable consideration; we think that we cannot avoid holding, that any privileged claim in force when the registry law came into effect, whether resulting from deeds of sale, or any other cause, and not enregistered according to the requirements of that law, must be held to be inoperative against any subsequent *bona fide* purchaser or mortgagor for valuable consideration.

Quebec 24 Nov 1814

Bot forward			464	14	8 11/14
. Do Ens Graves	pr 27 days Pay	5 7½	7	5	10 5/28
. Do Ens Heugault	pr " " "		7	5	10 5/28
. Do Ens Jeury	pr " " "		7	5	10 5/28
. Do Ens Decoupe	pr " " "		7	5	10 5/28
. Do Ens Vernault	pr " " "		7	5	10 5/28
. Do Ens Edge	pr " " "		7	5	10 5/28
. Do Ens Stubinger	pr " " "		7	5	10 5/28
. Do Ens Gauvreau	pr " " "		7	5	10 5/28
. Do Adj Burke	pr " " "		11	19	10 11/28
. Do Patriotic Fund	pr 1 days Pay ea		19	11	3 15/28
. Do Music Fund	pr 2 " " "		39	2	7 2/28
		£	591	15	3 3/14

John Stewart Esq^r D^r to Sundries

To Capt. Vasal, Comp^y pr Subsistence from 25 Sept^r to 24 Oct^r	92 10 6½			
Less 1 day each for P. Fund	3 0 1½			
	89 10 5 2/4			
	6 7 10 2/4	95	18	3 9/14
To Capt Mackays Comp^y pr Subsistence from 25 Sept^r to 24 Oct^r	67 5 0½			
Less for P. Fund	2 4 1½			
	65 0 11			
	4 12 11 4/4	69	13	10 4/4
To Capt Delagorgendiere Comp^y pr Subsist^ce from 25 Sept^r to 24 Oct^r	60 " 4			
Less for P. Fund	1 18 4			
	58 2 "			
	4 3 "	62	5	"
To Capt Jouvancours Comp^y pr Subsist^ce from 25 Sept^r to 24 Oct^r	67 16 2¼			
Less for P. Fund	2 1 3/4			
	65 14 4½			
	4 13 10 17/28			
		70	8	3 3/28
Can^o forward		298	5	4 23/28

We are aware, that it has been contended by persons whose opinions are deserving of respect, that the vendor of real estate is not liable to lose his privileged claim, by omitting to register it; but we think it will be seen, in the course of the remarks which we shall have occasion to make, on the second branch of the question under consideration, that all the arguments that can be advanced for the purpose of shewing that the claim of the vendor of real estate need not be registered, must be confined to claims resulting from deeds of sale, executed after the law came into effect; and in order to avoid repetition, we shall at once proceed to consider whether the vendors of real estate by deeds of sale, executed after the registry law came into effect, are liable to lose their privileged claims if they omit to cause them to be registered.

It cannot be denied, that the words of the first section of the ordinance, which have reference to privileged and hypothecary rights and claims, to be acquired after the coming into effect of the ordinance, are as general as the words of the fourth section, which have reference to claims in force at the time the ordinance came into effect; and it may therefore be contended, and not without much appearance of reason, that if we hold that the privileges of vendors in force when the registry law came into effect, must be registered under the fourth section of the ordinance; that we ought also to hold, that vendors' privileges, resulting from deeds executed after the law came into effect, should be registered under the first section of the same ordinance.

It may however be replied, that it is not sufficient to shew that the legislature in framing the first section of the ordinance, intended that all privileged and hypothecary rights and claims to be acquired after the law came into effect should be registered; but that it is also necessary to shew, that the legislature have provided means for the registration of all those rights and claims: and if it can be shewn, that the law does not afford means for the registration of a particular class of those claims; then notwithstanding the general words of the first section, it may reasonably be supposed, that the legislature did not intend to subject the particular class of claims, in relation to which such omission is made, to the necessity of registration.

Even if this supposition be not admissible in the case before us; still we would deem it impossible, that a person could be despoiled of his property for the inobservance of a formality, for the observance of which the law does not afford him any effectual means.

We are of opinion that the law has not provided any mode for the effectual registration of vendors' privileges resulting from deeds executed after the law came into effect,—and to establish this point is the main object of the following observations; for if this point be once established, the inferences to be drawn from it will not, we think, admit of much difficulty.

With this object in view, then, I would observe, that to the majority of the Court, it appears to be necessary, *essentially necessary*, for the effectual registration of any class of privileged claims, that the law should specify a time, within which such claims, if enregistered, should have full force and effect, even as against previously registered claims.

In order to prove the correctness of this opinion, it may be observed, that there are but two rules which can be adopted for the registration of claims upon real estate. The first is that which obtains with respect to common mortgages, and according to this rule, priorty of registration gives superiority of right. The second rule is that which is usually observed with respect to privileges; and according to which the privilege is to be registered within a certain time, and if registered within that time, it preserves its rank in all respects, even as regards previously registered claims.

Our Legisture have adopted this second rule, with respect to the various privileged claims mentioned in the 32nd Section of the Registry Law, and they do not appear to have done so with respect to the privileged claims of vendors of real estate, resulting from deeds of sale, executed subsequently to the registry law coming into effect.

They certainly have not in direct terms adopted this rule, with respect to the class of privileges last spoken of; for they have not named a time, within which these privileges may be effectually registered.

Those, therefore, who, notwithstanding this omission in the law, contend that the privileged claims of vendors, under deeds of sale, executed after the Registry Law came into effect, are subject to registrations, must shew either that the class of privileged claims now being spoken of, may be registered according to the rule which obtains with respect to ordinary mortgages; or that there is something in the law to warrant us in naming a time, within which those privileged claims may be effectually registered as privileges.

In order to shew that the vendor's privilege could not be registered according to the rule which is provided with respect to ordinary mortgages, I would remark that, if that system were adopted, it would have the effect of reducing the privilege in question to the rank of an ordinary mortgage, thus virtually destroying the privilege, by a proceeding purporting to protect it.

To hold that a privilege is to be ranked according to the date of its registration, would plainly be equivalent to declaring, that the privileged credtor should be despoiled of all his rights as such.

The rule with respect to the privilege is—"*privilegia non ex tempore sed ex causâ æstimantur.*"

But if the privileged creditor is to rank merely according to the date of the registration of his claim, then the nature of the claim becomes unimportant; and instead of taking for our guide the rule already referred to, as being applicable to privileges, we would have been guided by the maxim which obtains with respect to ordinary mortgages, *prior tempore, potion jure.*

The consequence of thus reducing the privilege of the vendor of real estate to the rank of an ordinary mortgage, would be, as will be obvious to any lawyer, to expose the vendor in every case, notwithstanding the observance of every possible precaution on his part, to the loss of his claim.

Sufficient, I think, has been said to shew that it is impossible to maintain, that the privileged claim of the vendor can be registered in the same way as a common mortgage,—for, in a word, such registration would cause, not the preservation, but the destruction of the privilege.

This point being established, and it being admitted, that the law has not *expressly* fixed a time for the registration of the privileged claim in question, it only remains to be shewn that there is nothing in the law to warrant us in naming any particular time within which the vendor may register his privileged claim, so as to cause it to rank before previously registered mortgages.

The only time that has been suggested, or that can, with any appearance of reason, be suggested, as that within which it may be held, that the vendor should register his privilege, is that during which the purchaser may hold the property—and this brings us to the consideration of the system which has been adopted by the Honorable Judge, whose views on this subject differ from those of the majority of the Court.

According to the system now about to be considered, namely, that by which it is proposed in the silence of the law, to name a time for the effectual registration of the vendor's privilege; that privilege must be registered, but it may be registered at any time before the sale of the property by the purchaser; and when once registered, it takes precedence of all common mortgages, whether previously registered or not.

The objections to this system are, firstly—That by it, the rights of the vendor are made to depend upon the will of the purchaser; for the purchaser, by selling the property immediately, may render it not only difficult, but perhaps impossible, for the vendor to register his privilege in time.

It is plain, that according to this system, the privileged claims of the vendor of real estate, although one of the most favourable nature, and plainly entitled to all the protection the law can afford it, would be placed not only in a much less favourable position, than any, even of the inferior privileges on real estate, but in fact in a position of imminent peril.

It is admitted by all, that this would be an extreme injustice, and it is not contended by any that the Legislature contemplated this injustice; but yet it is contended, that the words of the first section of the ordinance, are so general, as to subject the vendor of real estate to the necessity of registering his claim, notwitstanding any injustice that may result from the obligation so imposed.

To the majority of the Court, however, it appears, that if it be admitted, as it must be admitted, that this system would be productive of grave injustices; and if it be admitted, as indeed it is admitted, that the Legislature could not have contemplated, that is to say, could not have intended, this injustice; then, that it must follow, that the Court ought not to adopt a system which would be productive of such injustice.

Nothing less than the express words of the Legislature (and there is certainly nothing of the kind in the present instance,) would justify us in adopting e system which, even its most strenuous advocates admit, would place in jeopardy the most favourable, the most important, and by far the most extensive class of privileged claims.

The second objection to the system now being considered, is that there is nothing in our law to justify us in declaring, that the period during which the purchaser may hold the property, rather than any other period, is to be that, during whih the seller may effectually register his privilege.

The adopting of that particular period appears to the majority of the Court, to be a merely arbitrary proceeding, and it might, we think, as well be said, that the vendor should register within a month, a year, or ten years, as within the time the purchaser may think fit to hold the property.

If the Court, in the silence of the law, were to name a time for the registration of the privileges in question they would plainly do, as regards this class of privileges, that which the Legislature have done, by the thirty-second of the ordnance, as regards the different other classes of privileges.

To this, there would be but one objection, namely, that the *Court* is *not* the Legislature.

The third objection to the system now being considered is that there is nothing in the law to warrant us in saying that the privilege of the vendor (supposing it to be subject to registration), shall, if registered, after a common mortgage, rank before it.

The law does prescribe a time, within which the privileged claims of co-heirs, co-partners, architects, builders, workmen, and certain other privileged claims may be registered, so as to rank before previously registered common mortgages, but the law does not contain any such provision as to the vender of real estate.

The law expressly declares, that, except as to the few special cases, to which reference has just been made, that priorty of registration gives superiority of right.

The privilege of the vendor of real estate is not one of the excepted cases, if therefore, that claim be subject to registration, the consequences of such registration, must he in accordance with the general rule, laid down by law—whereas it is contended by the advocates of the system now being considered that the Court of its own authority, may make an exception in favor of the vendor's privilege, similar to that, which the Legislature have made by special enactment, in favor of the other classes of privileges.

The Legislature may, if it be thought expedient, do this; the court cannot.

The fourth and last objection to the system which we are now considering is that although it would subject the vendor of real estate to the expense of registering their claims, and most unjustly expose them to the loss of those claims, if not registered before a sale by the purchaser; yet so far as regards mortgages, this system, would admit of concealment, when publicity would be advantageous, and would require publicity, when it could be no longer useful. For instance A sells real estate to B for £1000. B the purchaser, holds the property for ten years, and during the first two or three of those years borrows money to a large extent. The seller does not register his claim for some years afterwards, that he does so, before a sale of the property by the purchaser. The lenders could not at the time they advanced their capital, nor for many years afterwards, know of the vendors claimed by the Registry Office and yet the subsequently registered claim of the vendors would defeat the previously registered claim of the lenders.

These objections appeared to the majority of the Court to be so great, that we are disposed to think that the system, against which they are urged, would not have many supporters were it not, that it is the same, or very nearly the same, as that which has been adopted in France, under the Code Civile.

But if it be desired that we should imitate this portion of the law of France, it would be well to shew us, at least, that it is esteemed by those persons in France who are capable of forming a sound judgment as to its merits.

One or two quotations will shew what the most esteemed french authors think on this point.

Troplong speaking of this says:—"Ce sys-
"teme est vraiment bizarre, et conduit à des

Quebec 25 October 1814

. Sundries D. to Cash				
. Capt Rolette in full to 24 Inst			14	17 8
. Lieut. Baby " "			9	2 "
. Ens Gauvreau " "			5	18 10
. Lieut Larkin " "			9	2 "
. Lieut Sayer " "			9	2 "
. Ens Edge " "			7	5 10
. Ens. Verault " "			7	5 10
Lieut Larue " "			18	10 9
26. Lieut. Mackay " "			20	9 5
. Major Panet paid Gibb 21 Oct.		16. 17. 1		
paid you this day		5.	21	17 1
26th				
. Lieut Perras in full 24 Oct.			9	2 "
. Lieut Porter " "			9	2 "
. Ens Decoupe " "			7	5 10
. Ens Stubinger " "			7	5 10
. Ens Judy " "			7	5 10
Capt 29th				
. Capt. Faribault in full to 24 Oct.			14	17 8
. Jq Lemieux on a/c of " "			98	3 7
. Lieut Bernier in full to 24 "			9	2 "
. Lieut Beaubien " "			9	2 "
. Lieut Faribault " "			9	2 "
. Lieut Mount " "			7	6 "
			311	6 2
. Cash D. to Jq Lemieux				
. Jq and a/c of Mess Jr from 20 Sept. to 26 Oct.			114	17 5

"conséquences toutes contraires à celles que le "legislateur a voulu obtenir." At another place (No. 267) the same auther says—"pourquai tant de fracas d'inscriptions, qui ne font rien savoir; Mr. Valette speaking of inscriptions on the part of unpaid vendors, calls them "*inscriptions derisoires.*"

I had intended to have shewn, that even, if the system which obtains in France, were deserving of imitations, which it certainly is not, still that there does not in this matter, exist any analogy between our law and the provisions of the Code Civile, which would justify us in adopting a system founded on the Code. The discussion of this point would however occupy more time than can be devoted to this subject on an occasion such as the present; I shall therefore close this branch of the case by observing—that what has been said appears to me to be sufficient to prove firstly—that for the effectual registration of any class of priviliged claims, it is necessary that a time should be specified, within which, such claims, if registered should have full force and effect; and secondly, that our law being silent, as to the time within which, the priviliged claims, of the vendors of real estate, by deed of sale executed after the registery law came into effect, may be registered; that there is nothing to warrent us in supplying the silence of the law in this respect—and if these two points be established as I think they are—then it must be admitted that the legislature have not made provision for the registration of the last mentioned class of claims—and the majority of the Court are of opinion, that the legal and just consequence from this admission is, that the class claims in question cannot be lost by the inobservance of a formality, for the observance of which the law has not afforded any effectual means.

LEX.

JUDGMENT ON AN APPEAL TO THE PRIVY COUNCIL.

We subjoin the report, in full, of the judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of the Beacon Life and Fire Assurance Company *vs.* Gibb and others, from the Court of Queen's Bench of Lower Canada; delivered 3rd December, 1862.

Present:—Lord Chelmsford, Lord Kingsdown, and Sir John T. Coleridge.

This is an action upon a renewable time policy of insurance against fire, made by the appellants the Beacon Life and Fire Insurance Company, of Lower Canada, upon the respondent's steam-vessel *Tinto*, described in the policy as "lying at Sorrel, to ply between Quebec and the Upper Lakes;" and the only question which arises in the case is whether part of one of the conditions indorsed upon the policy enters into the contract between the parties.

Now the whole difficulty in this case—if really there is any difficulty—has arisen from the Company taking a form of policy for insurance upon houses and buildings, and not striking out those conditions indorsed on the policy which were inapplicable to the subject matter insured; but leaving the question of the application of the conditions to the proviso in the body of the policy to this effect "that this policy and the insurance hereby made shall be subject to the several conditions and regulations herein and hereon expressed, so far as the same are or shall be applicable."

During the continuance of the policy the steamer was entirely destroyed by fire, and the present action was brought against the Company to recover the amount of the insurance. The declaration, it has been observed, negatives the fire having been brought within any of the exceptions which are contained in part of the seventh condition, thereby admitting that part, at least, of the condition enters into the insurance. The Company pleaded, amongst other pleas, that the policy of insurance in the declaration mentioned was made by the defendants under and subject to certain conditions and regulations therein and thereon expressed; and, among other things, that if more than 20 lbs. weight of gunpowder should be on the premises at the time when any loss happened, such loss would not be made good. And the plea averred that at the time the *Tinto* was destroyed by fire there was on board the vessel a larger quantity of gunpowder than 20 lbs. weight.

The parties being at issue by the provisions of a provincial statute, the questions to be submitted to the jury were determined by the Court, and one of those questions—the only one necessary to be considered—is the third, viz., at the time the said steamer *Tinto* was so consumed by fire was there any quan ity of gunpowder on board the said steamer; and, if so, what weight or quantity?

Upon the trial that question, with the others, was submitted to the jury, and they returned for answer: "Yes, we find that a package containing about 100 lbs. of powder was on board as freight, and which the owners of the said steamer were not precluded by their policy from carrying."

It is quite clear—it is admitted, indeed, by all the Judges, and there can be no question about it—that the latter words of this finding, "and which the owners of the steamer were not precluded by their policy from carrying," were beyond the province of the jury. It was taking upon them to decide upon the construction of the contract. I suppose that the course in the province in these cases, where the jury are required by the provincial statute to find a special verdict—that is, not a special verdict as the term is understood in this country, but to answer distinctly to the different questions which are settled by the Court to be proper to be submitted to them—is, that an application is afterwards made to the Court to apply the verdict. Accordingly, such an application was made by the defendants in the action; and, in addition, there was a motion to strike out the words to which I have referred in the finding of the jury. There was, perhaps, no necessity for this motion, as the latter part of the finding of the jury might have been treated as mere surplusage; but the Superior Court took it into consideration, and decided that the words ought to be struck out from the answer of the jury; and then gave Judgment for the defendants.

From this judgment there was an appeal to the Court of Queen's Bench, and after argument the Court was divided, three Judges being in favor of the respondents, and two in favor of the appellants. The judgment of the Superior Court being also in favor of the appellants, there has been an equality of opinion amongst the Judges who have had to decide the question in the Courts of the Province.

Two of the Judges, the Chief Justice and Judge Mondelet, who were in favor of the respondents, were of opinion that the word 'premises' was applicable in the seventh condition to the case of a steamer, but their decision proceeded on the ground that a policy of insurance was a *contrat aleatoire*, which must be carried out in good faith, and that the Company could not be relieved from their responsibility to answer for the loss without proof of deception and fraud, and a further proof that the fire had extended by reason of more than the limited quantity of gunpowder being on board. There was not the slightest ground for suggesting any deception or fraud on the part of the Company, and as to its being necessary to give proof that the fire had extended by reason of a breach of the condition, this seems to introduce into the contract an entirely new term. It is important to observe that in this very seventh condition there are instances in which the Company have expressly stipulated that they shall not be liable for any loss or damage which has been occasioned by or through certain circumstances, as explosion in one case, and the use of camphine in another, thereby distinguishing in terms between those cases where the loss must be brought home to the specified cause, or to the use of the prohibited article, and the case in question of their not being answerable where there are more than 20 lbs. weight of gunpowder on board, whether it has occasioned the loss or not.

Mr. Justice Badgley in part of his Judgment seems to think that the condition is not applicable at all to the case of a steamer; but at the close of it he takes a different view, and says the contract may be fairly read as follows:—"We will insure your freight steamer; we know that gunpowder is an article of freight and transportation in steamers; but if you keep on board for use more than 20 lbs., and the vessel take fire, we shall not be responsible for the loss." Here, again, the contract is construed against the Company by the introduction of words which entirely change its meaning and effect, and an absolute prohibition against having more than a certain quantity of gunpowder on board is rendered inapplicable by inserting the words "for use" into the condition.

In the argument before their Lordships it has been contended on the part of the respondents that from the use of the word "premises" the parties could not have intended that the part of the seventh condition in question should apply to the steamer insured; and that there were extrinsic circumstances to show that it could not have been in the contemplation of the parties that the word "premises" should be so understood. In order to construe a term in a written instrument where it is used in a peculiar sense differing from its ordinary meaning, evidence is admissible to prove the peculiar sense in which the parties understood the word, but it is not admissible to contradict or vary what is plain.

Now the word "premises," although in popular language it is applied to buildings, in legal language means "the subject or thing previously expressed," and the question here is, in what sense this word is used, which must be gathered from the contract itself, and not from any external evidence. As Lord Denman says in a case of Rickman *vs.* Carstairs, in 5 Barnwell and Adolphus, 663:—"The question, in this and other cases of construction of written instruments, is not what was the intention of the parties, but what is the meaning of the words they have used." Supposing, however, that evidence was admissible in this case for the purpose of proving that by the use of the word "premises," the parties did not intend to include the steamer, the subject matter of the insurance, what is relied upon appears to be entirely insufficient to render the condition inapplicable. It is said that this insurance was upon a trading steamer; that it was the usage of steamers of this description to carry gunpowder on freight; that this was known to the Company, and, therefore, it must be taken that they did not mean to include this portion of the seventh condition in the insurance.

But assume that it was notorious to the Company that it was the usage of a steamer of this description to carry gunpowder upon freight, why should they not, for that very reason, desire to limit their risk by preventing more than 20 lbs. of such a hazardous article being carried at any one time? If the condition is not to be considered part of the contract, this strange consequence will follow: that it being clear to the parties insured that the Company desired to guard themselves in the case of houses and buildings from the hazard of there being upon the premises at any one time more than a limited quantity of gunpowder, and having excluded gunpowder altogether from those hazardous risks for which an additional premium is to be paid, the conditions stating that gunpowder under no circumstances is to be insured, this steamer might, during the whole continuance of the policy, carry backwards and forwards cargoes of gunpowder, the Company receiving no premium for the additional risk incurred; and in case of the vessel taking fire and being burnt, though not originally by an explosion, but of course the gunpowder contributing materially to extend the fire, the Company would be answerable for the loss.

The question then is, whether, assuming under these circumstances that it was more probable that the prohibition with regard to the amount of gunpowder should be included in the contract between the parties than not, whether the word "premises" must not receive a reasonable construction, which would make it apply to this particular contract.

Now it is quite clear that the popular sense of the word is excluded, because there are no buildings to be insured. Then it only remains to give it that meaning which the reasonable construction of the contract requires.

Judge Mondelet says, that "the form of the policy is one which should not have been made use of relative to a steamer. But inasmuch as this policy, though improper, has been accepted by the insured, and they must be taken to have read it, since they have signed it, it is right and just that the word 'premises' should be interpreted against them, and adjudged to refer between the parties to the steamer, which was the object, the sole object, insured." If, then, this condition is applicable to the subject insured, the only question which arises upon it is, whether the facts bring the case within the condition upon which the finding of the jury, that there were at the time of the fire more than 20 lbs. weight of gunpowder on board, is conclusive.

Under these circumstances it is quite immaterial whether the fire was or was not occasioned by more than the specified quantity of gunpowder being on board. The parties have agreed to this as a condition in the policy, and the cases which have been adverted to, of the effect of deviations upon marine insurances, are good illustrations of the way in which parties are bound by contracts of this description. It is familiar law that a wilful deviation, although the loss is not occasioned by nor attributable to it, exonerates the underwriters from liability. So, again, take a life policy. We know that in England these policies invariably contain a stipulation that the assured is not to go beyond the limits of Europe. Now if the party insured goes, even for an instant, out of Europe, though without the least injury to his health, this condition of the policy attaches, and the policy becomes void.

This being so, all that remains for their Lordships to say on the present occasion is, that it being admitted that this condition is

Quebec 11 Nov 1814

. John Stewart Esqr. D. to Sundries for 24 October					
. To Capt. Panet Comp. for Subsistence from 25 Sept. to 24 Oct.	86	18	4½		
less 1 day ca to P. Fund	2	18	5½		
	83	19	11 13/14		
1/14	5	19	11 14	89	19 10 13/14
. To Capt. Mackays Comp. for Subsist. from 25 Sept. to 24 Oct.	64	10	4½		
Less for P. Fund	2	2	5½		
	62	7	11		
	4	9	1 9/14	66	17 9/14
. To Capt. Delagnaudiere for Subsist. from 25 Sept. to 24 Oct.	56	6	4½		
Less for P. Fund	1	15	7½		
	54	10	9		
1/14	3	17	10 13/14	58	8 7 13/14
. To Capt. Tonnancour Comp. for Subsist. from 23 Sept. to 24 Oct.	61	11	4½		
Less for P. Fund	2	0	3½		
	59	11	1 13/14		
1/14	4	5	0 14	63	16 1 13/14
. To Capt. Finlays Comp. for Subsist. from 25 Sept. to 24 Oct.	59	19	4½		
Less for P. Fund	1	19	11½		
	57	19	5 11/14		
1/14	4	2	9 14	62	2 2 11/14
. To Capt. Gauthier Comp. for Subsist. from 25 Sept. to 24 Oct.	69	7	7		
Less for P. Fund	2	6	5		
	67	1	2 8/14		
1/14	4	15	9 14	71	16 11 8/14
. To Capt. Faribault Comp. for Subsist. from 25 Sept. to 24 Oct.	65	8	9		
Less for P. Fund	2	3	7		
	63	5	2 6/14		
1/14	4	10	4 14	67	15 6 6/14
. To Capt. Hinchey Comp. for Subsist. from 25 Sept. to 24 Oct.	73	8	9		
Less for P. Fund	2	8	11		
	70	19	10		
1/14	5	1	5	76	1 3

applicable to the case of the steamer, the subject insured, and it having been found that the condition has been broken, the Judgment of the Superior Court was a correct Judgment, and the Judgment of the Court of Queen's Bench, reversing that Judgment, cannot be supported. They will, therefore, recommend to Her Majesty that the Judgment of the Court of Queen's Bench be reversed, and the Judgment of the Superior Court be affirmed; and that the Respondents should pay the costs in the Queen's Bench, and also the costs of this Appeal.

Note.—The Judgment in the Superior Court was given by the late Mr. Justice Chabot, and in the Court of Queen's Bench by Chief Justice Sir Louis Hypolite Lafontaine, Mr. Justice Charles Mondelet and Mr. Justice Badgley. From the Judgment of the Court of Queen's Bench Mr. Justice Aylwin and Mr. Justice Duval dissented, being of opinion that the Judgment of the Superior Court was a correct one.

Law Intelligence.

VICE-ADMIRALTY COURT.—LOWER CANADA.

FRIDAY, 20th March, 1862.

WASHINGTON IRVINE—*Durrant.*

This case came before the Court upon a reference, made under the authority of the Shipping Act, by the Judge of the Sessions of the Peace, of Quebec, before whom the original suit for wages was brought, and the following judgment was this day rendered by the Court:

THE COURT—(*Hon. Henry Black, C.B.*)

This is a suit for wages, brought by the promoter, Alex McDonald, against the ship *Washington Irvine*, under the following circumstances: The promoter was shipped and signed articles in the usual form at London, in England, on a voyage thence to Quebec and Montreal, and if required to any other place in British North America, and back to the port of final discharge in the United Kingdom, the probable length being stated in the articles at about six months. The ship sailed on the voyage, arrived at Quebec, went to Montreal, took in part of her cargo for her return voyage, came to Quebec and completed it, and sailed for London on the 27th of November last, in tow of a steamer down the St. Lawrence, and came to anchor opposite Crane Island, in the evening of that day. The steamer had tried to take the ship through the floating ice, but had failed to do so, and determined leaving the ship at anchor. A breeze sprang up from the eastward, and she returned to Quebec, and anchored off Indian Cove on Sunday, the 30th November. The master came up to Quebec and called upon Mr. Cocker, Lloyd's Surveyor, who returned with him to the ship, at about two o'clock P.M. on that day, for the purpose of inspecting her, and ascertaining what damage she had received, by having been chafed by the ice in going down, and whether she was fit to proceed on her voyage to England. Mr. Cocker, who was examined in the case, states that, accompanied by the master and Mr. Crawford, one of the agents for the ship, they went round the vessel in a boat and caused the pumps to be tried twice. He also says he found no serious damage outwards; that she made no water, and that in his opinion she was fit to proceed on her voyage, and should not have returned to port. The master then made an engagement for the steamer *Victoria* to come for the ship at five o'clock on the Monday morning to tow her down the river, and ordered the ship to be hove short by three o'clock. The steamer came at five A.M., but all hands on board, except the master and the mate, having refused to proceed, the steamer was allowed to proceed down the river without the *Washington Irvine*, but taking another ship, which succeeded in getting to sea. On the Monday, after the refusal of the men to proceed, the ship was brought over from Indian Cove to Crawford's wharf, in the Lower Town of Quebec, where carpenters were employed until three o'clock on the following morning, in repairing the chafed sheathing. After this, Mr. Cocker was again called upon to inspect the ship, and he says, that after having done so he found her perfectly sea-worthy, and fit to proceed on her voyage to England. In consequence of the mate's having reported that some of the seamen were still dissatisfied, the men were sent for by the master and came aft. All of them, except the promoter and four others, agreed to proceed on the voyage, but the promoter coming forward as spokesman for himself and the four others, refused, for himself and them, to proceed; and shortly afterwards, without obtaining or asking leave, they came ashore and went to a tavern in the Lower Town. One of the four returned voluntarily. Three others were brought on board by Constables, under warrants from the Police Office, but the promoter was not to be found. The steamer was alongside to tow the ship down, and the master shipped three new hands, one in lieu of the promoter and two extra hands, and made an entry in the official log-book of the refusal and desertion of the promoter. The vessel sailed at three o'clock in the afternoon, in tow of the steamer, and proceeded as far as L'Islet, about forty miles below Quebec, but was compelled to return by the ice, and was towed back to Indian Cove. The ship lay off Indian Cove until the 4th of December, when she was hauled inside the block. On the morning of the fifth the master saw the promoter on board, who came up to him and asked to be allowed to take away his clothes, but the master treated him as a deserter and refused to have anything to say to him, and ordered him to leave the ship.

The 250th section of the Merchant Shipping Act provides, that whenever a question arises, whether the wages of any seaman or apprentice are forfeited for desertion, it shall be sufficient for the party insisting on the forfeiture to shew that such seaman or apprentice was duly engaged in, or that he belonged to the ship from which he is alleged to have deserted, and that he quitted such ship before the completion of the voyage or engagement, or if such voyage was to terminate in the United Kingdom and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log-book; and thereupon the desertion shall, so far as relates to any forfeiture of wages or emoluments, under the provisions therein before contained, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge, or *can otherwise shew, to the satisfaction of the Court, that he had sufficient reasons for leaving his ship.* Now, it appears in the present case, that the promoter on two occasions, that is, on the Sunday evening and on the Tuesday morning, declared his intention to refuse to proceed with the ship on her voyage, that on Tuesday, when he knew that the ship was about to sail, he left her and went ashore to a tavern, and remained there until his place had been supplied, and the ship had sailed; and that an entry of the facts was duly made in the official log book, and it is also clear to me that he has shown to the Court no sufficient reason for leaving the ship and has, therefore, forfeited his wages under the provisions of the Merchant Shipping Act, as well as under the General Maritime Law. Great indulgence is and ought to be, on ordinary occasions, shown to seamen who leave their ships, even without leave, for short periods; but if upon the eve of the departure of the ship from a port on her voyage, a seaman should, with a full knowledge of her intended departure, voluntarily and without leave, quit the ship, that of itself would be strong *prima facie* evidence of an intent to desert, and it would require strong evidence of *bona fides* to rebut the presumption; but in this case the promoter left the ship after expressly declaring his intention not to proceed on the voyage His excuse seems to have been that she wanted further repairs, and that he wished to make complaints to a magistrate; but there is no evidence that he ever went to a magistrate, on the contrary—he is proved to have gone to a tavern and remained there: and with respect to the alleged necessity of further repairs, his assertion is completely rebutted by the evidence of Lloyd's Surveyor, of the officers of the vessel with whom the responsibility rested, and in reliance upon whose judgment the remainder of the crew were willing to proceed to sea. I pronounce, therefore, against the claim of the promoter, but as it is not usual to give costs in cases of this nature* I make no order in this behalf.

Messrs. Alleyn & Alleyn for Promoter; Messrs. Jones & Hearn for Owners.

* The Vititia, 2 Haggard, 228.

DECISION IN PRIVY COUNCIL.

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of the Great Western Railway Company of Canada *v.* Fawcett, and the Great Western Railway Company of Canada *v.* Braid, from the Court of Error and Appeal of Upper Canada; delivered 21st February, 1863.

Present:

LORD CHELMSFORD.
LORD JUSTICE KNIGHT BRUCE.
SIR JOHN T. COLERIDGE.

These cases come before us by Appeals from Judgments of the Court of Error and Appeal of Upper Canada, affirming Judgments of the Court of Common Pleas in two actions brought against the Great Western Railway Company of Canada. As the actions arose out of the same accident, and in each of them the same ground of negligence is alleged against the Company, the principal questions to be determined are the same in both. There are two points, however, which are peculiar to Braid's case, to which it may be necessary shortly to advert.

The first of these, which was properly abandoned on the argument, arose upon two pleas of the Company, which alleged in substance that Alexander Braid, the deceased, was travelling upon the railway under circumstances which released the Company from all liability to answer for his death, and it was admitted that if the onus of the proof of their pleas rested upon the Company (of which there could be no doubt) it would be hopeless to attempt to disturb the verdict of the jury upon these issues. The other is an objection which has been urged against the right of Appeal on the ground of the damages being of insufficient amount. This objection depends upon an Act of the Canadian Legislature (22 Vict. chap. 13, sec. 57), which enacts "that the Judgment of the Court of Error and Appeal shall be final where the matter of controversy does not exceed the sum or value of 4,000 dollars." The damages in Braid's case were exactly of this amount, but it was contended on behalf of the Appellants that the costs which were the consequence of the verdict ought to be added to the damages, and that thus the matter in controversy would exceed the limited sum or value.

As the Judgment of their Lordships will be in favor of the Respondents upon the other grounds of Appeal, they think it unnecessary to express any opinion upon this objection; but nothing which was thrown out by them in the course of the argument must be considered as any indication of their assent to the proposition that in estimating the matter in controversy the costs incurred by the losing party may be taken into account.

Having adverted to the questions which are applicable only to one of these Appeals, we now proceed to those which are common to both.

The actions were for damage alleged to have been sustained by the Plaintiffs in consequence of the deaths respectively of Thomas Fawcett and Alexander Braid, occasioned by the want of care and skill of the Company in constructing their railway, and in repairing and maintaining the same. The part of the railway where the accident occurred was carried over an embankment, made on the slope of a mountain, and had been in use for four or five years, without any injury having happened.

Early on the morning of the 19th March, 1859, after an unusually heavy fall of rain, the embankment gave way to the extent of 45 yards in length on the line of the track. Trains had gone over the place where the accident occurred during the preceding night, and a train with thirteen cars had passed the same spot at ten minutes past one on the morning of the 19th March. The train in question arrived at the part of the embankment which had given way about 2 A.M., and was immediately precipitated into the breach, the deaths of the two persons upon which the actions were brought being the unhappy consequence of this accident.

In support of the verdicts, which in both the actions were against the Company, it was insisted by the learned Counsel for the Respondents that the mere proof of the embankment having given way would have been quite sufficient to establish a case of negligence; and in support of this position he cited the cases of Carpue *v.* The London and Brighton Railway Company (5 Q. B. 747), and Skinner *v.* The London, Brighton, and South Coast Railway Company (5 Exch. 78.)

There can be no doubt that where an injury is alleged to have arisen from the improper construction of a railway, the fact of its having

Quebec 17 Nov^r 1814

. Cash. D^r to L. Stuart Esq^r for 24 Nov^r.				
. P^d amo^t Subsistence 25 Oct & 24 Nov^r as p^r Warant N^o 492 Dated	1339. 7. 10½			
P^d amo^t p^r men to be Discharged 4th Nov^r as p^r Warant N^o. 508 dated 2^d Nov^r	25. 0. 0			
P^d amo^t for Half Yearly allowances as p^r Warant N^o 504 dated 2^d Nov^r	256. 17. 6			
	1621. 5. 4½			
1/14	115. 16. 1 5/28			
			1737	1 5 19/28
19th				
. Sundries D^rs to Cash				
. L' Mount in full 24 Nov^r			9	8 9
. Msp^s Fund paid Mount ⅔ on leaving			3	7 6
. Mayor Vanet P^d order			20	" "
. Capt^n Tarbault Comp^s p^r Estimate for 24 Novem^r			69	3 4
21st			101	19 7
. Sundries D^r to Cash				
. Capt^n Findays Comp^s p^r Estimate for 24 Nov^r			65	19 6
. Capt^n Finlay in full to 24 October			14	17 8
. Capt^n Lepichons Comp^s p^r Estimate for 24 Nov^r			92	18 0
. Capt^n Delagorgendiers Comp^s p^r Estimate from 25 Oct^r to 24 Nov^r			57	7 1
. Capt^n Mackays Comp^s p^r Estimate for 24 Nov^r			68	12 11
. Capt^n Vanet in full to 24th Nov^r			17	19 8
. Capt^n Vanets Comp^s p^r Estimate for 24 Nov^r			91	4 6
. Capt^n Rolettes Comp^s p^r Estimate for 24 Nov^r			86	7 3
22				
. Capt^n Canapps Comp^s p^r Estimate 24 Nov^r			76	6 11
. Capt^n Hinds Comp^s to balance up to 24 Sep^r			4	10 1
		£	678	3 2

given way will amount to *prima facie* evidence of its insufficiency, and this evidence may become conclusive from the absence of any proof on the part of the Company to rebut it. However, the Plaintiffs did not rest their case solely on the fact of the falling in of the embankment, but called witnesses to give their opinion as to the cause of the injury.

It was objected by the learned Counsel for the Appellants that this evidence amounted only to theory and conjecture, and that the Jury ought not to have been permitted to act upon it. To this it may be answered, that although the circumstances which occasioned the accident were facts to be proved, yet the causes which produced this state of circumstances were necessarily matters of opinion and judgment. But then it was said that the witnesses ascribed the accident to different causes, that their theories were conflicting and mutually destructive, and that consequently at the close of the Plaintiff's case there was nothing to go to the Jury. The difference of opinion of the witnesses, however, refers merely to the mode in which the water must have operated upon the embankment, but they speak almost with one voice as to the defective character of the drainage.

It was assumed that at the close of the Plaintiff's evidence in each case there was an application by the Defendants for a non-suit, but this seems to be a misapprehension. The notes of the learned Judge who tried the cause appear to be merely the heads of the defence set up. The first ground of defence in both cases, that the Company had always skilful engineers, and therefore could not be held to have been negligent, even if the work were not judiciously constructed, would have been permanently urged as matter of non-suit at that stage of the trial, as no proof had been given of the employment of such engineers by the Company. The language of the note in Braid's case, "it being proved," must be understood "upon its being proved," and must be taken as a short mode of stating the intended defence. The other defence mentioned to have been raised in Braid's case only was clearly for the Jury, even if the unusual state of the weather had been proved in the course of the Plaintiff's case. Although no mention is made of the ground of defence in the notes in Fawcett's case, it is fair to assume that it was urged on behalf of the Company in that case also, not only from the nature of the evidence, but also from the circumstances that when, on the application for the new trial, misdirection was imputed to the learned Judge in this particular, it was never objected that no question of the kind had been raised. The defence in both cases, therefore, was substantially the same, being founded upon proof of the proper construction of the railway, inspection of the line, and of the violence of the storm of rain which carried away the embankment. As far as we can collect from the learned Judge's note of his charge to the Jury, he does not appear in Fawcett's case to have adverted to the Company's defence arising upon the extraordinary and unforeseen state of the weather immediately before the accident, nor in Braid's case to have mentioned it otherwise than in an incidental manner. In neither case does he appear to have explained to the Jury the effect which would be produced upon the question of negligence, by satisfactory proof that the storm which destroyed the embankment was of such an extraordinary description that no experience could have anticipated its occurrence. Their Lordship's think that the Jury ought to have had their minds distinctly and pointedly directed to this question, and that without some definite instruction upon the subject they were likely to have omitted it from their consideration. If, therefore, there had been any miscarriage on the part of the Jury, in consequence of the non-direction, and a verdict against the evidence had been produced by it, their Lordships would have felt themselves compelled to send the case to a new trial. But upon a careful examination of the evidence they have come to the conclusion that the verdict ought to have been the same, even if the question of negligence had been left to the Jury, accompanied with a direction as to the circumstances under which the Company would have been exonerated from liability.

In the construction of works of a permanent character such as a railway, the amount of precaution which ought to be taken to guard against any external violence to which it may be exposed cannot be the subject of any precise rule, but must necessarily vary according to the varying local circumstances of each case. The difficulty of extracting any principle from decided cases which may be applied with certainty to questions of this description, is strongly exemplified by two Judgments of the Court of Exchequer which were delivered within three weeks of each other. In Withers *vs.* the North Kent Railway Company (27 L. J. N. S. Exch. 417), which was an action against the Railway Company for an injury occasioned by their keeping and maintaining their railway in an insecure state, it appeared that the railway had been constructed five years, and ran through a marshy country subject to floods; that it was constructed on a low embankment composed of a sandy sort of soil likely to be washed away by water, and that the culverts were insufficient to carry off the water. Evidence was given that on the day of the accident an extraordinary storm occurred, accompanied for sixteen hours with very violent rain, and that in consequence of this a stream, near to the spot at which the accident had occurred, had been swollen to a torrent and washed away a bridge, and poured down with great force upon the line; that the water had by midnight worn the earth away under the sleepers on some places, leaving the rails unsupported and exposed. A verdict was given for the Plaintiff, but the Court set it aside and granted a new trial; Pollock, C.B., saying that the Company was not bound to have a line constructed so as to meet such extraordinary floods, and Bramwell, B., observing that "the very existence of the line for five years, notwithstanding that the district was subject to floods, tended to negative the only negligence which was set up." There is some difficulty in reconciling this remark with the language used by the same learned Judge in the other case of Ruck *v.* Williams (27 L. J. N. S. Exch. 357). That was an action against Commissioners of Sewers for negligence in constructing a sewer in a defective and improper manner, and keeping it in that state, whereby it burst and damaged the Plaintiff's premises. It appeared that the sewer was constructed in April 1853. In the year 1855 two severe storms occurred, one on the 13th July, which occasioned the bursting of the sewer, and another on the 26th July before the repair of the sewer was completed, at which time the injury was done to the Plaintiff. It was stated in the Report of the Commissioners' Surveyor that the storm of the 26th July was without precedent for its violence. The Court held that the Plaintiff was entitled to recover. Bramwell, B., in answer to the argument for the defence of the Commissioners arising out of the extraordinary violence of the storm, which occasioned the damage, said "he called it extraordinary, but in truth it is not an extraordinary storm which happens once in a century, or in fifty or twenty years; on the contrary, it would be extraordinary if it did not happen;" and he added, "therefore, it seems to me that the Commissioners who ought to have put down a flap or penstock of a permanent character, in order to guard against a thing likely to occur, not only in a short time, but at all times, may well be said to be guilty of negligence relatively to the probable event of a storm happening in fifty years."

Their Lordships, without attempting to lay down any general rule upon the subject, which would probably be found to be impracticable, think it sufficient for the purpose of their Judgment in these cases to say that the Railway Company ought to have constructed their works in such a manner as to be capable of resisting all the violence of weather which in the climate of Canada might be expected, though perhaps rarely to occur. Now the evidence fairly considered shows nothing beyond this in the character and degree of the storm which destroyed the embankment. The night of the accident is described by various witnesses to have been "very severe;" one says it was a "bad night, very bad;" another, in the usual style of exaggeration, that "it was the worst night he ever saw;" it is stated by others that the rain "washed away bridges and portions of the road;" and two of the Plaintiff's witnesses describe the storm, one as being "a very unusual one," the other "an extraordinary storm." In the whole of this evidence there is nothing more proved than that the night was one of unusual severity, but there is no proof that nothing similar had been experienced before, nor is there anything to lead to a conclusion that it was at all improbable that such a storm might at any time occur. It must also be borne in mind that although the embankment had stood firm for five years, and had possibly not been exposed to any storm of equal violence to that before which it gave way, yet it was evidently not constructed, or at least not maintained, in a manner to enable it to resist any unusual pressure. It appears that there was a ditch made for the purpose of carrying off the water that came down from the hill, but it was either imperfectly constructed from the first, and of insufficient dimensions, or it was suffered to be obstructed and choked up, so that when an unusual quantity of water flowed into it it was unequal to the occasion. The Company's engineer says in his Report, "It appears from the levels that there is a depression of two feet in one place. The ditch is an imperfect one. If that depression of two feet had been filled in, I question whether that accident would have occurred." And afterwards, "The cause of this accident can be overcome, and must be, to prevent the recurrence of such an accident again." It is true that he adds, "No engineer could possibly have foreseen such an accident as this." But whether he means that it was impossible to have anticipated such a storm as occurred, or that from the manner in which the embankment was constructed, it could not have been expected to give way, it is not easy to determine. Whatever his meaning may be, it is evident that the embankment was insufficiently provided with means of resisting the storm, which, though of unusual violence, was not of such a character as might not reasonably have been anticipated, and which, therefore, ought to have been provided against by all reasonable and prudent precautions. Even supposing that the learned Judge omitted to explain to the Jury what amount of *vis major* would exonerate the Company from the charge of negligence, yet their Lordships are of opinion that had this direction been given, and had the Jury been led by it to find for the Company, their verdict would have been wrong, and they adopt the language of the Court of Exchequer in Ford *v.* Levy (30 L. J. N. S. Exch. 352), that "non-direction is only a ground for granting a new trial where it produces a verdict against the evidence; and they will therefore humbly recommend to Her Majesty that the Judgments in these cases be affirmed, with costs.

IMPORTANT LEGAL DECISION.

In the Superior Court at Montreal, on Saturday last, the Hon Mr. Justice Monck rendered the following judgment in an important life insurance case, to which allusion has already been made in our columns :—

"Hartegan *vs.* The Intercolonial Life Assurance Company—The defendants made three motions: 1. That the verdict of the jury be set aside, and the action dismissed; 2. That the action be dismissed, notwithstanding the verdict; 3. That a new trial be granted. The case was tried before a special jury on the 12th January last [reported in the papers at the time.] The action was brought by Mrs. Roger Finn, of Quebec, to recover the half of $25,000, being the sum for which her husband had insured his life about a year previous to his decease. The Company refused to pay the amount claimed, alleging that the deceased had not disclosed his real age; that he falsely declared he had no medical attendant; and had concealed the fact of his being affected with consumption. From the evidence, it had appeared that he had a family-physician, Dr. Russell, who deposed to the fact that deceased was undoubtedly consumptive. Dr. Marsden, another physician, had also attended him, and testified to the same effect. Dr. Fremont, however, the medical officer of the Company, had made a careful examination, and had certified that his chest was quite free from disease, and recommended him as a fit subject for insurance. The jury had relied on Dr. Fremont's testimony, and found for the plaintiff. The Court reviewed the whole case at great length, and arrived at the conclusion that the first and second motions could not be granted, as it was a question of evidence, and the Court in such case would not be justified in dismissing the action, notwithstanding the verdict. The motion for a new trial, however, would be granted. The evidence at the previous trial had been taken at Quebec. If the witnesses were brought before the Court at the next trial, it was possible that the evidence might be more satisfactory and conclusive and the question of age might be cleared up. The evidence as to the state of the deceased's health was so conflicting that his honor believed the finding of the jury in this respect to be good; but, in the other matter, respecting the medical attendant, the Court was of opinion that there was a material concealment amounting to a breach of warranty; and, therefore, the finding of the jury in this particular was not in accordance with the evidence. Taking all the facts into consideration, the Court had concluded to allow a new trial, especially as the defendants had asked for it."

THE COURTS.

((From *The Gazette* Second Edition, Yesterday.))

IN THE SUPERIOR COURT.

SITTING IN REVIEW.

Coram: The Honble. Justices MONDELET, BERTHELOT and MONK.

May 30th, 1868.

Baccerini et al. vs. Barbe et al., and Owler opposant, and Baccerini contesting.—This was an appeal from a judgment of Court below upon an opposition. It had been maintained in the Court below. The Court of Review was of opinion, Judge Monk, however, *dissentiente*, that the opposition should have been dismissed. It appears that plaintiffs had issued a writ of *saisie gagerie* against defendant, and seized the furniture. The opposant, a boarder who lodged with defendants, opposed the seizure and sale of a certain portion of the things seized, they being his property. The Court below maintained the opposition, and the Court of Review now reversed it. The Hon. Justice Monk stated that it was his misfortune to have to disagree with his learned colleagues. He stated that it had been clearly proved that the greater part of the things seized were the property of the opposant and not of the defendants, and that no fraud or collusion between defendants and opposant had been proved. There was nothing in the record to shew that apart from the things claimed by opposant there were no other things in the house to answer for the rent. If there were no other things in the house the plaintiffs would have had a lien upon the things seized; but as it had not been shewn that there were no other effects in the premises to answer for the rent, he was not disposed to say that plaintiffs had a lien in the present case. However, very likely he was mistaken, and that for two reasons—1st, because he had the misfortune to differ with his learned colleagues, and 2nd, because his learned brother to his right had as precedents two cases in which it had been held that the effects of a boarder were liable for the rent.

Casey *vs.* the Corporation of the Township of Brome.—This was an appeal from a judgment of the Circuit Court, District of Bedford, rendered on the 15th February, 1867. It appears that the plaintiff in this case, in returning from a fair during the night, had his buggy upset by a log of wood which projected on the highway and by which the plaintiff was thrown out of his buggy and sustained serious injury. In the Court below he obtained damages to the amount of $120. The defendants, not being satisfied with this judgment, now appealed to the Superior Court at Montreal to have it reversed. They had pleaded that on the night in question the road was in good order, and that if the plaintiff had met with an accident it was by his own negligence, and more especially as he was drunk and unable to manage his horse. They further pleaded that by law they were not responsible, but the Road Inspector. It appeared by the evidence that on the night in question it was very dark. The Court of Review was of opinion that the judgment should be maintained, but thought that the amount of damages was excessive. It was not disposed to grant more than $30 damages, and in that respect felt itself bound to reform the judgement of the court below. Judge Mondelet stated that, that by-law, the Corporation was not exonerated from liability, even if it had been proved that the road was in a bad state by the negligence of the road inspectors. In going into the merits of the case, he found no proof, whatever, to justify the allegation that on the night in question the plaintiff was drunk. It had been proved that the road was in a most disgraceful state. There was an obstruction upon it consisting of two logs or stumps which were 18 inches in diameter each and 4 feet wide. These logs projected upon the road opposite a ledge of rocks, and a traveller in passing upon this highway in trying to avoid Charybdis fell into the jaws of Sylla. The night was very dark and the plaintiff with several other persons was upon his return home from a fair. One witness stated that the plaintiff was so drunk that he had to be hoisted into his buggy, on the other hand two witnesses swore that the plaintiff got into his buggy without any assistance whatever. There was no proof whatever, to shew that the plaintiff was drunk. The logs in question had existed upon the road for over a month, and before the accidents in question two carriages had been upset by the projection of those logs. But, even supposing that it had been proved that Defendant was drunk, would this in law have excused the Defendants, on account of the bad state of the road. The learned judge stated that he was far from being disposed to take up the cudgels for drunkards; nevertheless, he could not countenance the preposterous doctrine, that because a man happened to be intoxicated, and met with an accident on account of the bad state of a public highway, that in such a case the corporation should be excused. Suppose the case where a gentleman has dined rather late and imbibed an unusual number of cups and becomes inebriated, and upon his return home on a dark night, falls into an excavation where there is no lamp to warn passengers, can it be maintained or even pretended for a moment, that the Corporation would not be liable. Such a principle would be an outrage upon society, law and order. The learned judge stated that he had been disposed to confirm the judg-ment in full as it stood the evidence of the Doctors as to the amount of the injury sustained being very strong, but that his learned colleagues did not take the same view of the case, and were disposed to reduce the damages to $30. Judge Berthelet said that he would give his reasons why he was not disposed to allow more than $30 damages. It appeared that plaintiff and several other parties had been drinking all day at a fair, and then started to go home. Four or five persons got into a small buggy, and there was no doubt whatever, that they were all more or less intoxicated. Even some of them were what might be vulgarly termed "blind drunk." There was evidence in the record to show that the plaintiff was very boisterous when he got into the buggy and cried out repeatedly "hold on to the bottle;" one witness swore that he had never seen a man so drunk as the plaintiff holding lines. There is a well known principle in law *volenti non fit injuria*, and that principle applied more or less to the present case, but that it would not do to apply it strictly. From the evidence it appeared that the plaintiff was not in a fit state to take care of himself; nevertheless this was no reason to excuse the Corporation, if the road was in a bad state, and in the present case it had been proved that the road was in a bad state. Under the whole circumstances of the case the Honourable Judge, was of opinion that the plaintiff was not entitled to more than $30 damages. Judge Monk, said that when he first looked at the case, he was disposed to reverse the judgment of the court below; however it appeared to him that it was one of those cases in which there is a good deal of doubt involved, and in this case he should apply the invariable rule which he had always followed, namely to confirm when he had any doubt. In the present instance he had some doubts as to the exact position of the logs in question. It had been proved that the logs had been where they actually were for over four months, and that people had passed by them both during the night and day for that period oft ime, and no accident had occurred. Now if these logs were such a serious obstruction and as dangerous as represented, it is not probable that they would have remained so long on the road side without being removed. It is very likely that these logs were an obstruction, but he was at a loss to discover the precise character and extent of it. Moreover, it had been proved that the plaintiff was strongly under the influence of liquor. For these reasons he was disposed to reduce the amount of damages, and concurred with his learned colleague, Judge Berthelot, in fixing them at $30.

Campbell *vs.* Miller, *et al.*—This was an appeal from a judgment of the Superior Court for the district of Bedford, rendered on the 15th of May, 1867. In the court below the plaintiff sued the defendants for damages alleged to have been sustained by him by a *trouble de droit* in consequence of the defendants having registered their title to certain property at the Registry Office in and for that district. The defendants pleaded that they had acquired the property at Sheriff's sale, it having been sold by the corporation in payment of certain municipal taxes, and that they were the lawful owners of the property, and as such entitled by law to register their title. In support of their plea they invoked chap. 24, sect. 64, sub sect. 8 of the Consolidated Statutes of Lower Canada. The plaintiff answered that the law quoted by defendants did not apply to the question at issue. That he did not sue to dispossess defendants, but merely to prevent them from registering their title. The Court of Review was of opinion that the same law governed both cases; that the defendant's plea was well founded in law and the judgment of the Court below was erroneous, and that the action ought to have been dismissed with costs. Judgment reversed, with costs of both Courts.

Quebec 24 Nov 1814

	Brot forward			£350	14	7 10/14
. To Lieut Methotte	@ 28 days pay		6/3½	9	8	9
. To Lieut Galineau	@ 28 "	"	"	9	8	9
. To Lieut Laurent	@ 28 "	"	"	9	8	9
. To Lieut Johnston	@ 28 "	"	"	9	8	9
. To Lieut Burk	@ 28 "	"	"	9	8	9
. To Lieut Prendergast	@ 28 "	"	"	9	8	9
. To Lieut Perras	@ 28 "	"	"	9	8	9
. To Lieut Beaulieu	@ 28 "	"	"	9	8	9
. To Lieut Bernier	@ 25 "			8	8	6 9/28
. To Lieut Lukin	@ 28 "	"	"	9	8	9
. To Lieut Martigny	@ 28 "	"	"	9	8	9
. To Lieut Payser	@ 28 "	"	"	9	8	9
. To Lieut Lacroix	@ 28 "	"	"	9	8	9
. To Lieut Savage	@ 28 "	"	"	9	8	9
. To Lieut Baby	@ 28 "	"	"	9	8	9
. To Ens Graves	@ 28 "	"	5/½	7	11	3
. To Ens Hengault	@ 28 "	"		7	11	3
. To Ens Fery	@ 28 "	"		7	11	3
. To Ens Decoupe	@ 28 "	"		7	11	3
. To Ens Vencault	@ 28 "	"		7	11	3
. To Ens Edge	@ 28 "	"		7	11	3
. To Ens Stubinger	@ 28 "	"		7	11	3
. To Ens Gauvreau	@ 28 "	"		7	11	3
. To Patriotic Fund	@ 1 day ea			19	11	3 15/28
. To Music Fund	@ 2 days ea			39	2	7 2/28
				£610	9	6 9/14

. John Stewart Esq. D.t. Cash for 24 Nov.

. @ amo. of Paylist for 32 Discharged & New ea 20 days full pay . . . £ 32 0.0

add 1/14 — 2.5.8 8/14 — 34 5 8 8/19

JUDGMENT IN THE PRIVY COUNCIL.

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Trigge *vs.* Lavallée, from the Court of Queen's Bench of Lower Canada; delivered 9th February, 1863.

Present:—Lord Chelmsford, Lord Kingsdown, Sir John Taylor Coleridge.

In the month of March, 1858, the Appellants instituted a suit in the Court of Queen's Bench, in Lower Canada, against the Respondent, to recover a sum of £30 alleged to have become due to them from him in the month of November preceding.

The claim was founded on a Notarial Act, dated the 21st May, 1847, by which the Respondent engaged to pay the annual sum of £30, so long as he should use a certain mill-dam and quay. The payment was to be made to a gentleman named Chandler, whose rights had become vested in the Appellants.

The Respondent in his answer to the suit did not deny the fact of the agreement, or that he had had the use of the dam and quay during the twelve months for which the payment was demanded; but he alleged that the engagement in question had been obtained from him under a mistake on his part of his rights, and by means of fraud and intimidation on the part of Chandler and his agents; that no consideration had been given to him for the agreement, and he insisted that it ought to be annulled, and the Plaintiffs' suit dismissed.

On the 27th June, 1859, the Circuit Court pronounced Judgment in favour of the Appellants, and condemned the Respondent to pay the sum demanded with costs.

On appeal to the Court of Queen's Bench, that Court reversed the Judgment of the Circuit Court, annulled the agreement in question, and dismissed the Appellants' suit with costs.

From this decision the present Appeal is brought to Her Majesty in Council.

Chandler was the owner of five-sixths of the Seigneurie of Nicolet, which adjoins the Seigneurie of La Baie. The south-west branch of the River Nicolet runs through these two seigneuries, and at the point where the dam in question stands, the whole channel of the river is within the Seigneurie of La Baie, but the shore or bank on the Nicolet side of the stream is within the Seigneurie of Nicolet.

On the La Baie side of the river was a grist-mill called the Moulin de Despins, which was worked by means of water diverted from the river by a chaussée or dam.

This mill was what is termed a "moulin banal," and had been built by the Seigneurs of La Baie.

In the month of April, 1844, the mill, with the dam, and all the rights belonging to the mill, was purchased by the Respondent and his brother, and conveyed to them accordingly.

The purchasers having taken possession were desirous of extending and making alterations in the dam, by which the water of the river was diverted to their mill. Whether the old dam extended across the whole stream, or only across a part of it; whether there was to be an entirely new dam, or only a repair of the old one; whether the new work was to be on the old site, or the site was to be changed, are matters which were disputed at the Bar, and with respect to which we are not able to arrive at any certain conclusion. But this is certain, that a very important change was to be made in the dam in one respect, that whereas the original dam was confined within the Seigneurie of La Baie, the new dam was to be extended into and supported and rendered more effectual by works carried into the Seigneurie of Nicolet. It was to be built for some depth into the opposite bank in the Island of La Fourche (which in this part of it is within the Seigneurie of Nicolet), and flanked on each side by a quay.

To do this it was of course necessary to procure the consent of the proprietor of the land so to be encroached upon; whether the consent of the Seigneur of Nicolet was not also necessary appears to us, for reasons which we will presently state, to admit of much doubt.

Amand Richard was proprietor of the land in question, deriving title under the Lords of Nicolet, and on the 29th May, 1844, A. Richard by Notarial Deed granted to Lavallée and his brother the right and privilege of building, constructing, and erecting a quay or dam (the French words, in this part of the instrument, are "quai ou chaussée") on his land in the parish of Nicolet opposite the mill called Moulin de Despins, in the Seigneurie of La Baie, and the right of digging out the land necessary to receive such quay and dam (the words here are "quai et chaussée") to the depth of 10 feet from the river, and to the length of 50 feet along the river.

This grant is made to the Sieurs Lavallée, their heirs and assigns, to enjoy the land so occupied by the said quay and dam, "comme bon leur semblera, en toute propriété de ce jour à l'avenir."

The grant is stated to have been gratuitous, but whether gratuitous or for consideration is immaterial. The Lavallées proceeded to execute these works, and while they were engaged on them they were served with two notices by a person named Cressé, professing to sign one notice as attorney for Chandler, the owner of five-sixths of the Seigneurie of Nicolet, and the other as attorney of Madame Lozeau, the owner of the greater part of the Seigneurie of La Baie.

Both these notices required the Lavallées to desist from the works which they were then erecting, as prejudicial to the rights of the Seigneurs of La Baie and Nicolet. The notice of Madame Lozeau alleged that the Lavallées were building a dam, quays, and other constructions within the Seigneurie of La Baie at other places than those included in their grant.

It does not appear that anything was done in consequence of the notice of Madame de Lozeau, and probably the allegations on which it rested turned out to be without foundation.

The allegation of Chandler, and the rights set up by him, will be considered more conveniently when we deal with the objections made to the agreement. For the present purpose it is sufficient to say that his notice rested entirely on his rights as Seigneur of Nicolet, and contained no mention of a deed which had been executed a few days before by Amand Richard.

The notice was served on the 4th August, 1846. On the 27th of July preceding Chandler had procured a grant, which is called a retrocession, from A. Richard, of a strip of land which would, as we understand it, include the strip already granted by him to Lavallées. We are of opinion that Chandler, if the fact were material, must be held to have had notice of Lavallée's grant. The object of the retrocession was, if possible, to defeat that grant. The grant to Chandler extended considerably further along the river, and considerably deeper from the river than Lavallée's, and would therefore include and surround it on the land side.

In this state of things, Chandler insisted that he had a right, and alleged that he intended, to build a mill on the land so obtained from Richard, and by means of a canal cut into the river above the dam of Lavallée, to withdraw all the water from Lavallée, and divert it to the mill which he so proposed to erect. It is proved in evidence, that though the mill was never built, nor, as far as appears, begun, the canal was dug to a certain depth, and that if it had been continued, as was threatened, to the depth of another foot, it would have withdrawn all the water from the Respondent's dam, and left the channel of the river at that point dry.

In this state of things, the agreement was made which is the foundation of the present dispute.

It was made on 21st May, 1847, between Chandler, described as Seigneur, Proprietor, and Possessor of five divided sixth-parts of the fief and seigneurie of Nicolet, and of the Isle de la Fourche and rivers of the same, acting by Cressé, his attorney, of the one part, and the Respondent, described as a Lumber Merchant, residing at the village of Berthier, in the district of Montreal, on the other part. It appears that the Respondent had at this time acquired the share of his brother in the mill.

The agreement expresses that, in order to terminate amicably the disputes and differences which have arisen between the parties with respect to the dam in question, which is stated to "abut against the lot of land late of Amand Richard, and now of Chandler," they have agreed to put an end to them by means of the present agreements and stipulations.

Then Chandler agrees, on his part, to allow the said dam to remain as it is at present constructed and erected, so long as Lavallée shall see fit there to leave it, or to reconstruct and rebuild it; and Chandler promises not to interfere with the said dam, except it be to make use of the water to bring down timber and pass it over the said dam. Lavallée, on the other hand, agrees to pay to Chandler the sum of £30 on the 11th day of the following month of November, and to continue to pay the same sum annually on the 11th of November, so long as the said dam shall remain abutted upon the property of Chandler, in the aforesaid locality. In case of Lavallée ceasing to use the dam, the payment is to cease.

It is further agreed between the parties, that Chandler shall be at liberty to build one or more mills or manufactories, opposite to the said lot of land of Amand Richard, or elsewhere, as he shall see fit, except that he shall not build any mill within a certain specified distance above or below the mill of Lavallée.

Against the validity of this agreement, it is urged that Chandler gave no consideration for the benefit which he received under it; that he had no right whatever to interfere with the dam of the Respondent, either in his character of Seigneur of Nicolet, or as purchaser from Richard; that the portion of the River Nicolet across which the dam extended was not within the lordship of Chandler, and that if it had been so, such circumstance would have conferred no right on the lord; and that as to the agreement not to build mills or manufactories within certain limits, such concession was worthless, for that no mill could have been advantageously built within those limits for want of water-power.

If by the deed in question Chandler had professed to grant, and Lavallée had agreed to take, a lease of this dam, paying a rent of £30 per annum as a consideration for it, it might have been argued that the consideration which he had agreed to give for the grant had wholly failed, if in fact Chandler had no rights to confer. But this is not the nature of the agreement; it is quite of a different character. It falls under the head of what in French law is termed a "transaction," and in English a compromise. It is an agreement to put an end to disputes, and to terminate or avoid litigation, and in such cases the consideration which each party receives is the settlement of the dispute; the real consideration is not the sacrifice of a right, but the abandonment of a claim. The French law to which we must look for the decision of this case adopts the definition of the civil law, and it is expressed by Domat, "Des Transactions," vol. iii, chap. i, p. 2, in these words:—

"La transaction est une convention entre deux ou plusieurs personnes, qui pour prévenir ou terminer un procès règlent leur différend de gré a gré de la manière dont ils conviennent, et que chacun d'eux préfère a l'espérance de gagner jointe au péril de perdre."

It is no objection to the validity of such a compromise that the right was really in one of the parties only. If two persons claim adversely to each other the inheritance of a deceased person, and in order to avoid litigation agree to divide the inheritance between them, it is no ground for setting aside the agreement that one only was the heir, and that the other therefore gave up no right which he really possessed.

The consideration which Lavallée agreed to take for this grant was the abandonment by Chandler of all attempts to disturb him in the enjoyment of his mill and dam, and the agreement not to erect within certain limits new mills, and this consideration he actually received.

There is, therefore, clearly no reason for annulling this agreement on the ground that Lavallée received no consideration for it.

But it is said that an agreement of compromise, like any other agreement, may be set aside for what the French law terms "dol," or want of good faith in either of the contracting parties; and it is alleged that Chandler, by his agent, was guilty of "dol" by misrepresentation of his title, and by using intimidation towards Lavallée.

The misrepresentation imputed to him is that he claimed by his protest rights as Seigneur of Nicolet which did not belong to him, and treated as within his Seigneurie a part of the river which was actually within the boundaries of La Baie; and it is contended that as he had been for many years the owner of some portions of the Seigneurie of Nicolet, including La Fourche, and had resided within it, he could not have been ignorant either of the boundaries of his Seigneurie or of the rights which belonged to it; and that, therefore, if his claims were unfounded, he must have known them to be so at the time when he made them.

But the proceedings under the Act for abolishing feudal tenures in Canada show that upon both these points he might be honestly mistaken.

With respect to the boundaries of Seigneuries, it appears that when this part of Canada was settled by the French Government about the year 1680, the country was waste and uncultivated, and for the most part covered with woods, and that any very precise description of boundaries was scarcely possible; that the plan of settlement adopted was to grant a large plot of land to some person as Seigneur, in order that he might grant it out to tenants or "censitaires" for the purpose of cultivation. The grant of the Seigneurie of La Baie describes the boundary on one side as two leagues in a forest to be measured from the Lake of St. Pierre, with the isles, islets, and meadows,

Quebec 24 Nov. 1814

Brs. forward					
To Capt. Hinkes Comp & Subsistence from 25 Oct. to 24 Nov.	71. 2 2¼				
Less 1 day ea for P. Fund	2 8 3¼				
	68. 13 11				
	4 18. 1 9/14	73	12	0 9/14	
To Capt. Robettes Comp & Subsist. from 25 Oct to 24 Nov.	82 13. ½				
Less 1 day ea for P. Fund	2 14. 2½				
	79. 18 10				
	5 14 2 6/14	85	13	0 6/14	
To Capt. Lepruhons Comp & Subsist. from 25 Oct to 24 Nov	75 4. 6¼				
Less 1 Day ea for P. Fund	2 10 9¼				
	72 13. 9 1/4				
	5 3 10 1/4	77	17	7 1/4	
To Patriotic Fund &					
2 Staff Sergeants	2	4			
1 Drum Major	2	2			
38 Sergeants	1/4	2 10 8			
43 Corporals	10	1 15 10			
13 Bugles one at 7½ the others	7 1/4	7. 10 3/4			
714 Privates	6	17. 17 0			
		22. 17. 4 3/4	24	10	9 45/56
		1 12. 8 36/56			
			£	740	8 3 21/56

25

To Sundries Dr. to Cash			
To Lieut Lukin & his pay 24 Nov.		9	8 9
To Ens Edge pr his pay " "		7	11 3
To Lieut Buck in full of pay " "		18	10 9
To Lieut Sayer " " " "		9	8 9
To Lieut Baby " " " "		9	8 9
To Lieut Vandugast " " "		5	15 11
To Ens Stabinger " " " "		7	11 3
To Capt Lamspry " " " "		15	8 9
	£	83	4 2

which might be met with in that space, and it is by means of this measurement that it is made out that this Seigneurie at the place in question includes the whole channel of the river, though the shore bounding it on the side of Nicolet is within that lordship. It might well, therefore, when the notice was given, be a matter of doubt whether the whole or part of the stream was not also within that lordship, though at the trial of this cause the fact had been ascertained and was admitted to be otherwise.

The fact itself was not, perhaps, of any great importance, for the diversion of a stream running through several Seigneuries could not be justified simply by the circumstance that the particular place at which the diversion was made belonged to only one Seigneur. On referring to the maps of Canada, it appears that the Nicolet is a very large river divided by Isle La Fourche into two branches, of which the south-west branch must run through many Seigneuries besides that of La Baie, and certainly runs along, and probably in part of its course entirely within, the Seigneurie of Nicolet. But the fact (whether material or not) was made out by the title-deeds of the Respondent; he had, therefore, at least equal means of knowing it with Chandler, and there is no more reason of imputing actual knowledge to Chandler than to him.

As to the general feudal rights of the Seigneurs when they were abolished by an Act of the Legislature in 1854, a Commission, consisting of all the Judges, was appointed for the purpose of determining questions which might arise with respect to them. A very large proportion of those questions appears by the proceedings to have related to the rights of the Seigneurs in non-navigable streams and waters within their Seigneuries. They insisted that, notwithstanding the grant of the lands by them to their tenants or "censitaires," they still retained the property in all these waters, and a right to the exclusive use of them for the purpose of mills and manufactories. This claim was not allowed by the Commissioners, though it seems to have been in some instances recognized by judicial decision.

With respect to mills, it appears that each Seigneur was bound by law to build a grist-mill within his Seigneurie for the use of his tenants, that the tenants were bound to resort to such mill, and that no person, except the lord, was at liberty to build a mill of the same description within the Seigneurie. These mills were called "moulins banaux," and if a mill of the same kind were erected within his Seigneurie by any other person, the lord had the right to demand its demolition. He also claimed the right of taking back from any "censitaire" a portion of the land included in his grant for the purpose of erecting such mill, making a reasonable compensation.

Whether this last claim was well founded or not does not appear to have been decided by the Judges under the Commission, but it is submitted as a proposition of law by the Attorney-General.

Now Chandler's protest is quite in conformity with these claims; he insists that, in his character of Seigneur of Nicolet and La Fourche, he is entitled to all non-navigable streams within the Seigneurie, and to the exclusive right of building mills and manufactories of all kinds within the same, and he alleges that the proceedings of the Lavallées in erecting the dam and quay within his Seigneurie were an infringement of his rights.

It may admit of doubt whether Chandler's claim to interfere with the works of Lavallée's mill within his (Chandler's) Seigneurie was entirely without foundation. If the lord had a right to prevent the erection by his tenant of any grist mill within the lordship on the ground that it might interfere with the custom due to his own mill, there seems room for argument that he might prevent the erection within his Seigneurie of the works of a mill of that description which might be equally injurious to him, though the main building was situate within the limits of an adjoining Seigneurie. The question, however, is not whether Chandler could have sustained his claim, but whether it was so unreasonable that it could not have been advanced *bona fide*, and we certainly cannot come to that conclusion. It is mentioned in his protest that he had served a notice of claims to the same effect, in the year 1825, on the Despins, the then owners of the mill.

We feel bound to say that we can discover nothing in this case to support the charge of wilful misrepresentation by Chandler, nor can we find any sufficient evidence of surprise or intimidation of the Respondent. Many months intervened between the service of the protest and the agreement, and there is nothing to show that the Respondent was in any manner under the control or influence of Chandler, or in such circumstances or condition of life as to be subject to intimidation by him.

The retrocession obtained from Richard, and the threat by Chandler to build a mill in the Seigneurie of Nicolet, are in a great measure explained by the state of the law, to which we have adverted, at the date of the agreement, and we think that the engagement by Chandler not to build any mill within certain limits was a substantial concession by him. If, therefore, the transaction were recent, and had not been the subject of former discussion, we must hold upon this evidence that the charge of "dol" brought against Chandler has not been substantiated; but it must be remembered that, for some time after the agreement was made, it was acted upon by both parties; that its validity was first disputed in 1852, when Chandler was dead, though Cressé seems to have been living; that the grounds on which its validity was then disputed were the same with those laid in the present suit; that the case was decided against the Respondent, and that he acquiesced in the decision. When the present suit was brought Cressé as well as Chandler was dead. Under such circumstances every presumption is to be made in favor of parties whose conduct is impeached after the death of both, and when all the explanations which might be desirable can no longer be afforded.

It remains to consider the objection of error in the *motif déterminant* of the agreement. Error on the part of the Respondent is alleged generally both as to matter of fact and of law. In what circumstances error will be a ground for setting aside or refusing to act upon an agreement generally, and an agreement of compromise in particular, and what the nature and effect of the error must be, seems to have perplexed alike Judges in England and foreign jurists.

The question here is to be determined exclusively by the French law as it is applicable to compromises or transactions. The rule, as we collect it from the numerous authorities cited in the argument, appears to be this:—If the error relied on be in a matter of fact, and the fact be one not included in the compromise, and of such a character that it must be considered the determining motive of either of the parties in entering into the agreement, its existence is regarded as a condition implied, though not expressed; and then, if the fact fail, the foundation of the agreement fails. This seems to be the meaning of the language used by Toullier, b. iii, tit. 3, sec. 1, Art. 42, and following articles.

The instances which he puts are, if a compromise be founded on the genuineness of instruments which turn out to be forged, or if a suit which it is the object of a compromise to determine turns out to have been already decided in favor of one of the parties, or if a compromise be founded upon a will which turns out to have been revoked by another will of which the parties are ignorant.

But, he says when the compromise is general of all matters in difference between the parties, then the rule of law is different, because it is not proved that the compromise would not have taken place, although the parties had known that one of the points was not doubtful. In such a case it is neither proved nor presumed that the compromise would not have taken place, and, in case of doubt, "erreur ne nuit qu'à celui qui était dans l'ignorance." The general rule then applies, "*Error nocet erranti.*"

We cannot say that in this case any mistake of fact has been proved on the part of the Respondent which, if it had been known, would have prevented the agreement. It is neither proved that Lavallée believed the part in question of the River Nicolet to be within the Seigneurie of Chandler, nor that if he had known it to be within the Seigneurie of La Baie he would not have entered into the compromise.

It appears to us to have been the intention of the parties to come to a general settlement of all the matters in dispute between them, without resorting to litigation in order to determine the various points of fact or of law upon which their rights might depend

As to the effect of error in law upon agreements of this description, Article 2052 of the Code Civil provides, "Les transactions ont entre les parties l'autorité de la chose jugée en dernier ressort. Elles ne peuvent être attaquées pour cause d'erreur de droit ni pour cause de lésion."

This Article in itself, of course, has no force in Canada, but it is merely an embodiment of the ancient law of France, as is clear from the chapter in Domat's Civil Law, tit. "Des Transactions," and as is expressly stated by Merlin in the passage relied on by the Respondents in the Répertoire, tit. "Transaction," sec. 5, art. 2, vol. 34, p. 371. He says:—

"L'erreur de droit ne peut jamais servir de prétexte pour faire rescinder une transaction. Les anciennes lois l'avaient décidée, et l'Article 2052 du Code Civil dit expressément que 'les transactions ne peuvent être attaquées pour cause d'erreur de droit.'"

As a general rule this is not denied by the Respondent. But he contends that there is an exception where a mistake has prevailed generally with respect to the law, affecting whole classes of the community, and a compromise has been made founded upon such mistake. And it is said that at the time when this agreement was made, the rights of the Seigneurs with respect to non-navigable rivers and other waters within their Seigneuries were universally considered to be much larger than they were afterwards found to be by the proceedings under the Commission to which we have already referred, and that this mistake was the foundation of the agreement. In support of the proposition of law, a passage is referred to in Merlin's "Repertoire," immediately following that which we have just read, and which is in these words:—

"Si cependant l'erreur de droit avait été tellement générale que le législateur se fût cru obligé non-seulement de la faire cesser par une déclaration de sa volonté, mais encore de relever ceux qui l'auraient commise de tous les acquiescements auxquels elle aurait pu les entrainer, la transaction qui aurait été la suite d'une pareille erreur serait incontestablement nulle. C'est ce qu'a jugé un Arrêt du 24 Mars, 1807, rapporté au mot 'Communaux,' sec. 4."

It is obvious that if an act of legislation correcting a mistake generally prevailing as to the law on a particular subject, at the same time expressly relieves parties who have acted on the mistake from the consequences of their acts, there is no question for a Judge to decide; and this is the case stated by Merlin. It is true that the Arrêt to which he refers, states merely that the party was not bound by acquiescence in a decree arbitral, "puisque l'opinion générale était alors que les décisions d'arbitres forcés n'étaient point attaquables par cette voie,"—that is, by way of cassation.

Neither the general rule nor the particular case, (of which the circumstances were very peculiar, and founded on the laws enacted by the Revolutionary Government of France in the years 1792 and 1793, in favor of the peasants against their lords,) goes the length of establishing the principle contended for by the Respondent, that a mistake of law as to rights of different classes prevailing generally at the time of a "transaction," is sufficient to annul a contract founded upon such mistake.

Whether under any circumstances it would be sufficient to do so, it is unnecessary for us to consider, because on referring to the proceedings we are satisfied that the facts of this case afford no ground for any such question. On the contrary, a careful examination of those proceedings as they are stated in the Lower Canada Reports, with which we have been furnished, convinces us that at the date of this compromise very great doubt prevailed as to the rights of the lords and their tenants respectively to the ownership and the use of non-navigable rivers, and as to the right to erect mills, and by means of dams to divert the water to such mills, and that there was no general recognition of the rights claimed by the lords. The 37th question put to the Commissioners was in these words: What was the jurisprudence followed in Lower Canada since the cession of the country in relation to the various rights claimed by Seigneurs in the waters which pass through or border upon the lands comprised in their respective "censives?" The legal proposition submitted on the part of the Crown was "that although several Judgments favorable to the pretensions of the Seigneurs on the matter have been pronounced, they are not such as the law requires to establish a jurisprudence," and the opinion of the Court is that "there has been no established jurisprudence in Lower Canada since the cession, in relation to the right in the waters which pass through or border upon the lands."

There is no ground, therefore, in this case for any exception to the general rule that an agreement of compromise is not vitiated by a mistake of either party in matters of law.

Upon the whole we have come to the conclusion that the Judgment of the Court below cannot be supported; that this agreement is to be dealt with upon the principles applied by French law to "transactions;" that the withdrawal or the claim of Chandler to interfere with the dam, and the engagement to limit his right of building mills, constituted a sufficient consideration to support the agreement, and that no such proof has been given either of "dol" or "erreur," as would authorize a Court

Quebec 1 Dec. 1814

. Sundries Dr. to Cash			
. Lieut. Galeneau in full to 24 Nov. . .		8	17 11
. Capt. Jonnancourt Comp. & Estimate 25 Oct. to 24 November		69	5 6
. Capt. Jonnancourt in full to 24 Nov. . .		30	6 5
10			
. Capt. Finlay in full to 24 Nov.		15	8 9
. Lieut. Mackay in full to 24 Dec. . .		9	2 "
. Lieut. Savage on a/c		15	" "
. Ens. Jury on a/c		9	2 "
. Ens. Stubinger . . on a/c of Dec. . . .		6	" "
. Ens. Edge . . in full to 24 Dec. . . .		7	5 10
. Lieut. Mastigny on account		15	" "
13			
. Lieut. Prineau To Ra. this day	1.10.0		
Musp. a/c 20 Nov. . .	4 5 2		
draft to Hall £2.5.0			
Account to do 1.0.0	3.5.0	9	" 2
. Lieut. Johnston To Receipt. . .	3.		
Musp. a/c 20 Nov. . .	3.14.10	6	14 10
. Lieut. Laurent paid Musp. 20 Oct.	5 5 3		
do do 20 Nov.	2.4.8	7	9 11
. Lieut. Mastigny p.d Musp. 20 Nov. . . .		1	19 "
. Ens. W. Jones p.d Musp. " "	2 17 11		
p.d Ferguson & Cairns	11.5.—		
p.d Hunston	8.3.6	22	6 5
. Q. M. Coates p.d Musp. a/c 20 Nov. . .		1	17 11
Doct. Painchaud p.d do " 20 " . . .		13	2 4
		£237	19 "
= Returned Books to Fort [illegible]			
. A. Parent Dr. to Cash			
. To amo. of Lodging Money p.d 29 Oct.		5	6 8

of Justice to annul it. We must humbly advise Her Majesty to reverse the Judgment complained of, and to restore the Judgment of the Circuit Court, and we think that the Appellants must have the costs in the Queen's Bench, and of this Appeal.

As this case is to be decided exclusively by the French law, we have forborne to advert to the English authorities upon the subject. But we may observe that in the case of Stewart *v.* Stewart, in the House of Lords, (6 Clark and Fin, 911), which was a case from Scotland, a very careful examination took place of the principles to be applied to this subject; and Lord Cottenham came to the conclusion that the rules of the civil law had been in effect adopted into the law both of England and Scotland; and this appears to us to have been the case with the law of France.

MONTREAL, June 1st, 1850.

CIRCUIT COURT.

Before Mr. JUSTICE BRUNEAU.

PHILBIN *v.* THE CITY BANK.—This was an action instituted against the City Bank for the recovery of the sum of 10s., the amount of one of the ordinary bills of issue of the said Bank, payment whereof has been refused. The plaintiff declared upon the bill as a promissory note, dated January, 1844. The plea amounted to a denegation of all the facts alleged in the plaintiff's declaration. For the defendant, it was shown that the bill, which framed the subject of the action, was so mutilated in form, (the centre portion of it being wanting,) that it could not be accepted by the Bank without incurring the risk of frequent imposition; and, in the presence of the Court, two bills were separated in such a manner as to form three distinct notes, all of an equally perfect description with the one upon which the plaintiff had sued. The plaintiff urged that the pieces of note produced were all the essential parts of such a note, and that defendant's plea did not allege fraud.

The Court, in pronouncing judgment, remarked that the case cited from Petersdorff (4 vol.) was exactly in point—a part only of the note had been produced, and a part was lost. If, in the case before the Court, a part of the note had been lost while in possession of the plaintiff, it was incumbent upon him to show it, and, if he had received it in an imperfect state it was his own fault.

The law in the present case, did not, in all respects, assimilate to that which held with regard to promissory notes, nor was it consistent with either justice or law that it should. Judgment must go for the defendant and the dismissal of the plaintiff's action.

Mr. Mackay for plaintiff, and Mr. Ross for defendant.—*Herald.*

INTERESTING CURRENCY CASE.

A Montreal contempory relates the following:—

"A resident of Montreal accepted a draft for $134, drawn on him by a New York creditor, payable at the bank of Montreal here, and on maturity tendered payment, less exchange, which the bank refused to receive. The case went to litigation, and the Court decided that the amount must be paid in Canadian funds, without deduction.

"The error of the defendant in this case was accepting the draft without the stipulation 'with exchange.' A debt due by a Canadian to a creditor in the United States, unless there is a special contract to the contrary, is payable at the office of the creditor in current funds of his country. If he draws on his debtor, stipulating a place of payment out of the United States, the latter has the right to refuse acceptance, unless accompanied with the stipulation 'with exchange.' Immediately following this, a tender at the office of the creditor, or a remittance in the usual manner to him of the amount due in greenbacks will be a good payment. But it is doubtful whether if a debt contracted in the United States, with a tacit understanding that it should be payable in Federal currency, were sued here for non-payment, the Courts would recognize the actual distinction between Federal and Canadian currency, although the custom of merchants is that the creditor is only entitled to recover a sum equivalent in the legal tender of the country in which collection is made to the amount stipulated in the contract, if paid according to its tenor, whether the contract was verbal or otherwise.

"In the case we have alluded to, the acceptance of a draft made payable in Montreal acted as a novation of the original debt; and the judgment of the Court was the only one which we should have anticipated under the circumstances."

Law Intelligence.

[Reported for the Quebec Mercury.]

VICE ADMIRALTY COURT: LOWER CANADA.

Friday, 13th July, 1855.

JOHN COUNTER,—*Miller.*

This case involved the question of the liability of a steamboat towing a vessel, for damage and injuries caused by the vessel in tow coming in collision with another vessel. The facts will be found stated in the following opinion of the court.

THE COURT, (*Hon. Henry Black.*) On the 22nd September last, the brig *William Wilberforce* was lying at anchor on the ballast ground in the harbour of Quebec, well over to the north side of that place, and about the middle of the channel of the River St. Lawrence. A barque was at the same time lying at the ballast ground about two cables' length to the northward or towards the Quebec shore, and a little lower down the river or astern of the brig. The wind was light from the south-west or down the river; and the tide was ebbing at the rate of about four miles an hour. At about two o'clock in the afternoon the steamer *John Counter*, belonging to the *Wolfe Island Railroad and Canal Company*, on her way from Montreal with the barges *Onward* and *Utility* in tow, rounded *Pointe à Pizeau*, and came in sight of the brig. From the evidence both of the pilot and master of the steamer, and of the people of the barges, it appears that they saw the brig and the barque when they were about two miles distant. The only discrepance as to the position of the vessels is, whether when the vessels were just within sight of each other, the steamer was on the port or on the starboard side of the brig. All the witnesses, however, agree that there was plenty of room and time for the steamer and her tows to pass to the south of the brig or on the port side, where there was nothing between the brig and the south shore.

The pilot of the steamer being of opinion that he could pass safely between the brig and the barque, and wishing, as he says, to save a certain distance in getting to the wharf, at which the steamer usually lay, determined, with the consent of the master, to make the attempt, and the steamer's helm was therefore put a starboard, which inclined her bow to the north shore; and she cleared the brig by about the steamer's breadth. The barge *Onward* which was about eighty or a hundred feet astern of her did not clear the brig, but the barge's starboard side about midships struck the bow of the brig; the second barge (*Utility*) being about fifty or sixty feet astern with her stem struck the brig's larboard bow, the tow rope broke, and she swung alongside the brig. At the time of the collision the steamer and her tows were running down the river, with steam and tide together, at the rate of from ten to twelve knots, the barges being light. It does not appear that at the time the steamer's helm was put a starboard, any special direction was given to the barges, as to how they should steer, though the people of the steamer assert that they had been carelessly steered all the way down from Montreal.

From the circumstances of the collision it appears that the steamer really was, as is asserted by the witnesses for the brig, on the larboard or south side of the brig, when her pilot and master determined to endeavour to pass between the brig and the barque, and put her helm a starboard for that purpose; and that she really did, as the same witnesses say, cross the bows of the brig. The tide was then running strong down, and the steamer and her tows were, of course, swept down with it. The action of the steamer, after her helm was so put a starboard, was to carry herself and to draw the barges to the northward or starboard side of the brig. The steamer being the foremost was carried sufficiently far in that direction to pass the brig, by rather more than her own breadth, but the *Onward* being eighty or a hundred feet astern had not drawn sufficiently to the northward before the tide had carried her down as far as the brig, and she consequently struck the brig's bow with her starboard side. The *Utility* being fifty or sixty feet still further astern, would of course be carried still further down the river before she could get on the line of the brig, and we accordingly find that she struck the larboard side of the brig with her stem, when the tow rope broke, the brig being between her and the steamer. The facts in the evidence thus agreeing with the circumstances which must have taken place, if the steamer crossed the brig's bow, as is asserted by the witnesses on behalf of the brig, convince me that this assertion is correct and that the steamer really was to the southward of the brig when she determined to pass to the northward of her. (*a*) It would seem, therefore, apart from other circumstances that the determination was rash and hazardous, and that the steamer ought to be responsible for any attempt to carry it into effect.

But even supposing that at the time when the brig was first seen from the steamer, the steamer was either in a straight line with the brig, or a very little to the north of her which is the utmost that the witnesses for the steamer state; yet, they also admit that they saw her when she was at the distance of theree fourths of a league or two miles; and there is no attempt to say or to shew that there was not plenty of room to pass to the south of the brig, and so to obey the spirit of the rule of the Trinity House of Quebec, (*b*) by passing the brig on the larboard hand. Instead of doing this the people of the steamer preferred, for the sake of saving a trifling distance, to run the risk of passing between the brig and the barque. They themselves assert that the barges had been wildly steered all the way from Montreal; and they therefore knew that, even if great skill in steering the barges would enable them to execute the manœuvre with impunity, they could not depend on any such skill being used: nor did they give any special directions as to how the barges should be steered, but left them to do as they had previously done. The steamer and her tows had just rounded the *Pointe à Pizeau*, and in so doing had avowedly inclined their course as they must have done towards the south side of the river, and the impulse of the barges was in that direction, in which the wind also carried them. They could not change their direction as easily as the steamer could; nor could they know that it was the intention of the steamer to pass on the starboard side of the brig. On the contrary, they were justified in supposing that she would pass by the clear channe!; and on the south or port side of her, as I think, under the circumstances of the case, she was bound to do. If for the sake of some expected saving of distance or trouble, she chose to take the short and dangerous course, she must bear the consequences resulting from it. The barges had no power to otherwise than follow in the best way they could; and having no intimation of her intended change of course, they could not be blamed even if,—which does not appear,—they did not follow her so quickly as they might have done, if they had been forewarned of her intention, and directed what to do.

The brig was at anchor, and therefore no blame can be imputed to her, and she was seen far enough off to allow ample time to avoid the collision, and there was ample room to do so; and therefore it cannot be said that the accident was unavoidable. The collision was the fault of those who had the power of avoiding it as the steamer undoubtedly had: and there is no proof that the barges or either of them had any such power. Cases may occur in which an accident may arise from the fault of the tow, without any error or mismanagement on the part of the tug, and in such case the tow alone must be answerable for consequences. Cases may also occur in which both are in fault, and in such cases both would be liable to the injured vessel, whatever might be their responsibility *inter se.* (*c*) The present case is not any of these; the manœuvre which caused the accident was the spontaneous action of the steamer herself, compelled by no necessity of circumstanees, and adopted solely for her advantage. There was a course open to her in which no damage could have occurred; one which it would have been easier and straighter for her to take after rounding *Pointe à Pizeau*; which would have been more consistent with the spirit of the Trinity House rule, and the usages of navigation and which the persons in charge of the barges would naturally expect that she should take. For her own benefit she chose another and more difficult passage, and her owners must bear the consequences of her error.

Messrs. Stuart and Vannovous for the *Brig*, and Mr. Jones for the *Steamer*.

(*a*) The Court will not enter into the discussion as to the precise point whether on the starboard side or otherwise in which one vessel lies to the other at the time of being discovered. (See opinion of Doctor *Lushington* in the case of *The Rose, Gilmore* 1 W. Rob. 1. and in the case of *The Columbine, Norwood.* Ib. 33.)

(*b*) Rule of 31st March, 1854.

(*c*) Opinion of Ch. J. *Lemuel Shaw* of the Supreme Court of Masstts. 25th March, 1833, in *Sproul v. Hemmingway.* 1 Pickering's Reports p. 1.—Opinion of Judge *Betts* in the case of the Steam Tug-boat *Express* 26th Feb. 1846, and that of Judge *Nelson*, one of the Justices of the Supreme Court of the United States, on appeal in same case, 12th November, 1848. 6. Law Observer p. 435 & 401.

24 Dec 1814

	Bro. forward						
. Do Adj.	Burke	27 Days pay	8/3½	11	19	10	11/28
. Do Q.M.	Coates	" "	6/3½	9	2		3/28
. Do Asst. Surg.	Fortune	" "	7/3½	10	10	11	7/28
. Do Capt.	Canot	" "	10/3½	14	17	8	19/28
. Do Capt.	Mackay	" "	"	14	17	8	19/28
. Do Capt.	Delagorgendiere	" "	"	14	17	8	19/28
. Do Capt.	Donnancour	" "	"	14	17	8	19/28
. Do Capt.	Finlay	" "	"	14	17	8	19/28
. Do Capt.	Panisse	" "	"	14	17	8	19/28
. Do Capt.	Faribault	" "	"	14	17	8	19/28
. Do Capt.	Hunter	" "	4/7	6	12	7	1/14
. Do Capt.	Rolette	" "	10/3½	14	17	8	19/28
. Do Capt.	Leprohon	" "	"	14	17	8	19/28
. Do Lieut.	Porter			9	2		3/28
. Do Lieut.	Lane			9	2		3/28
. Do Lieut.	Pruneau			9	2		3/28
. Do Lieut.	Faribault			9	2		3/28
. Do Lieut.	Mackay			9	2		3/28
. Do Lieut.	Methode			9	2		3/28
. Do Lieut.	Galarneau			9	2		3/28
. Do Lieut.	Laurent			9	2		3/28
. Do Lieut.	Johnston			9	2		3/28
. Do Lieut.	Burke			9	2		3/28
. Do Lieut.	Poyer			9	2		3/28
. Do Lieut.	Savage			9	2		3/28
. Do Lieut.	Lacroix			9	2		3/28
. Do Lieut.	Prudhomme			9	2		3/28
. Do Lieut.	Lukin			9	2		3/28
. Do Lieut.	Beaulieu			9	2		3/28
. Do Lieut.	Pinart			9	2		3/28

Law Intelligence.

[*Reported for the Mercury.*]

VICE ADMIRALTY COURT: LOWER CANADA.

Tuesday, 3rd July, 1855.

THE INGA,—*Eilertsen.*

This was a cause of collision promoted by the owners of the barque *Universe*, in which they claimed compensation for damage sustained by that vessel in consequence of being run into on her voyage from Montreal, on the 28th May, 1854, by a vessel called the *Inga*. The facts of the case sufficiently appear from the following opinion of the learned judge.

THE COURT (*Hon. Henry Black.*) The *Inga*, a Norwegian vessel of about 480 tons, had been lying in the harbour of Quebec opposite the Lower Town market place, and in the afternoon of the 28th May, '54, got under way for the purpose of proceeding to the ballast ground, from two to three miles up the river. The tide was ebbing, and the wind a light breeze from the eastward, and she went up under sail. Between three and four in the afternoon she had nearly reached the place at which she intended to come to anchor. She had come up under her fore-sail, fore-top-sail and main-top-sail; but having decided upon the place at which she was to anchor her main-top-sail was taken in, and she was proceeding under her fore-sail and fore-top-sail, the wind still light from the east, the tide ebbing, and the vessel having way enough to stem it, and to move past the land at the rate of from half a knot to a knot an hour. At the same time the steam tow boat, *Lumber Merchant*, was coming down the river from Montreal to Quebec, having the Bark *Universe*, about 313 tons register in tow astern of her, with about fifty fathoms of tow rope. They were going six knots through the water or about nine past the land with the tide. When the vessels came in sight of each other they were about a mile and a half or two miles apart, all three being some where about the centre of the channel; the witnesses examined on the part of the *Universe* saying that the *Inga* was a little to the north, or on the port hand of the line on which the *Lumber Merchant* and *Universe* were proceeding; and the witnesses examined on the part of the *Inga* affirming on the contrary that the *Inga* was a little to the south of that line, or in other words that the *Lumber Merchant* and *Universe* were a little on her starboard bow. Both parties however agree that the vessels were nearly in a straight line. As they approached, the helm of the *Inga* was put a starboard which threw her head round towards the south. The *Lumber Merchant* and the *Universe* on the contrary put their helms aport, which threw their heads also to the south, and the consequence was that the *Lumber Merchant* just cleared the *Inga*, leaving her on the port side; but the *Universe* and the *Inga* came into collision, the *Inga's* bow striking the port side of the *Universe* about the main rigging, doing considerable damage to both vessels. At the time of the collision the tow rope broke near the steamer's tow post. The vessels were afterwards cleared, and to recover the damage sustained by the *Universe* the present action is brought by the *Inga*.

The only questions to be decided in order to ascertain whether the action is well or ill-founded are, whether the *Inga* in putting her helm a starboard was justified by the rules and customs of navigation, or whether she ought rather to have kept her course or put her helm aport; and whether the *Lumber Merchant* and *Universe* did right in porting their helms.

The great increase of trade in the river St. Lawrence and in the inland navigation of the Province, and more especially in the number of steam vessels and of vessels towed by steam vessels, renders it of great importance that some clear and definite rule should prevail as to the course which should be adopted by such vessels when going in opposite directions, and so placed that if each continue her course there would be danger of collision. The recognized rules for sailing vessels has always been that if both vessels have the wind fair, each vessel should port her helm so as to pass each other on the port hand: that if both vessels were close hauled, the one on the starboard tack should keep her course and the one on the larboard tack should give way. This, as was lately very clearly remarked by the learned and able Judge *Sprague* of Boston in a judgment given by him in September last, in the case of the *Osprey* (*a*) is in reality the same rule qualified by the other perfectly well understood rule, that neither vessel is bound to port her helm, if by so doing she would either run into direct danger or would cease to be under command; for, if the vessel on the starboard tack close hauled were to port her helm, she would be thrown into the wind and cease to be under command; whereas the vessel on the larboard tack by porting her helm goes off from the wind, and is perfectly under command. The old rule was also that if one vessel had the wind large or free, and the other was close hauled, the one being close hauled should keep her course, and the other should port her helm and give way. The reason being obviously that the close hauled vessel would suffer much more inconvenience by giving way, and falling to leeward, than the other which having the wind free could immediately regain the line on which she had been proceeding. The rule therefore was in substance that vessels meeting as stated, should each port her helm, unless one of them by so doing would either run into danger or be put to much greater inconvenience than the other.

When steamboats came to be generally used their power of proceeding in any direction without regard to the wind, placed them always in the same condition as a vessel proceeding with the wind free, and accordingly the custom seems to have been so to regard them. On the 30th October 1840, the Trinity House of London, made a regulation that "when steam vessels on different courses must unavoidably or necessarily cross so near that by continuing their respective courses there would be a risk of coming in collision, each vessel shall put her helm to port, so as always to pass on the larboard side of each other. A steam vessel passing another in a narrow channel, must always keep the vessel she is passing on the larboard hand." (*b*) And the preamble to this rule recites that steam vessels "may be considered in the light of vessels navigating with a fair wind, and should give way to sailing vessels on a wind on either tack," and that "it becomes only necessary to provide a rule for their observance when meeting other steamers or sailing vessels going large." Notwithstanding this recital the rule does not in direct terms apply to steamers meeting sailing vessels, and it was so held by Doctor Lushington, in the case of *the City of London* (*c*) decided on the 24th April 1845: but the considerations in the preamble of the rule were adopted by that learned judge as consistent with the common law, with sound reason, and with the established rules of navigation; and he held accordingly that a steamer should be regarded as a vessel proceeding with a fair wind, when meeting sailing vessels. The rule of the Trinity House of Quebec, made on the same subject, on the 12th April 1850, was in spirit the same as that of the Trinity House of London; and on the 31st March 1854, the Trinity House of Quebec passed a further regulation meeting the precise case omitted in the English rule, and directing "that sailing vessels with a fair wind, and steam vessel when meeting within the port of Quebec, shall port their helm and draw to the starboard, passing each other on the larboard hand." This rule, as before observed, is only the application of the doctrine that steamers shall be considered as vessels having the wind fair. Between the dates of the two Quebec rules, the English steam navigation act (14 & 15 Vic. c. 79,) was passed, (*d*) and the 27th sect. provides that "Whenever any vessel proceeding in one direction meets a vessel proceeding in another direction, and the master or other person having charge of either such vessel perceives that if both vessels continue their respective courses they will pass so near as to involve any risk of a collision, he shall put the helm of his vessel to port, so as to pass on the port side of the other vessel, due regard being had to the tide and to the position of each vessel with respect to the dangers of the channel, and as regards sailing vessels, to the keeping of each vessel under command: and the master of any steam vessel navigating any river or narrow channel shall keep as far as is practicable to that side of the fair-way or mid channel thereof which lies on the starboard side of each vessel." This rule applies to all vessels without distinction, whether impelled by steam or by sails. Each vessel is to port her helm; the only exception being when by so doing she would be brought into danger, or if a sailing vessel the command over her will be lost. This it is evident is only the old rule and reasoning, thrown into a general form and made applicable to all cases. The 296th and 297th sections of the British shipping act, which was passed on the 10th August 1854, and came into force on the 1st May last, (17 & 18 Vic. c. 104,) contains the following enactment on the subject:—

"Whenever any ship, whether a steam or sailing ship, proceeding in one direction, meets another ship, whether a steam or sailing ship, proceeding in another direction, so that if both ships were to continue their respective courses they would pass so near as to involve any risk of a collision, the helms of both ships shall be put to port so as to pass on the port side of each other; and this rule shall be obeyed by all steamships and by all sailing ships, whether on the port or starboard tack, and whether close hauled or not, unless the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to the proviso that due regard shall be had to the dangers of navigation, and, as regards sailing ships on the starboard tack close hauled, to the keeping such ships under command."

"Every steam ship, when navigating any narrow channel shall, whenever it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such steamship."

The rules here given are in substance precisely the same as before, though given in other language, and more general and perhaps more definite terms. The rule is as before, that each vessel shall port her helm, unless she would incur danger by so doing, or the command over her would be lost. The British and the Canadian rules are therefore the same, and though that portion of them which relates to the meeting of steamers and sailing vessels, does not appear to have been formally enacted in direct words until recently; yet, as we have seen, it has been always recognized and adopted as reasonable and as consistent with the long established rules of navigation. The same rule seems to prevail in the United States, except that as appears in the case of the *Osprey*, and the cases therein referred to, our neighbours incline to give greater extent to that portion of the old British rule which favors the vessel which would be most inconvenienced by porting her helm, and to hold that as a steamer has greater command over her motions than a sailing vessel with a fair wind, she ought to give way to such sailing vessel; and that the latter ought to keep her course without porting her helm, leaving the duty of turning aside so as to avoid the collision solely to the steamer. I am not called upon to decide whether the English or the American interpretation of the old rule would be the best to adopt; first, because the Canadian and English rule must prevail in our waters; and secondly, because in the case before me the *Inga* did not keep her course, but starboarded her helm. The English rule has, however, the advantage of being more certain, and more easily remembered; and it does appear to me that there must be less danger of collision, and that the vessels can get out of each others way in less time if both draw to starboard, by porting their helms, than if one stands still, and throws the whole burthen of the movement upon the other.

I think, then, that in the present case each vessel was bound to put her helm to port, unless there were some peculiar circumstances in the case which made it dangerous so to do, or rendered a deviation from the rule necessary or justifiable. Now, it appears that both the *Inga* and the steamer were perfectly under command, each had sufficient way to make her obey her helm immediately. By the evidence of the *Inga's* own people it would seem that she was, if at all, very little to the starboard side of the steamer and her tow; so little indeed that the master of the *Inga* himself admits that it was necessary to starboard the *Inga's* helm in order to get sufficiently out of the line of the steamer and her tow, to enable them to pass safely on the starboard side. On the other hand it is denied by the witnesses for the *Universe* that the *Inga* was at all to the southward; and it is certain, from what took place, that if the *Inga* had ported her helm, or even perhaps if she had continued in her course the collision would have been avoided; for, the *Inga's* people say that her helm was starboarded about two minutes before the collision, and in two minutes she must clearly have run more than half the length of the *Universe* to the southward; and if she had been half the length of the *Universe* less to the southward than she was at the time of the collision, it is equally clear that she would not have struck that ship; and if she had ported her helm she would have gone to the northward, and been still further out of danger: and even if the collision would not have been avoided the *Inga* would not have been in default, and would not have been responsible for the consequences. The case is not one of a sudden *rencontre* where there is no time for consideration; the vessels were undoubtedly seen by each other, at least ten minutes before they met. Neither is it a case where there was any danger to either in obeying the rule; the channel was wide enough, and both could have drawn to the starboard without risk of touching the ground or of encountering any other damage; and both were in charge of pilots who were bound to know the rules of the Trinity House and of the river. Under these circumstances I can have no hesitation in giving effect to a definite and easily observed rule, which appears extremely well adapted to insure safety; and in deciding that the collision arose from the failure of the *Inga* to obey it.

Messrs. Stuart & Vannovous for *Universe*.

Mr. Edward Jones for *Inga*.

(*a*) 7 Law Reporter p. 384.
(*b*) See the Rule 1, W. Rob. 488.
(*c*) 4 Notes of Cases, p. 40.
(*d*) 7th August 1851.

☞ See the case of the *General Steam Navigation Company vs. Mann*, tried before Sir Frederick Pollock, Lord Chief Baron of the Exchequer, at the summer assizes at Croydon, 1853.

3 18 13/14 58 11 1 13/19

Brd forward

. Jo Capt Finlays Comp for Subsistence from 25 Nov 24 Dec. 57 18 9
Less to P Fund . . 1 18 7
56 0 2
4 0 0 7/10 60 0 2 2/14

. Jo Capt Gaucyys Comp for Subsistence from 25 Nov 24 Dec. 67 5 3
Less to P. Fund . . 2 4 11
65 0 4 8
Δ 12 10 7/10 69 13 2 8/10

. Jo Capt Faribault Comp for Subsist" from 25 Nov to 24 Dec. 60 3 9
Less to P. Fund . . 2 0 1
58 3 8 6
Δ 3 1 1/10 62 6 9 6/10

. Jo Capt Hunters Comp for Subsistence from 25 Nov to 24 Dec. 67 10 10 1/2
Less to P. Fund 2 5 3 1/2
65 5 7
4 13 3 7/10 69 18 10 1/10

. Jo Capt Rolette Comp for Subsistence from 25 Nov 24 Dec . . 81 14 9
Less to P. Fund . . 2 14 3
79 0 6 10
5 12 10 7/10 84 13 4 10/10

. Jo Capt Lepruhons Comp for Subsistence from 25 Nov to 24 Dec. 66 19 4 1/2
Less to P. Fund . . . 2 Δ 7 1/2
64 14 9 11
4 12 5 7/10 69 7 2 11/10

. Jo Patriotic Fund

3 Staff Sergeants & Drum Major		6			
38 Sergeants	1/Δ	2 10 8			
40 Corporals	10	1 13 Δ			
13 Bugles	7 1/2	0 8 1 1/2			
667 Privates		11 13 6			
		25 11 7 1/2			
		1 10 9 23/28	23	2	5 3/28
			£ 697	15	9 3/28

Law Intelligence.

VICE-ADMIRALTY COURT:—Lower Canada.

Tuesday, 21st November, 1854.

The New York Packet,—*Marshead.*

The present action was brought by the owner of the ship *Storm King*, against the bark *New York Packet*, for damages occasioned by a collision in the harbour of Quebec, on the 21st of June last. The judgment given in the case was as follows:—

The Court, (*Honorable Henry Black.*) The rules of the Trinity House of Quebec provide that the Harbour Master of Quebec shall station all ships and vessels which shall come to the harbour of Quebec, or any part thereof, or haul into any of the wharves within the limits of the said harbour, and shall regulate the mooring and fastening, and shifting and removal of such ships and vessels, and shall determine how far and in what instances it is the duty of masters and other persons having charge of such ships or vessels, to accommodate each other in their respective situations, and all disputes which may arise touching or concerning the premises or any or either of them. And any master or other person having charge of any ship or vessel, who shall refuse or neglect to obey the directions of the said Harbour Master in the premises, or in any or either of them, and any wharfinger or other person who resist or oppose such Harbour Master in the execution of the duties thereby required of him or of any or either of them, shall for each and every such offence incur and pay a penalty not exceeding ten pounds currency.

This being the law of the Harbour, it appears that on the 21st June last, the Bark *New York Packet* was lying at Gillespie's wharf, in the Harbour of Quebec, in a berth usually and properly assigned to a line of steamers, of which the *Lady Elgin* is one. In the afternoon of that day, the *Lady Elgin* having arrived, and it being necessary that the *New York Packet* should quit the berth so occupied by her, in order to allow the *Lady Elgin* to come into it; the master of the *New York Packet* applied to the Harbour Master, Captain Armstrong, telling him that he knew he had no right to retain the berth then occupied by his vessel, and requesting him to assign her a berth in the dock between Gillespie's wharf and St. Andrew's wharf, the next wharf above it. The Harbour Master had also been applied to on the same day by the agent of the *Lady Elgin* to have the *New York Packet* removed out of the *Lady Elgin's* berth. At about five o'clock the same afternoon, the Harbour Master went to the spot, and having caused the steamer *Lord Sydenham*,—which then lay across the space between the two wharves so as to shut up the dock between them,—to heave ahead, and to make an opening for the *New York Packet* to enter;—the *New York Packet* was then, under his directions, hauled into the dock, and being placed in a diagonal direction with her larboard bow resting against the side of the Bremen ship *Adlar*, or *Eagle*, her starboard side about midships, resting against the larboard quarter of the *Marie Celina*, and a warp from her starboard bow, and another from her starboard quarter being made fast to the upper and outward corner of Gillespie's wharf, to prevent her either swinging or going a-head. The Harbour Master considered her safely moored for the night, and told the Master so, distinctly charging him not to attempt to move his vessel further ahead, because there was not room enough between the two wharves for his vessel, the two others which have been mentioned, and the *Storm King*, which was lying in the dock at Gillespie's wharf, and inside of the *Marie Celina*. It was then very little after high water. It appears that St. Andrew's and Gillespie's wharves, are built with very considerable batter, so that the space between them at the bottom is less, by about eight feet, than at the top.

After the Harbour Master's departure, the Master of the *New York Packet* hauled his vessel forward until she lay between, and parallel to the *Adlar* and *Marie Celina*, the *Storm King* being inside the latter, which there was then just room enough for him to do. He requested the people of the *Marie Celina* to haul ahead, but they declined, and in so doing were backed by the Master of the *Storm King*, out of which the *Marie Celina* was receiving cargo, and who protested against any attempt to move the *Marie Celina*, which would put him to considerable inconvenience. In this position the vessels lay with the tide ebbing out, and as the water fell in the dock, and the space between the wharves, at the water level diminished, they became tightly jammed together, so that it was then impossible to move them; and as the water continued to fall, the pressure became so great that the *Marie Celina* was completely crushed, and the *Storm King* was suspended between the *Marie Celina* and the wharf, and thrown over nearly on her beam ends: both vessels, but more especially the *Marie Celina*, which was the smaller and the weaker, receiving very great damage.

To recover the damage done to the *Storm King* the present action is brought. The chief ground of defence is the refusal of the *Marie Celina* to heave ahead when requested to do so by *New York Packet*, and that of the *Storm King* to allow her to do so. But the berths which these vessels occupied had been assigned or confirmed to them by the only competent authority, that is, the Harbour Master, who did not think proper, under the circumstances, to direct the *Marie Celina* to move ahead. Nor does it appear that the Master of the *New York Packet* applied to the Harbour Master to direct the *Marie Celina* to heave ahead: on the contrary the Harbour Master expressly directed the *New York Packet* to remain in the position she then occupied, for the night, warning the Master at the same time of the damage which would be incurred if he attempted to haul further in. It is in evidence that the night was calm, that there was no appearance of bad weather, and that the Harbour Master considered the *New York Packet* perfectly snug till the morning. Since, under these circumstances, the *New York Packet* chose to set at naught, not merely the opinion but the positive injunction and warning of the Harbour Master, and thereby occasioned a very great damage to vessels which were in no wise in fault, and which contravened no order or rule of the harbour, it is only right that the *New York Packet* should bear the loss, which her violation of the Harbour Master's order brought upon innocent parties; and, therefore, however unfortunate it may be for her owner, I am of opinion that he must be made responsible.

It is evidently necessary, for the good of all, that there should be some officer clothed with sufficient authority to decide promptly all questions as to the berths or positions which vessels may occupy in a crowded harbour like that of Quebec; and this authority the Legislature, acting through the Trinity House, has devolved upon the Harbour Master. Any contravention of such authority must manifestly tend to general loss and inconvenience, and often to great damage, as the contravention of which the *New York Packet* was guilty in the present instance, has done. Had she suffered injury herself, or occasioned injury to others by obeying instead of contravening the Harbour Master's orders, she might have been blameless, however great the damage occasioned. The order of the Harbour Master, in such case, would have been her defence, as it now forms the ground of her condemnation.

From the decree of the Court the owner of the *New York Packet* asserted an appeal to Her Majesty in Her Privy Council, and gave the usual bail.

Messrs. Stuart & Vannovous for *Storm King*.
Mr. Sol. Gen. Ross & Mr. Edw. Jones for *New York Packet*.

LAW INTELLIGENCE.

Before William King McCord and Robert Symes, Esquires, Justices of the Peace.

The Mayor and Councillors of the City of Quebec, Complainants;

against

The Bank of British North America, Defendants.

This case came under the consideration of the above-named Justices, in their weekly sittings, upon a complaint brought by the Mayor and Councillors of the city of Quebec, against the Bank of British North America, for the recovery of assessment dues supposed to be due by that Institution, and for which they were taxable by the Mayor and Councillors of the city of Quebec, in virtue of the Provincial Ordinance, 4 Vict., chap. 31, sec. 15, which authorises the Corporation of Quebec to impose *a duty or duties* upon certain trades and callings, and amongst others *on wholesale or retail dealers in goods, wares or merchandize of any kind*; and upon this section of the ordinance the case was determined.

The defendants, by their counsel, argued that the 15th section of the ordinance permitted the Corporation of Quebec to impose a duty *on wholesale and retail dealers in goods, wares or merchandize*, only, and that, as the Defendants were Bankers and dealt in monies and monied securities, which obviously could not be considered as *goods, wares or merchandize*,—in which, by the charter of the Bank, which was produced and of record, the Defendants were expressly prohibited from trading,—the Corporation of Quebec had no power vested in them by that ordinance to impose any duty upon an Institution, such as the Defendants, who did not deal *in goods, wares or merchandize*, but carried on the business of Banking and dealt in monies and monied securities.

The Complainants, by their counsel, argued that a Banking Institution must be viewed as a company of merchants incorporated for commercial purposes, and as such were wholsale dealers, within the meaning of the ordinance; and could, in virtue of that ordinance, be taxed by the Corporation of Quebec.

After mature deliberation the above-named Justices of the Peace pronounced their judgment, condemning the Defendants to pay the amount demanded, and declared unhesitatingly that the Defendants were taxable under that section.

The record and proceedings in this cause were removed by writ of certiorari to the late Court of Queen's Bench for revision; the result of which is now given.

SUPERIOR COURT.

PRESENT:

The Honorable E. Bowen, Chief Justice of the Superior Court; and
The Honorable Mr. Justice Meredith.

The Queen,
vs.
The Bank of British North America,

Upon an application for a writ of certiorari.

Upon motion made by the Bank to quash the conviction of the Justices of the Peace, the parties were heard.

The same arguments were used upon the one side and upon the other, and therefore dispenses with the repetition.

Judgment—The conviction of the Justices of the Peace is quashed.

Justice Meredith said that there was no doubt that the 15th section of that ordinance did not empower the Corporation of Quebec to impose any duty upon Banking Institutions trading in monies and monied securities, but distinctly specified those persons upon whom the Corporation had a right to impose a duty, and that it was manifest, by the record of conviction, that the Bank of British North America, under their charter, traded in monies and monied securities only, and could not, under any circumstances, be viewed as *wholesale or retail dealers in goods, wares or merchandize*, within the meaning of the statute.

It is to be regretted that cases of this nature, in which is involved the interpretation of the laws of the country, should be tried and disposed of by persons, who (although well-intentioned) can not, when discharging the duties of a Magistrate, be expected to exercise that sound legal judgment which cases similar to the one above reported requires. Necessity alone can justify the legislature of a country to vest in the hands of Justices of the Peace a civil jurisdiction so pregnant with the frequent discussion of the rights of the subject, which can not be adequately dealt with by these persons. It may be a matter of doubt to some whether such a necessity does or does not exist in this country; but such a doubt is no sooner raised than it disappears, because of the summary mode of proceeding in the Circuit Court, which is a Court presided over by gentlemen of acknowledged talent and possessed of high legal attainments, and before which Court cases of this kind can with facility be brought. It is to be hoped that the legislature, sedulous in confining the jurisdiction of petty tribunals, will interpose and wrest from the hands of the magistrates, sitting in their weekly sittings, the quondam jurisdiction over the collection of assessment, since, by a subsequent act, the Corporation of Quebec can sue in the common law Courts for the recovery of their assessment dues. This would obviate the necessity imposed upon persons impleaded by

Quebec 7 Jan 1815

. Sundries D to Cash					
. Music Fund	paid Basson &c.			5	5 "
. Lieu Lutkin	his pay 24 Jan			9	8 9
. Capt Hendrys Company	pr Subsistence 24 Decem.			70	10 9
12					
. Ens Decoupe	his pay 24 Jan			7	11 3
. Doct Painchaud	dft to Boucherville			25	" "
. Ens Herrigault	his pay 24 Dec	7 5 10			
	" " 24 Jan	7 11 3		14	17 1
. Ens Edge	his pay " "			7	11 3
. Capt Hendrys	his pay 24 Dec	6 12 7			
	" " 24 Jan	6 17 6		13	10 1
. Capt Lepruhons Company	Subsistence for 24 Jan?			73	8 "
. Capt Lepruhons	his pay 24 Jan			15	8 9
. Lieu Burk	his pay 24 Jan			9	8 9
. Capt Panbault	his pay 24 Jan			15	8 9
. Lieu Lacroix	his pay 24 Jan			9	8 9
. Lieu Galineau	his pay 24 Jan			9	8 9
				286	5 11
12					
. Cash D to J. Stewart Esq for 24 January					
. J Subsistence 25 Dec 24 Jan pr Warrant 532 dated 24 Dec.		1211 11 1			
add 1/14		86 10 9½		1298	1 10½
13					
. Sundries D to Cash					
. Lieu Venas	his pay 24 Jan			9	8 9
. J W Coates	dft to Godfroy	6 12 6			
	p^d Subscrip^s to assembly	2 10.		9	2 6.
. Capt Tomancows Company	J Subsistence 25 Nov to 24 Dec			58	11 2
				77	2 5

Legal Intelligence.

SUPERIOR COURT.

BEFORE HON. MR. JUSTICE STUART AND A SPECIAL JURY.

Quebec Bank vs. Augustin Cote.

The issue arising in this case between the plaintiffs and defendant, originated in the alleged endorsing by the defendant, of three promissory notes, as follows :

Quebec, 29th September, 1862.

Two months after date we promise to pay to the order of Messrs. A. Cote & Cie, one hundred and thirty dollars, value received.

(Signed) J. & O. CREMAZIE.

endorsed " A. Cote et cie."

Another promissory note dated 9th October, 1862, for $200, drawn by the same firm, J. & O. Cremazie, to the order of A. Cote et cie, and endorsed by A. Cote et cie.

Another note for $220, payable two months after date, to the order of the same firm, A. Cote et cie, and drawn by J. & O. Cremazie, also endorsed A. Cote et cie.

The defendant pleaded to this action that the signatures on the back of said notes were forged, and are not in his handwriting

The total sum claimed by the plaintiffs was $556.

The following gentlemen were sworn in as a jury, after the disposal of a few formal exceptions taken to some of the names of the Sheriff's panel : J. B. Bouchette, Zacharie Chabot, Alexander Fraser, Thomas Jackson, Olivier Potvin, F K Baigeley. Joseph Lachance, Jos h L Heureux, Robert Barry, Robert Moffatt, Alfred DeGaspe, Ebenezar Fales.

Messrs. Parkin and Pentland, Holt and Irvine, Attorneys of Record, and Fournier and Gleason, appeared for the plaintiffs, and Messrs. Casault, Langlois, and Angers, Attorneys of Record for defendant, and Messrs. Alleyn and Alleyn, and F. C. Vanovous, Counsel for defendant.

Mr. Holt opened the case to the jury and said that the action was brought against the makers and endorsers of three promissory notes for the sum of $556. The makers, Messrs. J. & O. Cremazie, he thought were well known to the jury from their having been engaged in trade in this city for a number of years, and having a large and respectable connection. About the autumn of last year the business of that firm came to a stand-still, by one of the members suddenly leaving the city, but he would not go into any speculation as to the reason of Mr. Octave Cremazie's departure from Quebec. The question which you are called upon to try is, whether the endorsations on these notes is in the defendant's hand-writing. The law didn't require that he should bring any witnesses to prove that he saw A B sign any paper. You know, gentlemen, from experience, that hand-writing changes as often as a man's face, and in the same way as the countenance is seriously affected, so it is with the different styles of hand-writing. The plaintiffs will lay before you, gentlemen, sufficient proof to satisfy you of the genuineness of the endorsations of the promissory notes in question, and that they are in the hand-writing of the defendant. Mr. Cote filed an affidavit denying the signatures in question, to be in his hand-writing He cousidered it great weakness on his part to fyle such an affidavit. The affidavit was waste paper on the record and the Court would tell them so, and the only effect it would have would be to put the plaintiff on proof. He had no doubt the discussion would take a wider range than he anticipated, if he was to judge from the array of books in Court, and from his knowledge of the forensic skill and learning of the defendant's Counsel He had no doubt the plaintiff's evidence would compare favorably with the evidence on the other side. The only question for the jury to decide is : Did the defendant endorse the several promissory notes mentioned in the plaintiff's declaration.

Mr. Fournier followed in the French language, and the following witnesses were called and examined :

EVIDENCE.

Philip Leseur sworn :—I am clerk in the Bank of Montreal. I am not personally acquainted with the defendant, but I am aware that a gentleman of that name is the publisher of a paper called the *Journal de Quebec*. I know his place of business to be in the Upper Town of this city, near the Bishop's Palace. I do not know of the existence of any other person of that name in Quebec, nor of any other newspaper of that name published in the city. My avocation is bill clerk in the branch of the bank of Montreal established at Quebec. I have been in the employment of the bank for 17 years past, during the greater portion of which I have been bill clerk. In that capacity all the bills and notes for collection and discount pass through my hands. The business signature of the defendant is A. Cote & Cie." I have often met with that signature in the bank, either as acceptor on bills of exchange, or as endorser on bills discounted or placed in the bank for collection and in other ways. I have noticed the said signature in this manner for several years past. Until within a few months past I have not known that name to be dishonored at the bank. By the said notes being not dishonored I mean to say that the bills met with that name attached thereto were paid by some person directly or indirectly interested in their payment.

Question—Would you look at the signature endorsed on the back of those notes attached to their protests, and say if that is the same signature that passed the bank as already mentioned by you?

Mr. Vannovous objected to the question on the ground that the witness, up to the present, had not in any way shewn any knowledge of the defendant's handwriting. In support of his pretentions he cited the case of Brigham vs. Young, 1st Vol. Grey's Reports, page 145. In that case the same question was involved as in the present case.

Mr. Parkin thought that the witness, from his position, was a competent person to prove the genuineness of the defendant's signature. He says he knows these signatures, and from his experience, he is able to say if this signature is genuine.

The Court intimated that it would be better to allow the witness to withdraw for a few moments.

A juror asked if Mr Cote kept an account in the Montreal Bank? Witness answered, not to his knowledge.

John J. Leitch was then called in and examined by Mr. Holt :—I know the parties in this cause. I have been seven years in the bank of Montreal, and, about four years of that time, receiving teller.

During that time Mr. Leseur was bill clerk. As receiving teller, the payment of bills and notes maturing, placed in the bank for discount or collection, is made to me. All such bills and notes having, in the first instance, passed through Mr. Leseur's hands as bill clerk. A Cote & Co.'s notes or endorsations passed through the bank during the time that I have mentioned. These notes were retired by A. Cote & Co., but I do not remember if all these notes were retired by that firm. I have seen Mr. Cote retire some of them, and also a person whom I took to be his partner. I have seen the signature of A. Cote & Co. on these notes, some of which were retired by Mr Cote himself. To the best of my knowledge and belief, the signature " A Cote & Cie," endorsed on the three promissory notes, exhibits 1, 2 and 3, are in the handwriting of Mr. Cote, the defendant.

The promissory notes were then shewn to the jury, and the evidence in chief of Mr. Leitch translated to the Jury

Cross-examined by Mr. Vannovous :—As far as I can remember, it was on promissory notes that Mr. Cote's name was. I have also seen, to the best of my knowledge, Montreal drafts with Cote & Company's name on them. I did not particularly examine the signature of Cote & Co. on the bills and promissory notes to which I referred in my examination in chief. All the notes of the bank pass through my hands, which are very numerous Mr. Gunn ceased to be manager of the bank when he died, about six years ago. I have not seen Mr. Cote very often since 1856, in the bank, but do not recollect the number of times. He came for the purpose of taking up bills or notes. I cannot say when I last saw him at the bank I have never seen Mr. Cote sign his name or the name of his firm. I have never seen Mr. Cote write. I will not swear positively to any signature, but, to the best of my knowledge, the signatures on these notes are Mr Cote's. I have no other knowledge than that already stated.

Mr. Vanonvous then placed a number of bills and checks in the witnesses hand to examine.

Mr. Holt objected on the grounds that if such evidence were allowed, it would have the effect of raising as many collateral issues as there were papers on the record. He then referred to Sanders, vol. 2, page 159, and 1st. vol. Greenleaf, on Evidence, paragraph 575, and following.

Mr. Parkin said that the whole resume of the law was contained in Sanders just cited, namely, that the plaintiff's counsel will not be allowed to give in evidence a number of other notes, bearing the undoubted signature of the defendant, with the view of allowing the jury to draw an opinion between the two signatures Besides no evidence was yet adduced to show that the papers produced and shown to the witnesses, bore the genuine signature of the defendant.

The Court then ordered the following question to be put, confining themselves to the notes which passed through the Bank of Montreal.

Look at the drafts now produced by the defendant, and marked respectively, exhibits 1, 2, 3, 4, and 5, and state whether the said drafts did not pass through the Bank of Montreal, and are those to which you made reference as having been paid by the defendant ?

The witness after examing the papers placed in his hands said : I believe those to be the drafts drawn on Mr. Cote, and to bear his signature, to the best of my knowledge. I have derived my knowledge of the signature of Mr. Cote from said drafts shown to me, and from others. I cannot say whether Mr. Cote has had any drafts other than those now shown to me, which have passed through the Bank of Montreal during the past two years. I believe the signatures on those drafts to be Mr. Cote's signature. The signatures of said drafts correspond, in my opinion, with those on the notes in question in this cause.

The witness was then asked to compare the signatures on the promissory notes with the signatures on the 5 drafts. The question was objected to by Mr. Holt, who held it was a question for the jury to decide and not the witness. The Court allowed the question to be put.

Witness : I won't swear positively To the best of my belief, I think they are the same. I do not believe that the Bank of Montreal hold any notes which are disputed by the defendant. I have not seen these bills before to-day. I have had no conversation with any one in relation to my testimony in this cause.

The witness identified Mr. Louis Lamontagne, who was in Court, as the person whom he took to be the partner of the defendant, and who paid some of his notes at the Montreal Bank.

John Childs sworn : I know the parties in this cause. I have had occasion to see the signature of the defendant in this cause several times. I have seen the defendant sign his name. I have also corresponded with him once. I seen him sign receipts for money which I paid him I have three or four receipts bearing his individual signature, and in his own hand-writing The signature of the notes now shown to me, A. Cote et cie, closely resembles the signature of the defendant. I would say that the defendant's signature, which I have in my possession, appears to me to be smaller than that on the notes in question. If those notes were presented to me and I was asked whose signature they bore, I would say Mr. Cote's, the defendant. To the best of my knowledge the signature in question is the defendant's.

Cross-examined by Mr. Casault :—I cannot say how many of Mr. Cote's receipts I hold, but it is about ten years ago that I saw Mr Cote first sign. The only knowledge I have of Mr. Cote's signature is what I stated in my examination, in chief derived from having seen him sign his name before me. The signatures in the defendant's exhibits in the cause appear to me to be longer than the writing in my receipts. On comparing the signatures in the defendant's exhibits with the signatures on the back of the promissory notes on which this action is founded, I perceive a difference between them. The words "et cie" at the end of the signature A. Cote, are not made alike in both documents.

Re-examined by Mr. Fournier :—After examining the exhibits produced by the defendant, I find a difference in the formation of the letters on those papers. There is also a difference in the words "et cie."

In answer to a juror, the witness said that the signatures on his receipts, which he has recently examined, resemble more closely the signatures on the promissory notes (plaintiff's exhibits) than the signatures on the drafts produced by the defendant.

William Cole examined :—I have frequently seen the handwiting of the defendant, doing business, as " A. Cote et Cie " I have seen him write during the 12 or 15 years I was in the paper line. I did a great deal of business with him, making large sales of paper to him for his printing office. My accounts were settled by his promissory notes. I must have had a considerable number of his notes, as the business I did with him was large. Having examined the signatures on the three promissory notes produced in this cause, and being asked in whose handwriting I believe the endorsations thereon to be, I answer, the word " Cote," is very good; but I don't like the " Company." When I say I don't like the Company. I mean the way in which the word " Cie" is written. I have seen Mr. Cote's signature frequently, and these signatures differ materially at different times. I consider the " A. Cote" upon the said notes to be a very good signature If those notes had been offered to me in business, I would decidedly have taken them as bona fide notes, but I do not consider the word, " & Co " to be in Mr. Cote's handwriting. I could not pretend to express an opinion whether or not the endorsation in question of the Plaintiff's exhibits are in the defendant's handwriting.

Cross-examined by Mr. Alleyn :—When I say that the words, " A. Cote," are very good, I mean to say that that portion of the signature is a very good imitation of the handwriting of the defendant.

. John Stuart Esqr	D to Sundries			24 Feb			
. Jo Col Taschereau	℔ 31 days Comd		4 19. 7 19/14				
	℔ 28 " Pay		24 17. 6	29	17	1 10/14	
. Jo Major Laforce	℔ 28 " Pay		15/7	23	7	6	
. Jo Major Panet	℔ 28 "		"	23	7	6	
. Jo Paymaster Jones	℔ 28 "		14/9½	22	3	9	
. Jo Adjutant Ryan	℔ 30 "		8/3½	13	6	6 3/14	
. Jo Surg Panchaud	℔ 28 "		11/1½	16	13	9	
. Jo Surg Mr Coates	℔ 28 "		6/3½	9	8	9	
. Jo Asp Surg Fortier	℔ 28 "		7/3½	10	18	9	
. Jo Capt Panet	℔ 28 "		10/3½	15	8	9	
. Jo Capt Mackay	℔ 28 "		"	15	8	9	
. Jo Capt Delagorgendiere	℔ 28 "		"	15	8	9	
. Jo Capt Tonnancour	℔ 28 "		"	15	8	9	
. Jo Capt Finlay	℔ 28 "		"	15	8	9	
. Jo Capt Gauvry	℔ 28 "		"	15	8	9	
. Jo Capt Taschereau	℔ 28 "		"	15	8	9	
. Jo Capt Hinchy	℔ 28 "		4/7	6	17	6	
. Jo Capt Rolette	℔ 28 "		10/3½	15	8	9	
. Jo Capt Lepronhon	℔ 28 "		"	15	8	9	
. Jo Lieut Lortier	℔ 28 "		6/3½	9	8	9	
. Jo Lamy	℔ 28 "		"	9	8	9	
. Jo Perreau	℔ 28 "		"	9	8	9	
. Jo Taschereau	℔ 28 "		"	9	8	9	
. Jo Mackay	℔ 28 "		"	9	8	9	
. Jo McKotte	℔ 28 "		"	9	8	9	
. Jo Galarneau	℔ 28 "		"	9	8	9	
. Jo Laurent	℔ 28 "		"	9	8	9	
. Jo Johnston	℔ 28 "		"	9	8	9	
. Jo Bark	℔ 28 "		"	9	8	9	
. Jo Payser	℔ 28 "		"	9	8	9	
				£ 398	16	1 13/14	

Re-examined by Mr. Holt:—In using e word imitation, I do not mean to say there has been an actual imitation, or an attempt at imitation.

The Jury were permitted to retire for a few moments, but two of them, on their individual responsibility, remained away for a much longer time than allowed by the Court. One for half of an hour and the other for a quarter of an hour. They were reprimanded on their return, and the former was fined £10, and the latter £5, for not obeying the order.

Mr Leseur recalled:—An examination of the endorsements on the notes leads me to the conclusion that, to the best of my knowledge, they are the signatures of A. Cote & Company, - the same A. Cote et Cie that I have already spoken of in my examination in chief. I have an indistinct recollection of having seen Mr. Cote write, but I cannot say when where or under what circumstances. I am not personally acquainted with him,—I may have seen him here to-day and not know him. I have no recollection of Mr Cote coming to the bank to take up a note. Besides the knowledge derived from the signatures on the notes, I have also the knowledge of other documents signed by A. Cote et Cie, which I knew to be genuine.

Q.—How do you know those writings were genuine? Did you ever see him write?

A.—Documents and letters which were signed A. Cote & Co, one of which was addressed to the Montreal bank, within the last twelve months, and passed through my hands. I refer to this one in particular, because I have a distinct knowledge of it. I will not swear to having seen other letters besides that one, which in my belief was signed by A. Cote et Cie. I am not prepared to declare the contents of that letter. I may or may not know the subject of that letter. I have no knowledge of Mr. Cote having at one time an account in the Montreal bank.

Witness said, in answer to a Juror, that this letter was addressed to the bank about the same time that Mr Cremazie left Quebec.

I have no recollection of A. Cote et Cie having obtained discounts at the bank.

The drafts and checks now placed in my hands, and bearing the signature of A. Cote et Cie. have passed through the bank. The signatures thereon I also believe to be genuine.

I have compared the signatures on the five bills with the three notes and can see no difference, save such as might happen with my own signature. I neither hold nor have any interest in any note bearing Mr Cote's signature.

James Reid, sworn:—I am a general merchant residing in Quebec. I know the defendant, and have sold paper to him for the last five or six years. I have seen the defendant sign his name, but did not pay any attention to it. I know the defendants signature when I see it.

Cross-examined by Mr. Alleyn:—I have not paid any more attention to the handwriting of the defendant than to the handwriting of my customers generally. I will not speak as positively to the endorsations on these notes as if I had paid particular attention to the defendant's handwriting.

P A Drolet, bookeeper, sworn:—I know Mr Cote, he carries on business under the name of A Cote & cie. While in the Canadien office I have seen letters publably signed by the defendant, and passing between him and the proprietor of the Canadien. I had an opportunity of seeing three or four of those letters. These letters were acted on as emanating from Mr Cote; what was asked for in these letters was complied with; I am aware that the orders contained in those letters were executed from what I have seen of the signature of 'A Cote & cie;' I can about state that I know the defendant's signature; I have examined the signature endorsed on the three notes now shown me; I state that they resemble a little, but not altogether, those which I saw at ached to the letters; I cannot, to the best of my knowledge, say that these are the signatures of the defendant.

This witness closed the plaintiff's case.

DEFENCE.

The defendant's Counsel then addressed the jury. They maintained that the plaintiffs failed to make out their case in evidence, and could not, therefore, claim a verdict. The following witnesses were examined for the defendant:

Louis Lamontagne sworn:—I am a clerk in the employ of the defendant, and have been in his employ since 1845; since that time I have frequently seen the defendant sign his name, and am well acquainted with his signature; the signatures on the back of the promissory notes now shown to me is not the signature of the defendant; I am positive; the difference between Mr Cote's signature and the signature on the back of these notes is the defendant's mark for "et cie" is made like an "m," with a tail for the "ie"; the defendant writes a freer hand than this; I have never taken up notes in the Montreal Bank, bearing a signature similar to that on the promissory notes; drafts have been drawn on Mr Cote, from Montreal, about two or three each year.

Cross-examined by Mr Fournier:—I have not noticed any change in Mr Cote's signature since 1845, and I would know it any time.

Q.—Are the signatures "A Cote et cie," on the two receipts now shown to you the real signatures of the defendant and in his hand-writing

The question was objected to by the defendant's Counsel, and maintained by the Court.

After examining the five signatures of the defendant on the checks and drafts now shown to me, I say there is a difference in two of those signatures; In one the "c" of Cote, and the "i" [illegible]

We subjoin the following judgment rendered in an interesting commercial case, before the Court of Queen's Bench in appeal on Monday last. The details of the question at issue are made sufficiently clear by the remarks of His Honor Mr. Justice Meredith, and by the formal judgment of the Court:—

MCCULLOCH ET AL., & HATFIELD.

JUDGE MEREDITH said:—The appellants, about the 30th of May 1862, at Montreal, under a contract of affreightment with the respondent, shipped on board of the *General Williams*, of which the respondent was master, 1500 barrels of flour to be carried on board of that vessel from Montreal to Liverpool, and there delivered to the appellants' order. The flour was delivered on board of the *General Williams* by one Toussaint Lecompte, who proves that when delivering it, he told the mate of the ship to reject any that was in bad order; that none was rejected; that after the flour had been received, bills of lading were demanded two or three times, and were refused on the ground that the barrels were in bad order. The loading of the 1500 barrels was completed on the 3rd of June, and one or two days afterwards the *General Williams* sailed from Montreal with the flour belonging to the appellants on board, and without bills of lading having been signed. The *General Williams* reached the Island of Orleans, on her voyage home, on the 6th of June, and, on the forenoon of that day, the appellants sued out a writ of *saisie-revendication*, under which the said flour was attached on the following day. In the interval between the issuing of the writ and the execution thereof, and after much negotiation between the agents of the appellants on the one side, and the respondent on the other, the latter signed bills of lading in due form, under protest, for the flour in question; and the bills of lading signed, were transmitted to the appellants and retained by them, Unfortunately a misunderstanding occurred as to the costs; in consequence of which the writ of *saisie-revendication* was executed, and the action retnrned into court. As to the first cause of difference between the parties, no proof has been adduced by the respondent tending to contradict the evidence of Lecompte already alluded to, or to shew that the respondent had any justification or any reasonable excuse for refusing to sign, before he left port, the bills of lading which he afterwards signed in the course of his voyage; and, therefore as to the original matter in dispute, the respondent must be regarded as the party in the wrong. Such being the facts of the case, the first question that we have to determine is, as to whether the appellants had a right to revendicate their flour under the circumstances above mentioned. This question is one of great importance, and not so free from difficulty as may, at first sight, appear. The right claimed by the appellants, might often be exercised so as to cause great injustice; indeed there are but few cases in which a captain of a ship going to sea would not rather submit to be wronged to some extent, than to wait in harbor sufficiently long to allow a part of the cargo to be taken out his ship, perhaps from the bottom of the hold, under a process of *saisie-revendication;* and late in the season, the delay incident to the execution of such a process, might endanger the ship and cargo, and the lives of all on board. On the other hand, the shippers of goods would be placed in a false position, and left without anything like adequate protection, were the Courts to hold that masters of ships could carry off the goods entrusted to their care, without delivering to the owners the customary bills of lading; such bills of lading being necessary, not only as receipts, binding the master and the owners, but also as, in effect giving the shippers the immediate power of obtaining the use of capital, if required, equal to the value of the property shipped.

The authorities on this question are not so conclusive as might be expected upon a point which must have very frequently presented itself; but still, *in such a case as the present*, it appears to me, upon general principles, impossible to deny the right contended for by the appellants.

The parties in this cause have expressly admitted, "That it is the usage and custom of trade, in this Province, for masters of vessels to sign bills of lading for cargo shipped, on request of shipper, before the vessel leaves port." The usage thus admitted is as binding upon the parties, as if there had been an express agreement between them to the same effect; for whether a contract be in writing or verbal, all incidents annexed by law or by custom are tactily understood "*In contractibus tacite veniunt ea quae sunt moris et consuetudinis.*" Viewing then the contract of affreightment between the parties in this light, it amounted to this: the shippers agreed to send 1,500 barrels of flour on board of the *General Williams*. The master of that ship, according to the admitted usage and custom of trade, was bound, before leaving port, to sign bills of lading, on being requested so to do by the shipper. And thereupon the master was to convey the flour to the port of destination and to deliver the same as agreed, upon the payment of freight. Under this contract the master, after he had been put *en demeure* to sign bills of lading, had no right to carry to sea the flour belonging to shippers; and if he had no right to do this, then the shippers had a right to prevent their flour being unlawfully carried off; and, according to the laws of this Province, a *saisie-revendication* is the usual remedy for the enforcing of a right such as that just mentioned.

Our attention was drawn by the learned counsel for the respondent, to a passage in Abbott on Shipping, which is in these words: "If there is any dispute about the quantity or "condition of the goods, or if the contents of "the casks or bales are unknown, the words of "the bill of lading should be varied accordingly."*

This authority appears to me to be perfectly reasonable; and cases frequently occur in our own trade, in which I think the authority just cited ought to be acted upon. For instance, if upon the shipment of a large quantity of grain, a difference—involving a few bushels—were to occur as to the quantity shipped, I think it would be unreasonable on the part of the shipper to require the whole quantity shipped to be at once unloaded in order to ascertain who was right; and if, in such a case, the master were to offer a proper Bill of lading for the quantity admitted, leaving it an open question as to the remainder, it might be well contended that a saisie-revendication would not be justifiable.

The case of Gordon et al *vs.* Pollok,† cited at the argument seems, at least in some respects, to be one of the class of cases to which I have adverted; and although at first sight that case may appear to be in favour of the respondent, yet, upon a careful consideration of the facts, I do not think that it will be found to militate against the view which I take of the present case.

In Gordon et al *vs.* Pollok, the plaintiffs alleged that they had shipped 457 barrels of flour on board of the bark *Jemima*, of which the defendant was master. The master contended that he had received 437 barrels only and tendered bills of lading for that quantity. According to the report it appears that "part "only of the flour in question had been shipped "at Montreal on board of the *Jemima*, and that "the remainder had been sent to Quebec by "the barge *Scotland*, described as a ship-tender, to be delivered there on board of the said bark *Jemima*,"—from the freight of which vessel, however, the freight earned by the ship-tender the *Scotland*, was to be deducted. "The bills of lading relating to that "portion of the flour, were signed by Messrs. "Gilmour & Co., the owners of the said barge, "and contained the following undertaking "'to be delivered on board of the *Jemima*, at "the port of Quebec, or of any other vessel, to "be pointed out by *Thomas Gordon*.' It appeared that the error, in relation to the 20 "barrels missing, had taken place on board of "the barge *Scotland*, and that these 20 barrels never reached the *Jemima: So* (according "to the report) *ran the bulk of evidence.*"

As I view the case of Gordon et al *vs.* Pollok, the plaintiffs were altogether in the wrong. The defendant had received but 437 barrels of flour, and the plaintiffs, in violation of the contract of affreightment, revendicated their flour because the defendant would not sign bills of lading for 20 barrels of flour more than he had received. The judgment of the Court, which is given at full length in the report, decides that under the circumstances above stated, the plaintiffs had no right to revendicate their flour; but the judgment does not appear to me to establish anything beyond this.

The learned counsel for the respondent also drew our attention to an authority from Valin, as indicating the course which the appellants ought to have followed in the present case.

That passage, as cited in Gordon et al *vs.* Pollok, is in the following words: "Le refus "du maitre de signer le connaissement ne

Brot. forward			152	11	3
. Jo Capt. Delagorgendieres Comp & Sub from 25 Jan to 24 feb.	52 15 4½				
Less 1 day ea to P. Fund	1 13 2½				
	57 2 2				
	3 13 0 2/14		54	15	2 2/14
. Jo Capt Tomancours Comp & Subsist from 25 Jan to 24 feb.	57 12 3½				
Less 1 day to P. Fund	1 17 0½				
	55 15 3				
	3 19 7 13/14		59	14	10 13/14
. Jo Capt Finlays Comp & Subsist from 25 Jan to 24 feb.	66 3 4 3/4				
Less 1 day ea to P. Fund	2 3 7 3/4				
	63 19 9				
	4 11 4 13/14		68	11	1 13/14
. Jo Capt Gascoyns Company & Sub from 25 Jan to 24 feb	69 5 2 3/4				
Less 1 day ea to P. F	2 4 5 3/4				
	67 0 9				
	4 15 9 3/14		71	16	6 3/14
. Jo Capt Faubault Company & Subsist from 25 Jan to 24 feb	59 12 4½				
Less 1 day ea to P. F	1 19 6½				
	57 12 10				
	4 2 4 2/14		61	15	2 2/14
. Jo Capt Hinckes Company & Subsist from 25 Jan to 24 feb	70 6 2½				
Less 1 day ea to P. Fund	2 6 10½				
	67 19 4				
	4 17 1 2/10		72	16	5 2/14
. Jo Capt Rollos Company & Subsistence from 25 Jan to 24 feb	81 5 10½				
Less 1 day ea to P. F	2 13 0½				
	78 12 10				
	5 12 4		84	5	2 2/14
. Jo Capt Lepuchons Company & Subsist from 25 Jan to 24 feb	71 10 6¼				
Less 1 day ea to P. Fund	2 6 1¼				
	69 4 5				
	4 18 10 9/10		174	3	3 2/14
		£	700	9	1 4/14

"pouvant qu'etre injuste, il y aurait action "contre lui pour l'obliger de signer les con- "naissements et pour faire ordonner que faute "par lui de signer, le jugement qui l'y con- "damnerait vaudrait signature." (1)

The other writers on this subject seem to agree with Valin as to the course usually adopted in France by the shippers of goods when the master refused to sign a bill of lading. (2)

But the authorities, at the same time that they show that in France in cases such as the present, shippers obtained redress by suit, without seizure of the property shipped, further establish that the shipper had an undoubted right to prevent the vessel containing his goods from leaving the port until bills of lading were signed, or an equivalent therefor given to the shipper.

Emerigon‡ says: "Si les chargeurs laissent "partir le navire, sans avoir fait signer les connaissements, ils doivent s'imputer à leur negligence: and Boulay Paty lays down the same doctrine in the same words. (3)

The foregoing authorities, which are in accordance with the general principles of our law, establish that on the case before us, the appellants had a right to prevent the respondent from taking their goods to sea until he had signed the usual bill of lading.

According to our law, the usual mode of enforcing a right, such as that last mentioned, is by a *saisie-revendication*. In France it seems that the same object was attained by a proceeding less stringent and less expensive; but, in this country it is impossible to obtain redress in the way it was afforded in France, as our laws do not admit of summary proceedings in such matters. And such being the case, I am of opinion that the appellants had a right to avail themselves of the ordinary process of law, namely, a *saisie-revendication*, to prevent the unlawful carrying away of their property by the respondent. Moreover, it may be observed that although a judgment such as spoken of by Valin would be equivalent to a bill of lading as a receipt; certainly it would not be equivalent to a bill of lading viewed as a negotiable instrument representing the property shipped. Indeed a judgment would be useless, comparatively speaking, for some of the most important purposes for which a bill of lading is generally required; and to compel a party to adopt a proceeding which could not possibly give a remedy commensurate with the wrong complained of, whilst full justice could be done, under another form of proceeding, would be, in effect, a denial of justice.

The view which I take of the part of the case now being considered does not seem to be opposed to the judgment of the Superior Court, which is based on the sufficiency of the exception pleaded by the defendant, and not upon the ground that the declaration of the plaintiff did not disclose a good cause of action.

If, then, as I think, the action of the appellants was rightly instituted, they are entitled to their costs, unless those costs were waived by them as the respondent contends.

Upon this point I am, I may at once say, against the respondent.

The *onus probandi* was upon him; and, to say the least, there is not a preponderance of evidence in his favor.

And here it is deserving of remark, that the respondent, when he pleaded to this action, does not seem to have been under the impression that the appellants had given up their claim to costs; because, although at the *enquete* an attempt was made to prove that the appellants agreed to waive their cost, no such waiver is alleged in the defendants' exception.

It now remains only for me to say a few words as to the right of the appellants to return the action for their costs; and, as to this point, I cannot say that I entertain any serious doubt.

The costs, it is true, do not form any part of the original cause of action, but they form a part of the plaintiff's demand; and I cannot see any reason for saying that the appellants had not as much right to a judgment upon that part of their demand as upon any other portion of it. The Superior Court at Quebec, in the case of Darche and Dubuc, ‡ expressly maintained that a plaintiff may return his action for the costs only.

This judgment was in conformity to a judgment rendered by a majority of the Court of Queen's Bench, in the year 1857, in the case No. 304, Dubord and Labranche. § The same question recently came under the consideration of this Court, in the case of Hébert *dit* Lecompte and the Fabrique of St. Jean; and no one of the judges, so far as I know, expressed even a doubt as to the right of a plaintiff to return his action for costs.

Upon the whole, therefore, I am of opinion that, under the circumstances of this case, the appellants had a right to sue out the writ of *saisie-revendication* which issued therein; and, I am further of opinion, that the respondent is liable for the costs accrued upon the suing out of the said writ; that the appellants did not waive their right to their costs, and that they had a right to return their action so as to have a judgment for costs. The costs of the seizure, however, ought not to be allowed. It was made after the bills of lading had been given and accepted, and was therefore unnecessary.

As I mentioned at the argument, it would have been more regular, if the appellants, on the return of their action, had discontinued their demand except as to the costs. But their omission to do so has not been the cause of any additional expenses whatever; because, in order to establish their claim to costs, they had to prove their demand as stated in their declaration, as is plain from the factum of the respondent. The real controversy between the parties was as to whether the appellants, under the circumstances of the present case, had a right to a *saisie-revendication*, and as to whether they had a right to return their action for the costs only; and holding, as I do, that they were right as to both those points, I think they are entitled to the costs necessarily incurred by them in order to establish their rights.

The judgment of the Court was then recorded, as follows:—

"The Court of our Lady the Queen, now here, having heard the parties by their Counsel respectively, examined as well the record and proceedings in the Court below, as the reasons of appeal filed by the appellants, and answers thereto; and mature deliberation on the whole being had: seeing that the appellants, on or about the thirtieth day of May, one thousand eight hundred and sixty-two, at the city of Montreal, under a contract of affreightment with the respondent, shipped on board the ship called the *General Williams*, of which the respondent, then, was master, fifteen hundred barrels of flour, to be carried, on board that vessel, from Montreal to Liverpool.

"Seeing also that it is admitted in this cause, that it is the usage and custom of trade in this Province, for masters of vessels to sign bills of lading, for cargoes shipped, on request of the shipper, before the vessel leaves port.

"Seeing that, after the shipment of the said fifteen hundred barrels of flour, on board his said ship, and before the said vessel left the port of Montreal, as hereinafter mentioned, the said respondent was repeatedly requested to sign bills of lading for the said fifteen hundred barrels of flour; and that the said respondent, without having any lawful or reasonable cause or excuse for so doing, refused to sign the said bills of lading, and also, that afterwards, to wit, on or about the fifth day of June, one thousand eight hundred and sixty-two, the said ship *General Williams* sailed from the said port of Montreal, under the command of the said respondent, with the said fifteen hundred barrels of flour on board, and without any bills of lading having been signed therefor; and considering that after the said respondent had been so requested to sign the said bills of lading, and had refused to do so, he could not legally carry off to sea the said fifteen hundred barrels of flour so belonging to the appellants; that, therefore, the said appellants had a right to prevent him from so doing, and that, according to the laws of this Province, the appellants were entitled to enforce their said right by the suing out of a writ of *saisie-revendication*, as was done in this case; And, considering that, although the respondent, after the suing out of the said writ of *saisie-revendication*, delivered to the appellants bills of lading, in due form, for the said fifteen hundred barrels of flour, thereby admitting the right of the appellants to have the said bills of lading; and, although the said appellants accepted the said bills of lading, yet that the said delivery and acceptance of the said bills of lading, after the suing out of the said writ of *saisie-revendication*, did not deprive the said appellants of their right to recover, from the respondent, their costs incurred in suing out the said writ; and, that the said appellants, who are not proved to have waived their claim to the said costs, had a right to return their said action into Court, in order to obtain a judgment for that part of their said demand by which they prayed for the costs; and, considering, therefore, that, in the judgment of the Court below, in so far as it dismisses the demand of the appellants for their costs, and condemn them to pay costs to the respondent, there is error: doth, in consequence, reverse the said judgment, to wit, the judgment rendered in this cause by the Superior Court, at Quebec, on the fifth day of December, one thousand eight hundred and sixty-two; and, proceeding to render the judgment which the said Court ought to have rendered, doth condemn the respondent to pay to the appellants their costs, in the Court below, excepting the costs of the seizure of the said flour, which seizure was unnecessary, after the delivery and acceptance of the said bills of lading, as aforesaid; and the Court doth also condemn the respondent to pay to the appellants their costs in this Court; and, lastly, it is ordered that the record be remitted to the Court below."

Dissentiente, the Hon. Mr. Justice Aylwin.

Messrs. Holt & Irvine, for appellants.

Mr. F. C. Vannovous, for respondent.

* Abbott, Eng. Ed., page 333.
Am. Ed. p. 419.

† Gordon vs. Pollok, 1 L. C. R., p. 313.

(1) 1st L. C. R. p. 315. V. also Valin. Com. Ord. de la Mar. Ed. 1770. Vol 1, p. 601.

(2) Becane Com. sur l'Ord. de la Mar., p. 344.

‡ Emerigon, Traite des Assurances. Vol. 1re, page 312.

‡ Darche and Dubuc, 1 L. C. R., p. 238.

§ Vol 1, L. C. R., page 239, N (1).

3 Boulay Paty Dr. Commer. Vol 2 p. 204

TRINITY HOUSE OF QUEBEC.

1863

FRIDAY, Oct. 9th.

Present—James Gillespie, Esq., Master; Hon. I. Thibaudeau, Warden; Francis Gourdeau, Esq., Sup't. of Pilots.

The Harbor Master of Quebec, Plaintiff.

vs.

Joseph Pouliot, of St. Jean, Pilot, Defendant.

The defendant, Joseph Pouliot, is a duly admitted branch pilot, to navigate vessels in the lower part of the River St. Lawrence. The charge preferred against him, set forth in the summons, and for which the present investigation was held, was for gross misconduct or want of due care and diligence, while in charge of the ship *Arran*, whereof William Cummings is master, in his capacity of pilot, and piloting the said vessel up the River St. Lawrence, within the jurisdiction of the Trinity House of Quebec, caused the said ship to be delayed for a considerable time.

William Cummings, the master of the *Arran*, was first called and examined. The defendant Pouliot was engaged as pilot, on board his vessel, to pilot her up the River St. Lawrence, during last month. The defendant came on board off Bic, and took charge of her as pilot, to bring her to Quebec. We were about six or seven days coming up; that is, from Friday morning until the following Thursday, when we arrived in Quebec. I had reason to be dissatisfied with the conduct of the pilot, while he was in charge of the vessel. He didn't appear to know his business, for he could'nt get the ship under way. I was obliged to take the duty from him. We were laying at anchor off Basque Island; and the defendant, in getting the vessel under way, would have canted the ship's head towards shore, instead of canting it to the northward. If the defendant's orders had been obeyed, the ship, in all liklihood, would have gone ashore. Again, when he came to the Traverse light-ship, with fair wind, the defendant ordered the course to be steered S.

Quebec 15 March

. John Stewart Esqr D^r to Patriotic Fund .

. To 1 days pay for 24 subs omitted

say on	3 Staff Sergts & D Mayr.	6			
	39 Sergeants . . .	2 12. 0			
	45 Corporals . . .	1. 17. 6			
	21 Buglers . . .	12 8½			
	670 Privates . . .	16. 15. 0			
		22. 3. 2½			
		1 11. 7 $\frac{23}{56}$	23	14	10 $\frac{7}{56}$

16

. Sundries D^r to Cash

. Joseph Colbath paid your dft to Pell		9	7 6
. Capt Hinckley & Companys Subsistence from 25 Jan 24 Feb. . .	72 " "		
. To his pay " " 6 17 6			
his pay " Mar 6 17 6	13 15		
	£95	2	6

. Cash Cr By Fractions for arrs not paid since 20th June last to Balance Books . . . . 7 $\frac{5}{56}$

. Cash D^r to L. Stewart Esqr for 2D March .

. To Subsistence & Warrant No.

556 dated 1 March	1053. 17. 6½				
add 1/14	75. 5. 6 $\frac{25}{56}$	1129	3	0	$\frac{39}{56}$

. Sundries D^r to Cash

. Col Taschereau & 500 Mons^r States .	18. 9		
paid Subscip^n to assembly	2. 10. 0	3	8 9

S. W. ½ W., which would have run my vessel ashore on the south side. I countermanded this order, and hauled up about S.W. to ½ W. The wind was then from N.N.W. The defendant said his book of directions gave him that course, and he would stick to it. After that I found that the ship's course was altered, by the defendant's order. I had again to order her course to be kept as above mentioned. Shortly after this I requested the pilot to cast the lead, when discovering that there was little water, he (the pilot) ordered all hands to bout ship, and stand towards the southward. The vessel was at that time well to the southward, and about two ships' lengths from the buoy which is placed above the Traverse. We were at that time betwen the buoy and the shore. The pilot's order was not obeyed; had it been so, the vessel would have been ashore. I ordered the man at the helm to keep the ship to the wind, until we could get into seven or eight fathoms of water. The only way to get into deep water was, to keep the ship's head as it then was. I took charge of the vessel until she got into deep water, when I gave her up to the pilot. In my opinion, the pilot gave too many orders, and had too many courses. Owing again to the pilot's negligence, the next morning after getting the ship under way, the pilot gave orders to put the helm down, when we were abeam of the ship *Allan*, about two ships'-lengths from us. The result of this order was, to bring our jib-boom between the main and mizzen-mast of the *Allan*. The defendant then gave no order. I had to order the vessel to be tacked; had we not done so we would have been foul of the "*Allan*." The defendant afterwards endeavoured several times to put the ship around but could not do so. I then told him if he would look out for the landmark and the lead I would take care of the sailing. I tacked the ship three or four times after this to show the pilot that she could stay, he saying that she could not. On another occasion, when I absented myself for a few moments from deck, I heard the defendant give orders to bout ship. I came on deck and found the ship had come round, over the wind. The wind was then two points on the bow before he ordered the main yard to be swung. The tacks and sheets had not been let go, and the consequence was the vessel backed towards the South Shore. I had only 15 feet of water at the front of the poop, and my ship draws 14½ feet. She was turning the mud up with the rudder, but I cannot say if she touched. If the pilot had given the proper order to let go the tacks and sheets, the vessel would not have got sternway. I then took command of the vessel, and again got her into deep water. When I asked the pilot why he did not order the tacks and sheets to be let go, he said he thought he had given the order. I told the defendant that he could not take the vessel to Quebec. He said he could, that he had taken vessels to Quebec before. I said he might if he had no beating to do. I hoisted the jack for another pilot. The next time the defendant ordered the vessel to be put round, she shook in the wind and then fell off and remained there for a quarter of an hour or 20 minutes. This was caused because the pilot did not know how to put the ship about. I asked the defendant if he could could get the ship round and he said to let go the anchor. I told him we did not require the anchor, that it was easier to get her round with the sails. Defendant then said to back the mizzen and main yards, upon which I told him that they had been backed for a quarter of an hour. I then gave orders to square the yards and the ship was brought round. We came to anchor the evening of this day, which was Wednesday; the next day we procured a steamer, and the ship was towed to Quebec. We saw a number of vessels in company with us at "Green Island." Some of them arrived in Quebec before us. They were all up before us with the exception of one vessel the *Queen of the West*. She got up at the same time. I have no doubt in saying that in working the vessel, as I have already described, considerable time was lost in making the passage to Quebec. The cause of this delay was in great part the mismanagement on the part of the defendant, who took charge of the ship. In my opinion, the defendant did not know his duty. Some of the vessels which were in company with me at Green Island got here on the 23rd, while I only got up on the 25th. In my opinion we lost the best part of 24 hours in the river St. Lawrence, owing to the bad management of the defendant.

Cross-examined by Mr. Andrews, junr., who appeared for the defendant:—I took the defendant on at Bic and got the steamer to tow us at the upper end of Grosse Isle. We displayed our signal for another pilot immediately after we got under way at Crane Island, near the light-house. I kept the signal flying all that day. I observed the *John Bull* and *Tasmania* at Crane Island, which were ready to start with us. Pouliot boarded us in the morning. I was the next who got a pilot after these vessels. When we saw the light and the buoy at the time we got into difficulty, as stated in my examination in chief, the light was to the northward of us, and the ship's head was in. At that moment I could not see the buoy. When we saw both the buoy and the light, the light was in a direction from the ship about S.W. ½ W, and the buoy was away to the northward of us, and the ship's head was west. At that time we nearly ran into the *Allan*, and afterwards when the ship got sternway and nearly got ashore, my ship was about two miles from the *Allan*, at the moment the rudder was turning up mud, as already mentioned. On the occasion of the difficulty above mentioned, when I saw the light and the buoy, the tide was about the latter part of the ebb. I had many difficulties and altercations with the pilot; and, in fact, whenever any difficulty was to be surmounted, it was I who done it. I first saw the *Allan* at Green Island.

The first mate of the ship *Arran* was next sworn. He deposed that the facts stated by the Captain were true, with the exception of the courses given by the pilot, and the way he ordered to put the helm and the bearings of the lights and buoys.—I can corroborate the evidence given by the Captain. I heard him give his evidence, and I can speak as to the truth of what was stated by him, with that exception. I know that the master had to take charge of the vessel on one or two occasions to take her out of difficult positions in which she had been placed through the bad management of the defendant in working her.

Captain Wilson of the ship *Queen of the West* examined.—I was in company with the ship *Arran* when off Crane Island I saw that the *Arran* was not properly handled. She was beating up with my vessel, tack for tack. The *Arran* fell astern, losing ground in wearing. This might have been caused by not staying.

Cross-examined.—It was about Green Island we first noticed the *Arran*. She kept ahead of us until we got abreast of Crane Island. It was there I first noticed the vessel was not being well managed. It was at this time I also noticed a signal up for another pilot. I arrived in port at the same time as the *Arran*. I was satisfied with my pilot and considered that I made a fair passage. I was also towed up.

Captain David Lawson of the ship *Allan* sworn. I was in company with the ship *Arran* off Crane Island. I had occasion to remark that the *Arran* was in bad trim or badly managed. I could not observe anything wrong with the vessel. I was in company with her for about 6 hours, after which I left her behind.

Cross-examined—During these six hours I saw the signal flag flying for a pilot, part of the time. I know the *Arran* for a long time and she can beat my vessel under ordinary circumstances. I left Bic before the *Arran*. I could not say if it was a day or more. She caught up to me on the passage up.

EVIDENCE FOR THE DEFENCE.

Thomas Theberge, pilot.—I was the pilot on the *Queen of the West* on her last voyage up to Quebec. We left Bic on Sunday evening. We saw the *Arran* on the passage; we caught up to her at Apple Island. We got into Quebec on the same day as she. From the Friday night to the Saturday morning previous to starting from Bic, and while the *Arran* was in the river very heavy head winds prevailed. That is from the Saturday night to Sunday evening. During this wind it was impossible for any vessel to have made progress up the river. I know the time that the *Arran* took to come to Quebec, and under all the circumstances it was a fair voyage; I could not bring her up quicker myself. Our vessel was on sight of the *Arran* from Apple Island up.

Cross-examined—It was on Tuesday morning that we arrived at Apple Island.

Moise Lachance, pilot, sworn.—I boarded the ship *Allan* a day before the defendant boarded the *Arran* from Green Island up to Quebec. The two vessels arrived at the towage ground the same time. The voyage of the *Arran* was a fair one, and perhaps if I had been the pilot, I would not have brought her up so quick.

Six certificates from captains of vessels with whom the defendant had sailed in the capacity of mariner across the Atlantic, and to other parts, were produced and fyled on record. These certificates were most creditable to the defendant's character, both to his skill as a sailor and his general good conduct.

Mr. R. Alleyn submitted the case for the prosecution without remarks.

Mr. Andrews, for the defendant, contended that the only offence which could be enquired into by the court was that of which the defendant was accused, viz. for "causing the ship to be delayed for a considerable time;" that any want of skill evinced by the pilot in the conduct of the ship could not be visited with punishment in this suit unless it had that effect, and that it was clearly established by the evidence that the ship had not suffered any delay; or at least any such delay as that contemplated by the law when using the term "considerable" which, from the punishment attached to it, viz. suspension of the pilot for two years, and the category of offences in which it was found, namely causing the loss of the vessel &c., could not but be a greater delay than that of "the best part of twenty four hours" which was the most that even the captain of the vessel would swear to—further that the captain having constantly interfered with the pilot, and in fact as he said himself taken the vessel into his own control whenever any difficulty arose, the pilot ceased to be responsible.

Mr. Alleyn was heard in reply. He concurred with Mr. Andrews that the real point to be decided by the Board was, "Had the defendant caused delay to the *Arran* or not? This charge was one which was no doubt difficult to establish. The ordinary offences of which pilots were charged before this Court were for running vessels ashore or for causing collision; but, in this case, Pouliot was simply charged with causing the vessel delay. In the first cases, it was always comparatively easy to prove that a vessel was put ashore or had come into collision with another vessel, but in the present case it was more difficult to prove such incompetency or negligence as to cause delay. There is no evidence before the Court by which it can be guided, with the exception of that of Capt. Cummings, and that is, in part, corroborated by Capts. Wilson and Lawson, who both say that the *Arran* was badly handled and managed, while in charge of the defendant. From the evidence of the master there can be no doubt but that the defendant did not, in the present instance, show himself qualified as a pilot. Owing to his incompetency, the arrival of the *Arran* at Quebec was delayed. The statute uses the words "considerable delay," and, in the interpretation of the law, great discretion is of course given to this Court. A delay of about 24 hours was caused in the present case; and it must be remembered that, in consequence, it became necessary to hire the services of a steamboat to arrive in port. It seems to me that this case, although apparently of little importance, does still contain a question of greater interest than it would at first appear. The Board will have seen, by the evidence, that on more than one occasion the master had to take charge of his vessel, to get her out of difficult positions in which the pilot had placed her. In doing this, had any accident occurred to the vessel, difficulty might and no doubt would have been met in endeavoring to recover the insurance. Much as it is to be regretted that a young man, with the good certificates of the defendant, should be before this Court, and that, after a short career as a pilot; it may nevertheless be, in the long run, greatly for his interest, as the judgment which this Court will render will no doubt make the defendant more careful in future. He certainly ought to be thankful to Capt. Cummings who, by assuming a great deal of responsibility and taking the charge of his vessel out of the hands of the defendant, prevented a serious accident from occurring to his vessel, for which the defendant might be suspended or severely punished. With these remarks I submit the case to the Court.

The Court, after taking the question *en delibere* for a few minutes, condemned the defendant to pay a fine of $20 and costs.

Quebec 18 March 1815

. Cash Dr to Sundries			
. To Jos Colbath Jr and Wanted from Lt Vigneau 24 June 14		2	10 "
. To John Coates Jr amo of Rules as Jr Bordeau ... 6.14.9 Jr two balances in change 19/2 & 2/6 Jr Bordeau 1.1.8		7	16 5
. To Mess Fund Jr amo of Blankets & on Ac of J. Taschereau amo		4	16 6
		15	2 11
. Sundries Dr to Cash			
. J. Coates Jr Rent of Mess Room at Lapraire Jr Bordeau		8	" "
. Music Fund paid Transport Instruments		"	11 "
. Aug Lequin paid Jr Ru'		2	" "
22 Capr Fenlay paid Arnold		10	" "
. Capt Jarvis his pay 24 feb		15	8 9
. Music Fund paid Ruffenstein Jr Bordeau of 6 March 50.0.0 Jr Bordeau of 22 " 158.7.5	208	7	5
24			
. Capr Vaut Jr his sum lent			10
. Ens Hengault Jr his pay 24 March		7	11 3
. Ens Vencau Jr his " " "		7	11 3
. Lieu Galineau Jr his " " "		9	8 9
. Lieu Methott Jr his " " "		9	8 9
. Adj Ryan Jr his " " "		12	8 8
. Lieu Faribault Jr his " " "		9	8 9
. Lieu Baby Jr his " " "		9	8 9
. Lieu Savage Jr his " " "		9	8 9
. Lieu Beaulieu Jr his " " "		9	8 9
	£	329	0 10

CARTERS' STAND IN PALACE STREET.

The MAYOR read the following petition from certain proprietors of Palace street, relative to the carters' stand in that street. Owing to its importance we subjoin it *in extenso:*

"To the Worshipful the Mayor and Councillors of the City of Quebec:—

"The memorial of the undersigned, proprietors and residents of Palace street, in the said city, respectfully represents that your memorialists have learned with satisfaction that the question of the illegality of the fixing of carters' stands in the public streets of the city of Quebec has at length been settled by the action with reference to the carters' stand in St. Joseph street, St. Roch's, taken by your worshipful body, in accordance with the opinion of the Advocate of the Corporation, in confirmation of that already obtained by your memorialists.

"Wherefore, your memorialists beg respectfully to bring under your notice the stand in Palace street, established under the authority of a by-law equally unsanctioned by law, and earnestly to pray that that by-law may be repealed, and that every means may be adopted to compel the carters to desist from obstructing that street, thereby deteriorating the value of the properties and residences of your memorialists.

"Quebec, Nov. 27th, 1863.

"C. Smeaton, Thos. Norris, Alex. Smeaton, L. Frechet, P. Lesperance, H. Blanchet, F. Sasseville, Richd. J. Shaw, A. Watters, Joseph C. Woodley, Hy. Knight, P. A. Russell, for Russell's Hotel, Joseph Painchaud, M.D., D. Logie, J. E. Gingras, F. Logie, L. Maclean, Andrew Strang, M. Read, L. A. Desrochers, Jas. H. Marsh, M. S. Ste. Monique, Superintendent, Hotel Dieu.

We subjoin the opinion of Counsel, obtained by the residents of Palace street:

"By the Ordinance 4th Vict., cap. 35, (1840) of the Special Council for the affairs of Lower Canada, the Council of the Corporation, therein styled—'The Mayor, Aldermen and citizens of the City of Quebec was authorized to make By-Laws for various purposes, among others, for the good rule, peace, welfare and government of the said city,' but any such By-Law being repugnant to the law of the land, was thereby declared null and void. By the same ordinance the powers theretofore vested in the Justices of the Peace for the district of Quebec, relative to regulating the streets and the making of rules and regulations of police, were vested in the said Council.

"The powers given by the above ordinance not being sufficiently definite, the same Legislature, on application of the City Council, amended the Ordinance of Incorporation, by the 4th Vict., cap. 31, (1841,) and thereby extended the powers of the Council, but carefully defined them. Among those powers is that to impose 'a duty on carters,'—but in neither of those acts is any authority given to fix stands in any of the public streets. By the 18th Vict., cap. 159, consolidating the acts for governing the City of Quebec, viz: the above ordinances and subsequent acts amending or extending them, the same enactments relating to the powers given to the Council relative to public streets and carters are continued, but neither in this nor in any other act is any authority given to the Corporation now called 'the Mayor, Councillors, and citizens of the City of Quebec' to obstruct the public highways or streets by converting them or any portion of them into a carters' stand, and thereby create a nuisance. On the contrary, they are invested with ample powers to remove all obstructions or nuisances in the streets, and it is their duty to remove them.

"If the Acts of Incorporation give no such authority directly, it becomes necessary to enquire whether any such authority was included in the powers vested in the magistrates, before and at the time of the incorporation of the city, and then transferred to the City Council.

"The principal acts under which the streets of Quebec and Montreal were regulated, were the 36th Geo. 3rd, chap 9, and 39 Geo. 3, chap. 5. By these acts the magistrates were authorised to remove all obstructions on the streets of the city of Quebec, but in no part of them is authority given to encumber the streets by fixing stands for carters, and the only act in any way referring to carters in the 17 Geo. 3, cap. 12, which provides only for fixing the 'rate that shall be paid to them.

"It is not therefore difficult to come to the conclusion that all the present stands in public streets of the city are illegally fixed by the Corporation, as no authority for that purpose has been delegated to them by the Legislature.

"The pretention made by the carters themselves that the power given to the City Council, to impose a tax on them, imposes on the Council itself the duty of providing them with stands on the public streets, would apply equally to bakers, butchers, tavern-keepers, hucksters, pedlars, and all other taxable callings; and if admitted, would require the City Council to establish on the public streets, bakeries, taverns, and butchers, hucksters, and pedlars' stalls, as well as to convert the public highways into stables for the licensed carters."

Referred to the By-Law Committee.

Legal Intelligence

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Boswell v. Kilborn et al., from the Court of Queen's Bench of Lower Canada; delivered 5th March, 1862.

PRESENT:

LORD CHELMSFORD.
LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.
SIR JOHN TAYLOR COLERIDGE.

This is an Appeal from the Judgment of the Court of Queen's Bench of Lower Canada reversing a Judgment of the Superior Court of that Province given in favour of the Appellants in an action for not accepting and paying for a parcel of five tons of hops under the following contract, signed by the respective parties:—

"QUEBEC, March 6, 1855.

"Messrs. Kilborn and Morrell sell, and Joseph K. Boswell contracts for delivery with them for the following three years, viz., 1855, 1856, and 1857, five tons weight of hops for every of the said years, the hops to be good and merchantable and of the growth of each respective year, to be paid for at the rate of 1s. Halifax currency per lb. on delivery. Hops to be delivered free in Quebec."

The declaration in the action after stating the terms of the contract, and the amount due to the Plaintiffs for the hops deliverable in 1856, proceeded to aver that the Plaintiffs were ready and willing, and tendered, and offered to deliver five tons weight of good and merchantable hops, the growth of 1856, and requested the Defendant to accept and pay for the said hops, whereby the Plaintiffs not only lost the benefit of the sale, but were put to great expense and trouble in carting away and stowing the hops in a warehouse, and in other respects, the whole to the damage of £600 currency, for which sum they prayed Judgment together with interest and costs.

The Defendant pleaded that the hops tendered by the Plaintiffs in fulfilment of the contract were bad and unmerchantable, and unfit to be used in his business; and he pleaded what is called a defence "au fonds en fait," the effect of which was to put in issue all the material averments in the declaration.

It appeared in evidence that the Plaintiffs having in their possession a quantity of hops of the growth of 1856, sent to the Defendant's brewery a portion of them, consisting of eighty-two bales, which greatly exceeded the weight of five tons. The Defendant desired that the hops should be unloaded from the sleighs in which they were brought, in order that he might inspect them, and the hops were accordingly taken out of the sleighs and placed in the Defendant's brewery, the Plaintiffs agreeing to take the hops away again if the Defendant should not accept them. After the examination of a few of the bales, and a tender of the hops in two separate lots, one cotaining fifty-three bales and one twenty-nine bales, but without any tender of the specific quantity of five tons, and without anything having been done by the Plaintiffs to distinguish that quantity from the rest of the bales, the Defendant refused to accept the hops, and they were conveyed away by the Plaintiffs and deposited by them in a store-house in the town of Quebec. There the hops were examined by persons on behalf of the respective parties for the purpose of ascertaining their quality, and the Plaintiffs again offered to deliver five tons of hops to the Defendant, but down to the time of the commencement of the action they had never weighed or set apart five tons of hops, so as to separate and distinguish them from the larger quantity deposited in the store-house.

A great number of witnesses were called on both sides to prove that the hops were or were not of the quality stipulated for by the contract. But, unfortunately, this very long and expensive inquiry has become entirely fruitless from the course which the cause afterwards took. The learned Judge of the Superior Court treated the action as one brought to enforce the performance of the contract by compelling the Defendant to take the hops and to pay the price, and as the Plaintiffs did not by their declaration offer to deliver to the Defendant the quantity of hops in pursuance of the agreement, and as the tenders alleged in the declaration were not followed by a request that they might be judicially declared to have been good and valid, he dismissed the action with costs, reserving to the Plaintiffs the right of appeal.

This Judgment, however, was reversed by the Court of Queen's Bench, the Chief Justice dissenting from the reasons on which it was founded, and the other Judges declining to enter into them, considering them as objections which the Judge had no right to raise, the parties themselves having waived them. The Court, therefore, proceeded to pronounce its own Judgment, that the Defendant should, within fifteen days from the service upon him of a copy of the Judgment, pay to the Plaintiffs the sum of £560 currency (being the contract price of the hops), with interest, and that upon payment the Plaintiffs should give to the Defendant a delivery note upon the occupier of the store where the hops were deposited for the delivery to the Defendant of five tons weight, to wit, fifty bales, of the hops which had been tendered and stored, and that upon default of payment within fifteen days, and upon leaving with the Prothonotary of the Court the delivery order or duplicate one for the Defendant and the other to remain of record, execution should issue against the Defendant.

Even if this Judgment were properly adapted to the form of action chosen by the Plaintiffs, it would be open to great objection. By the contract, delivery is to precede payment. By the Judgment, payment is to be made, not merely before, but without any delivery. The Defendant is adjudged to pay within fifteen days after service of a copy of the Judgment; if he does not, the Plaintiffs by merely depositing with the officer of the Court the delivery order in duplicate, would be entitled to sue out execution. And supposing the Defendant should pay the money and obtain the delivery order, the Plaintiffs would have discharged themselves of every duty imposed upon them by the Judgment, and yet the Defendant might be unable to obtain the hops in accordance with the contract in consequence of the storekeeper having a lien upon them, or by the loss or deterioration of the hops while they were at the risk of the vendor. But the Appellant contends that, looking to the form of action, the Judgment is one which it was not competent to the Court to pronounce. He says that the action is brought, not to compel the performance of the contract, but for damages for breach of the contract by the Defendant in not accepting the hops, and that the proper measure of damages in such an action is the difference between the contract price and the market price at the time of the refusal to perform the contract. If this question were to be decided by English law, there could be no doubt as to the extent of the Defendant's liability under the circumstances of the case. Where there is a sale by weight or measure, and (to use Lord Ellenborough's language in Bush v. Davis, 2 M. and S. 403) "any acts are to be done to regulate the identity and individuality of the thing to be delivered, it is not in a state fit for immediate delivery;" and no action for goods bargained and sold can be maintained to recover the price. The only remedy open to the vendor (if the circumstances of the case give him a right to complain of a breach of contract) is by an action for non-acceptance. The necessity of separating and distinguishing the article sold from a larger quantity in order to constitute a complete delivery cannot be more strongly exemplified than in the case of Cunliffe and Harrison (6 Exch. 903), which was cited in the course of the argument for the Appellant. But the Respondents contend that whatever may be the law of England on this subject, the case is to be tried by the old French law, in which the principles to be applied are different; and that by that law a vendor in some cases may recover the full price agreed upon, where there has been no complete delivery of the subject according to the terms of the contract. Their Lordships have been referred in support of this view to the Civil Law, and also to the writings of various Jurists, and part cularly to the Treatise of Pothier, "Du Contrat de Vente," which contains all the learning upon the subject. A very few passages from this Treatise will show that there is no material difference between the English law and the old French law, with respect to the completion of contracts. Pothier, in his Treatise, partie iv, fol. 309, states, with his usual clearness when a contract is to be regarded as perfect, and when it is imperfect. He says: "Ordinairement le contrat de vente est censé avoir reçu sa perfection aussitot que les parties sont convenues du prix pour lequel la chose serait vendue. Cette règle a lieu lorsque la vente est d'un corps certain, et qu'elle est pure et simple. Si la vente est de ces choses qui consistent *in quantitate* et qui se vendent au poids, au nombre, ou à la mesure, comme si l'on a vendu dix muids de blé de celui qui est dans un tel grenier, dix milliers pesant de sucre, un cent de carpes, &c., la vente n'est point parfaite que le blé n'ait été mesuré, le sucre pesé,

50

. John Stewart Esq^r	D^r. to Sundries for 24 Mar					
. Do Col Larcheveau & Com^d.		4	10			
	@ 28 days pay	24	17	6	29	7 6
. Do Major Lapora	@ "				23	7 6
. Do Major Panet	@ "				23	7 6
. Do Pay M^r Jones	@ "				22	3 9
. Do Adj^t Ryan	@ "				12	8 9
. Do Surg Vaunchand	@ "				16	13 9
. Do 9 M^r Cadets	@ "				9	8 9
. Do Asp^t Fortier	@ "				10	18 9
. Do Capt Panet	@ "				15	8 9
. Do Capt Mackay	@ "				15	8 9
. Do Capt Delagorgendiere	@ "				15	8 9
. Do Capt Tonnancour	@ "				15	8 9
. Do Capt Finlay	@ "				15	8 9
. Do Capt Garuzy	@ "				15	8 9
. Do Capt Vaudault	@ "				15	8 9
. Do Capt Hunter	@ "				6	17 6
. Do Capt Voltette	@ "				15	8 9
. Do Capt Lepruhon	@ "				15	8 9
. Do Lieu^t Fortier	@ "		6/3½		9	8 9
. Do Lieu^t Lamy	@ "				9	8 9
. Do Pineau	@ "				9	8 9
. Do Vaudault	@ "				9	8 9
. Do Mackay	@ "				9	8 9
. Do Mathotte	@ "				9	8 9
. Do Galarneau	@ "				9	8 9
. Do Laurent	@ "				9	8 9
. Do Johnston	@ "				9	8 9
. Do Bunk	@ "				9	8 9
. Do Passer	@ "				9	8 9

les carpes comptées, car jusqu'à ce temps *nondum apparet quid venierit.*" So far the law is tolerably clear, but upon the question whether when goods are sold by number, weight, or measure, the property is transferred to the buyer immediately or only after the goods have been counted, weighed, or measured, there is some difference of opinion.

Dalloz, in his "Repertoire de Législation de Doctrine et de Jurisprudence," titre "Vente,' chapter 3, section 1, ranges the Jurists upon the opposite sides of the question, and suggests a distinction to reconcile the difference between them. He puts a case where the seller says to the buyer, "I agree to sell you so many gallons of wine in such a cellar at so much a gallon;" here (he says) is not only a sale by measure, but also a sale of an indeterminate thing, therefore such a sale does not operate an immediate transfer of the property And he adds, "Tout le monde est d'accord sur ce point." But where the vendor says, "I agree to sell you all the wine in this cellar at so much a gallon," here the doubt arises. In this latter case the thing is ascertained, and it may be said there is no reason why the property should not pass immediately to the buyer. But even in such a case Dalloz states his concurrence with the opinion of Troplong that until the measurement the wine remains at the risk of the seller. It is true (he says) the thing is ascertained, but the price is not; but the price is like the thing itself, an essential element of the sale, and the ascertainment of the price is not less necessary than the identification of the thing to the completion of the contract. The delivery of the thing, and its being at the risk of the buyer, appear to be convertible terms, and it seems clear from all the authorities that upon a sale by weight or measure, until the thing is ascertained by weighing or measuring, it remains at the risk of the seller. Pothier, in the same section (309), which has been already referred to, says, "It is only after measuring, &c., that the thing sold is at the risk of the buyer;" "car les risques ne peuvent tomber que sur quelque chose de déterminé.

It is difficult to understand how the vendor can have any claim to receive the price of the thing contracted for until he has separated it for the use of the buyer. Until it is ascertained and identified, it may be properly said to have no existence. And yet there is one short passage in Pothier, sec. 309, which is opposed to all his reasoning in the same section upon which the Respondents rely as establishing the propriety of the Judgment in their favour. The passage is this: "Il est vrai que dès avant la mesure, le poids, le compte, et dès l'instant du contrat, les engagements qui en naissent existent. L'acheteur a dès lors action contre le vendeur, pour se faire livrer la chose vendue, comme le vendeur a action pour le paiement du fruit en offrant de *le* livrer." One may fairly ask To deliver what? The contract does not give the thing exis ence; it depends upon the vendor himself whether it shall ever exist. When there is a condition precedent to his right to the price unperformed by him, it is difficult to understand how he can recover the price upon a mere offer to perform

The Chief Justice treats the present case as one where the vendor has executed his contract, and has done all that depends upon him to entitle him to an action *ex vendito* against the vendee, and he goes on to say that from the moment the vendor has offered to deliver the thing sold, and has put the vendee in a position to receive it, the thing is at the risk of the vendee. But how was the vendee in a position to receive the hops in this case? He could not go to the store and help himself out of the bulk to the proper quantity. And as to the hops being at the risk of the vendee, the Chief Justice is here directly opposed to the authority of Pothier, in the passage which has just been mentioned. It must always be borne in mind that, by the terms of the contract, the delivery in this case was to be made by the vendors, and therefore that an actual delivery by them, or acts done by them which were equivalent to a delivery, were a necessary preliminary to their being entitled to the price. This the Court appears to have overlooked, for in their Judgment they say that "it was fully in the Appellants' power to have set apart, distinguished, and taken away five tons weight of good and merchantable hops from among the said bales," thereby attributing to the Appellant the performance of acts which by the contract belonged to the Respondents.

The Judgment therefore proceeds upon false grounds, even if it was competent to the Court to give a different kind of relief to that which the Plaintiffs claimed in their Declaration. The Plaintiffs demand damages for breach of the contract on the refusal of the Defendant to accept the hops tendered to him. The Court has converted the proceeding into a suit to enforce the perforance of the contract, which they order or intend to order by their Judgment to be carried out. This the Respondents contend they had a right to do, and they referred to a passage in 4 Guyot's "Repertoire," *verbe* "Conclusions," p 351, which the Court was said to have acted upon in a former case, that "le Juge deut rejeter, accorder, ou modifier les conclusions prises par les parties" Whether the power thus described can be pushed to the extent of enabling the Court to change the nature of the action, and to administer relief entirely different from that which is sought by the Plaintiffs, may be extremely questionable. But if a power exists, it can hardly be exercised with propriety in a case where a party has the choice between two remedies. Assuming that the Plaintiffs might have instituted a suit to enforce the performance of the contract, it cannot be doubted that they were at liberty to waive this form of proceeding, and to bring their action to recover damages for breach of contract. And when they have deliberately preferred the latter remedy, it ought not to be in the power of the Court to force upon them the other, to which they made no claim. Their action is in form and in substance a demand for damages merely for the breach of the contract in not accepting the hops. In such an action it was not disputed that the Plaintiffs could not recover the prices of the hops, but only the difference between the contract price and the market price at the time of the breach of the agreement Their Lordships, therefore, are of opinion that the Judgment of the Court of Queen's Bench is erroneous, and ought to be reversed. This, if nothing more were said, would have the effect of setting up the Judgment of the Superior Court. But this Judgment cannot be supported. They will, therefore, recommend to Her Majesty that both the Judgment of the Court of Queen's Bench and of the Superior Court should be set aside, and that a new trial should be had between the parties. If under the defence "au fonds en fait" the Plaintiffs will be compelled to prove their averment that they tendered and offered to deliver the hops, and will not be at liberty to show that the defendant waived a perfect tender, their Lordships think that before the next trial the Plaintiffs ought to be permitted to amend their declaration, by averring an offer by them to deliver the hops, and a waiver by the Defendant, which it is probable a Jury will have no difficulty in finding in their favor, and this will clear the way to the determination of the real question at issue between the parties, viz., the merchantable quality of the hops. Their Lordships think that the costs of the appeal ought to be paid by the Respondents, and that the costs of the trial in the Courts below should abide the events of the new trial.

The judgment in the Queen's Bench was rendered by Sir Hypolete Lafontaine Chief Justice; Mr. Justice Aylwin, Mr. Justice Duval and Mr. Justice Caron. In the Superior Court by the late Mr. Justice Chabot.

SPECIAL JURY CASE.—ACTION OF DAMAGES.

An interesting trial took place on Saturday morning in the Superior Court, before Judge Stuart and a special jury. The action was brought by Germain Desaint *dit* St. Pierre, Esq, City Councillor, against John Hearn, Esq., also City Councillor, for the sum of £1,-000 damages for an assault and battery committed by the defendant upon the plaintiff, in the Councillors' Room, City Hall, on the night of the 21st of May last during a special meeting of the City Council. Our readers will recollect the occurrence, which was alluded to in our columns at the time, and which arose out of an acrimonious debate in the Council on a report of the Road Committee recommending that the tender of Mr. Pierre Gagnon, for certain work, be accepted. The assault complained of took place immediately outside the Council Chamber, at the close of the debate.

The following gentlemen were sworn as jurors:—Messrs. Wm. Crawford, Evan Rees, John Flanagan, Walter C. Henderson, Frs. Joseph Parent, Joseph Cremazie, Pierre F. Bedard, O. Frenette, Simon Roy, Ferdinand Weippert, Joseph Archer and Jean Bte. Morrisette. Messrs. Plamondon and Holt appeared for the plaintiff, and Messrs. Jones and Hearn for the defendant. The two first named gentlemen having opened the case Messrs. Ganvreau, Lemieux, Rousseau, Rheaume, Irvine and other gentlemen, including Dr. Dussault, were called to prove the assault and the damage suffered. It was late in the afternoon before the whole of the evidence for the plaintiff was got through. Mr. Jones then addressed the jury on behalf of the defence and Messrs. Pope, McDonnell, Giblin, Martin and Collins were examined. It was shortly after nine o'clock when the learned Judge had concluded his charge and the jury retired. About half-past ten o'clock they came into Court and returned their verdict which was in favor of the plaintiff, awarding five pounds damages against the defendant.

Considerable interest was manifested in the proceedings, and the Court was crowded during the day with members of the City Council and their friends. Notwithstanding the late hour at which the verdict was rendered there was quite a throng in the Court when the jury came in.

tuted; and the only case in which the amount awarded in any order made by Justices of the Peace directing payment to be made of seamen's wages, can be directed to be levied by distress and sale of the ship and tackle, is when the party directed to pay the same is the master or owner of the ship. (Merchant Shipping Act, sec. 523.) The reason of this provision is obvious, the ship cannot be seized upon an order made against a person who at the time it is made, is neither owner nor entrusted with the possession or control of her. Even if the Justices had had jurisdiction, and the orders had been valid as against Kellow, the former master, they could not have justified the seizure of the vessel; and Keane, the new master, and his people shewed great forbearance in not resisting by force an attempt to seize the vessel under illegal pretences Their resistance would have been justifiable, though the consequences might have been lamentable

In this view of the case it becomes unnecessary for me to inquire into the legal effect of the arrangement which Mr. Ritchie was induced to enter into with Mr. O'Farrell, the Attorney of the seamen in order to recover quietly possession of the vessel, so that she might proceed on the voyage which she had commenced Nor is it perhaps necessary to comment upon the attempt now made to revive and enforce the warrants after a lapse of four years, and against a *bona fide* subsequent purchaser and owner into whose hands the vessel passed upwards of three years ago, without notice, and under whose ownership the vessel has made several voyages to this port; the warrants having been moreover once executed by the seizure of the ship. which terminated in the arrangement made by Messrs Ritchie and O'Farrell. Admitting hypothetically, that the service had terminated,—that the seamen were entitled to recover their wages,—that the proceedings before the Magistrates were regular,—that the order against Kellow, who was not master, could be enforced against the ship, under the command of another master,—and that the seamem had a maritime lien upon the vessel,—still no case under the English law can be found in which such a lien has been enforced, after so long a lapse of time and the passing of the vessel into the hands of a third party without notice. By the law of France such a lien is extinguished if, after a voluntary sale, the vessel has made a voyage in the name and at the risk of the new purchaser, and without objection on the part of the privileged creditor of the vendor. The celebrated Marine Ordinance of Louis XIV, confines this privilege to the wages of the sailors employed on the last voyage, which provision, with the qualification just mentioned, is also found in the present Commercial Code of France (*e*). The law of England has adopted no arbitrary rule on this subject, but holding the lien not to be indelible, leaves the circumstances under which it shall be enforced, as against third parties, to the discretion of the Courts, to be exercised as justice may require in the peculiar circumstances of each case, when one of two innocent parties must necessarily suffer by its being allowed or disallowed (*f*): no stronger case than the present could arise for its disallowance.

Under these circumstances the Court can have no hesitation in dismissing the claim of Kinsley, and relieving the owner from all liability under the bail given by him in this cause, with costs against Kinsley.

Messrs. Jones & Hearn for the Promoter.

Messrs Dunbar Ross, Q. C., & John O'Farrell, for the Claimant.

(a) The Partridge. 1 Hagg. Adm. Rep. 81 (b.) The Mary & Dorothy, L. Canada Vice Adm. Rep. 187. (c) In the matter of Blanshard Baxter and others. 2 Barn & Cress 244 (d) The Scotia, L. Canada Vice Adm Rep. 164. (e) Ordonnance de la Marine, Liv. 1. Tit. 14. Act. 16 Code de Commerce Liv. 2 Tit. 4. Art. 193. (f) The Hercyna, L. Canada Vice Adm. Rep. 274 Flanders on Maritime Law § 495 p. 493.

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CORPORATION OF QUEBEC.

CITY OF QUEBEC, IN THE DISTRICT OF QUEBEC. } TO WIT:

AT a Special Meeting of the Council of the City of Quebec, held at the City Hall, in the said City, on the EIGHTEENTH DAY of APRIL, one thousand eight hundred and fifty-six, in virtue of a By-Law made and passed at a quarterly meeting of this Council, held on the ninth day of June, one thousand eight hundred and forty-five, adjourned from the said ninth day of June to the tenth day of the said month, and further adjourned from the said tenth day of June to the eleventh day of the said month of June, in the year last aforesaid, at each of which several meetings were and are present two-thirds of the Members composing the Council of the City of Quebec, that is to say:—

His Worship the MAYOR,
Messrs. LANGEVIN,
ROUSSEAU,
GLACKEMEYER,
SHAW,
LEMOINE,
CHATEAUVERT,
ROBERTSON,
HALL,
BUREAU,
GAUVREAU,
STAFFORD,
MARTEL,
TOURANGEAU,
SEWELL,
VALLEE,
LEMIEUX,
CONNOLLY,
JOSEPH,
HEARN.

It was ordained and enacted by the said Council, and the said Council doth hereby ordain and make the following By-Law:—

A BY-LAW INCREASING THE WATER RATE.

Whereas, it becomes necessary to amend a certain By-Law, made and passed by the Council, on the TWENTY-FIFTH DAY OF APRIL, one thousand eight hundred and fifty-six, intituled:—

"A By-Law Fixing the Amount of Annual "Assessment to be paid to the Corporation "by the Proprietors of Houses, Stores or "other buildings of that description within "the limits of the City of Quebec, which "the said Corporation is now ready and will "be hereafter ready to supply with water "from the Water Works, constructed and "erected by the said Corporation for the "purpose of supplying the inhabitants of "the said City of Quebec with water, and for "other purposes mentioned thereto, and also "to repeal a certain other By-Law, also "therein mentioned."

Be it ordained and enacted, and by the present By-Law the Council of the City of Quebec doth ordain and enact as follows:—

That from the first day of May next, all proprietors of houses, stores and other buildings of like description within the limits of the City of Quebec, which the said Corporation is now ready to supply with water, shall pay, in lieu of the rates imposed by the said above mentioned By-Law, a tax or annual assessment of two shillings currency in the pound on the annual value assessed of occupied houses, and the half of that sum on the annual value assessed of stores, storehouses, (*hingards,*) shops, offices, stalls or other buildings not occupied as dwellings or not specially described by the present By-Law, which said tax or annual assessment is by this present By-Law laid on all said proprietors above mentioned, and shall be paid as provided in the second section of the said first cited By-Law.

2. The rate or tax which shall be paid every year to the said Corporation, by every proprietor of steam engine, horse or horned cattle, shall be as follows, to wit:—

STEAM ENGINE.

For each of the first ten horse power, six dollars.

For each of the second ten horse power, four dollars.

For every horse power above twenty, three dollars.

HORSES.

For every horse of hire or belonging to any individual, when the number of horses shall not exceed five, seven shillings and six pence per annum.

For every horse above that number, five shillings.

For every carters horse, five shillings per annum.

HORNED CATTLE.

For every horned cattle, when the number shall not exceed five, seven shillings and six pence per annum.

For every horned cattle above that number, five shillings per annum.

3. Every section or part of section of the said first above mentioned By-Laws, which may be contrary to the provisions of the present By-Law is hereby repealed.

(Signed,) OL. ROBITAILLE,
Mayor of Quebec.

(L. S.)
(Attested) F. X. GARNEAU,
City Clerk.

Corporation of Quebec

CITY OF QUEBEC, IN THE DISTRICT OF QUEBEC. } TO WIT:

AT a Special Meeting of the Council of the City of Quebec, held at the City Hall, in the said City, on the Twenty-sixth day of June, one thousand eight hundred and fifty-seven, and adjourned from that day to the Thirtieth day of the said month of June, in virtue of a By-law made and passed at a quarterly meeting of this Council, held on the ninth day of June, one thousand eight hundred and forty-five, adjourned from the said ninth day of June to the tenth day of the said month, and further adjourned from the said tenth day of June to the eleventh day of the said month of June, in the year last aforesaid, at each of which several meetings were and are present two-thirds of the members composing the Council of the City of Quebec, that is to say:—

His Worship Mr. LANGEVIN, the Acting-Mayor,
Messrs. EADON,
SHAW
VALLEE,
HEARN,
AUDETTE,
TOURANGEAU,
LEMIEUX,
MARTEL
LEMOINE,
YOUNG,
CONNOLLY
ROBITAILLE,
CHATEAUVERT,
CHARTRE,
MUNN,
FITZPATRICK
STAFFORD,
ROBERTSON,
ROUSSEAU,
HALL.

It was ordained and enacted by the said Council, and the said Council doth hereby ordain and make the following By-Law:—

A BY-LAW *to amend the By-Law increasing the water rate.*

Be it ordained and enacted, and by the present By-law the Council of the City of Quebec doth ordain and enact as follows:—

That from the first day of August next, all proprietors of houses, stores, and similar buildings within the limits of the City of Quebec, which the said Corporation is now ready to supply with water, shall pay a tax or annual assessment of two shillings currency in the pound on the annual value assessed of occupied houses, and the half of that sum on the annual value assessed of stores and similar buildings not occupied as dwellings or not specially described by the present By-law, which said tax or annual assessment is by this present By-law laid on all said proprietors above mentioned, and shall be paid as provided in the second section of the first cited By-law.

HECTOR L. LANGEVIN,
Acting-Mayor.

(L. S.)
Attested,
F. X. GARNEAU,
City Clerk.

COURT OF APPEALS.—Lower Canada.

James Swinburn. *Appellant*, and Louis Massue and Pierre Boisseau, *Respondents*.

The facts of this case may be stated as follows:—Messrs. Caldwell, Crawford and Co. of London, in pursuance of orders from the Respondents, purchased divers goods for them in London, which appear to have been purchased at No. 27, Austin Friars, London, in sixteen packages, whereof the case numbered fourteen, contained amongst other goods, those the value of which was in controversy in this cause. They were delivered at the office of Caldwell, Crawford and Co. by Christopher Breaty Prince, their clerk, to a London carter, to be conveyed to the London Docks. Neither the aforesaid agents of the Respondents, nor any person in their employ, accompanied the goods. Mr. Prince saw the cases and packages on the quay about an hour after they had been put into the custody of the carter. Mr. Prince did not see them shipped, and did not know when they were shipped. The mate of the Great Britain who was examined under a Commission, addressed to the Mayor of New Castle upon Tyne, deposed that they were regularly stowed in the hold of the ship, and that they were landed at Quebec, to all appearance in perfectly good order, and taken away by a carter, and conveyed by him, by the directions of a clerk of the Respondents, to their store in the Upper Town of Quebec: the clerk not accompanying the carter. On opening the packages the clerk of the Respondents found that this particular case, No. 14, did not require the use of a hammer to open it,—that it was fastened at one end by one nail only, and at the other by two, which offered but little resistance. The other nails appeared to the clerk to have been cut by a sharp instrument, and to have been recently done. No notice of this appeared to have been given by the Respondents to the Appellant: no survey called upon the package, and no claim set up for the value of the goods missing therefrom until the following season, when the present demand was made and action brought. The bill of lading contained at its foot, the words "contents unknown."

The case having been argued in the last term and a consent rule made, that judgment should be entered in vacation as of the last day of the Term, his Honor Mr. Chief Justice Reid, was pleased to forward with the judgment the following remarks upon the case:—

This action appears to have been instituted by the Respondents, merchants in Quebec, against the Appellant, master of the ship Great Britain, for the recovery of a sum of £110 15 10, being the value of certain goods and merchandize said to have been shipped by Messrs. Caldwell, Crawford and Co. at London, on the 15th of August, 1831, to the Respondents, and packed in a certain case No, 14, which it is said, was broken open on board the said ship, and goods and merchandize to the above value pillaged and removed.

The Appellant has set up three points of defence to this action. 1st. The want of proof that the particular goods in question were contained in the said case, at the time it was received on board the said ship. 2dly. The want of proof that this case, after it was delivered from the ship to the Respondents on the wharf at Quebec, was safely conveyed to the warehouse of the Respondents, and there deposited, in the same state and condition in which it had been so delivered.—And 3dly. The want of any notice or demand on the Appellant for loss or damage alleged to have been sustained by the Respondents in regard to the said goods and merchandize, until the return of the said ship to Quebec, in the year 1832.

In a case of this kind, where the right of a Plaintiff rests upon the mere legal responsibility of a Defendant,—where no personal fraud or collusion can be attributed to him,—the latter is entitled to avail himself of every point that can either diminish or destroy that responsibility. Now it is certain that if the goods in question were not delivered on board the said ship, or if there be no proof of that delivery, which in law is the same, no responsibility can attach to the ship or master. In like manner, if the case has been delivered in the same state in which it was received on board the ship, but has passed through different hands before the damage was discovered, the presumption will be in favor of the master. The Court however, does not think it necessary in the present instance to enter particularly into the merits of those two points, and of the evidence adduced thereon, as they consider the other point of defence, namely, the want of notice to the Appellant, after the delivery and receipt of the said case, during an unreasonable delay of several months, and after the departure of the ship from the port of delivery, as sufficient to exonerate the Appellant.

As the law has attached great responsibility to the master in regard of the cargo under his care, and makes him liable not only for his own negligence or misconduct, but for that of others on board of his ship, so in like manner it extends to him a protection in the discharge of his duty consistent with the responsibility he thus incurs, and the nature of the trade in which he is employed.

When a ship arrives at the port of delivery, the master necessarily has many objects which demand attention and dispatch, and as the interests of his employers require that his delay in port should be as limited as possible, so it appears reasonable and necessary for the security of all parties, that a consignee of goods, having any cause of complaint, either as to short delivery or injury done to those goods, should notify it without delay, that an opportunity may be given to the master to make the necessary inquiries to detect offenders,—if pillage has been practised on board of his ship—or to make satisfaction for the loss. An immediate examination into the facts and circumstances of the case is best calculated to ascertain the truth, and to secure the interests of all parties: and as daily changes may occur, and the departure of the ship be uncertain, the necessity of such early precaution is strongly apparent.

It is in evidence here, that the case in question was delivered to the Respondents, in the same state and condition, as to outward appearance, as when received on board the ship; and all the authorities of law say, that when the master of a trading vessel has delivered the goods to the consignee, his duty is fulfilled, and his responsibility ceases.* This ought to apprize such consignee, that every instant of time he allows to elapse after such delivery, without objection or complaint, carries a presumption with it in favor of the master that the goods were safely delivered, or that no blame is to be imputed to him. But after the delivery here complained of was discovered, and not only days, but months, allowed to elapse, and the ship to depart before any objection or complaint was made,—the Respondents in the mean time disposing of the goods without the usual precaution of a survey and examination of their state and condition when received,—to attach responsibility to the master under such circumstances would be unjust, as he is, or he may be, thus taken unprepared and unprovided with the means of defence he had in his power at the time of delivery. From the moment he delivers the packages he has received according to his bill of lading, he is entitled to consider himself exonerated from all further responsibility, and consequently to give up any recourse he otherwise might have retained against his seamen, his passengers or others, had he been apprized in due time of any claim or difficulty in regard to what had been so delivered. It is inconsistent with the duties and obligations of the master of a ship, and would be injurious to this branch of commerce, that his responsibility should be continued for months and years after such delivery. The silence of the consignee in such a case is a presumption against him, and he cannot be allowed after so great laches to exercise a right which must inflict an unwarrantable injury on the master.

The provisions of the French Ordinance of 1681 on this point, are just and equitable. It directs that no action or demand can be maintained on the part of the merchant or consignee, against the master for damages accrued to goods on board of his ship, if the consignee has received them without protest.† This is considered to be necessary for the ease and convenience of trade, and for the security of perons concerned in it, that all contests and difficulties may be regulated without delay. The more modern commentators on this Ordinance commend its decisions as of general benefit, and of great practical utility,‡ and, on this particular point, one of them observes, "il est intéressant que "celui qui a une action à former pour cause de dommage ou "avarie, de faire ses diligences à tems, pour en faire constater "la nature, la qualité et l'estimation relativement aux circonstances, à l'effet de quoi il faut qu'il fasse faire la visite des "Marchandises ou du Navire, et qu'il fasse dresser un Procès "Verbal de leur état, partie présente ou duement appelée."

Although no decision of the English Courts upon this question has been adduced, yet as the general principles of law in all commercial countries, as regards the duties of masters of trading vessels, are drawn from the same source, have the same objects in view, and are founded in reason and justice, we must consider them as applying strongly here in favor of the Appellant, and to say that as the Respondents had received the case in question and retained it, without giving notice to the Appellant within a reasonable time, of the loss and damage complained of, they are not entitled to maintain their action against him.

Judgment of the Court below reversed, with costs to the Appellant.

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* Woolrich's Com. Law. p. 46.—Jones on Carriers' p. 91.—1 Emerigon. p. 679.

† Ord. 1681, liv. 1, Tit. 12, art. 5.

‡ 2 Pardessus No. 730. Ibid, Tom. 1, No. 543—Poth. Charte partie, No. 38,—2 Boulay Paty, p. 325—Boucher, Institution au droit maritime, ch. 47, No. 2508-9.

§ Valin liv. 1, Tit. 12, art. 5 & 6 in notis.

THE WATER-RATE QUESTION.

Our readers will recollect that some correspondence took place, in the columns of this paper, relative to the right of the Corporation to impose the full water-rate of two shillings in the pound on the annual assessed value of buildings occupied as shops only and not as dwelling-houses. For the benefit of those who wish thoroughly to understand the merits of the question, we subjoin a judgment rendered by His Honor the Recorder, in the case of "The Mayor *et al*, *vs.* Glover *et al.*," in which this question was raised. It will be seen that the issue turns upon the interpretation attached by law to the meaning of the word "store." We subjoin the judgment in full:—

"The Court—having heard the parties by their respective counsel, examined the writ of summons, and the account thereunto annexed, as well as the exception or defence of the Defendants, and the admission of facts produced in this cause by the said parties—and on the whole duly deliberated;

"Considering that, by the Act 18 Vic. ch. 30, sec. 2, the Corporation of the City of Quebec is authorised to impose, by means of a by-law, an assessment or annual tax on the proprietors or occupants of houses or other buildings, in the said city, for the cost of the supply of water furnished by the water works of the said city, namely, a tax or assessment, not exceeding two shillings in the pound on the annual value assessed on occupied houses, and half the said sum on the annual value assessed on stores and other similar buildings;†

"Considering that, by a by-law dated 30th June, 1857, the said Corporation ordained that the proprietors of occupied houses shall pay for the price of water supplied as above, an annual tax or assessment of two shillings in the pound on the annual assessed value of the said houses, and half this sum on the annual assessed value of stores and other similar buildings not occupied as dwelling houses;

"Considering that, by the statute 22 Vic. (1859) ch. 63, sec. 13, in order to dispel all doubts arising as to the interpretation of the word "store," in the said several acts relative to the water works, it is decreed that, henceforth, the word "store" should mean buildings used for the storage and sale of goods by wholesale;

"Considering that it is not proved, in this cause, that the house or building occupied by the defendants is occupied as a "store," according to the definition given to this word by the statute last hereinbefore cited;

"Considering that the said defendants admit that they are the lessees of the house or building mentioned in the account annexed to the said writ of summons, and that they were the lessees of the said house during the space of time hereinafter mentioned;

"Considering that there is due to the said plaintiffs, by the said house or building of [illegible]

Quebec 28 March 1815

Brot forward

. Do Capt Robitts Comp. for Subsist.	33.7.6			
for 12 days to 8 March	105.2.6			
	138.10.0			
for 20 days full pay	9 17.10 4/14			
Add 1/14 —		148	7	10 4/14
. Do Capt Lepruhons Comp. for Subsist				
for 12 days to 8 March	27.9.9			
for 20 days full pay	85 6 3			
	112.16.0			
Add 1/14	8 1.1 10/14	120	17	1 10/14
		£ 1170	14	1 4/14

5 4/14

31st

. Sundries Dr. to Cash				
. Lieu Pruneau	his pay 24 March	9	8	9 —
. Lieu Fortier	his pay " "	9	8	9
. Ens Gauvreau	his pay " "	7	11	3
. Surg Legum	his pay in full	5	11	"
. Doct. Fortier	his pay 24 March	10	18	9
. Lieu Prendergast	his pay " "	9	8	9
. Major Lafosse	balance of pay " "	17	7	6
. Capt Lepruhon	his pay " "	15	8	9
. Lieu Pruneau	his 80 days pay	27	17	1
. Ensign Hengault	his 80 " "	22	10	"
. Capt Lepruhons Comp. for balance due —		9	14	9
. Capt Lepruhons	his 80 days full pay	45	"	"
. Lieu Lance	his 80 days " "	27	17	1
. Lieut Savage	his 80 days " "	27	17	1
. Lieu Mastigny	his pay 24th Mar 6 8.9			
	his 80 days pay 27.17.1	34	5	10 —
. Capt. Delagorgendieus Company				
for this sum in full		"	3	11
		£ 280	9	3

Legal Intelligence.

[Reported for the Morning Chronicle.]

VICE ADMIRALTY COURT.—LOWER CANADA.

Tuesday, 31*st January*, 1860.

THE HAIDEE,—*Kempthorn.*

This was a suit brought by Thomas Hobbs, of Liverpool, Merchant, to obtain possession of the British registered ship Haidee, alleging that he was the owner, and that possession thereof was wrongfully withheld from him by Richard Kinsley. The facts connected with the detention of the vessel are fully stated in the following judgment this day rendered in the cause.

THE COURT, (*Hon. Henry Black.*) This is a case technically known as a "cause of possession," the object in which is to obtain the restoration to the alleged rightful owner of a vessel, of which he avers that he has been wrongfully dispossessed The proceedings in this court commenced on the 14th of September last, by the promoter, Thomas Hobbs, as the owner of the ship Haidee, whereof Edward Kempthorn was then master, of the burthen of 688 tons, suing out a warrant of arrest, upon an affidavit made by his agent, according to the practice of the court, that he was such owner, and that she was wrongfully detained and withheld from him by one Richard Kinsley, and others acting under his authority. Upon the return of the warrant a decree of possession was made, ordering the vessel to be delivered to the promoter, on his giving security to answer such claims as Kinsley might legally have; security was given, and on the 19th of September, the vessel was delivered to him accordingly, and proceeded on her voyage home. The promoter having filed his libel in the cause, Kinsley, by his claim and answer, set up no adverse title to the vessel, but alleged that he had seized her under the authority of certain warrants of distress, therein recited, and that he did not otherwise detain or withhold possession of the vessel from the promoter.

The facts of the case as they are disclosed in the pleadings and evidence are as follows:—In the month of August 1855, the Haidee, then owned by Arthur Ritchie of Quebec, and commanded by Robert Kellow as master, was lying at Plymouth in England, bound on a voyage from Plymouth to Quebec or any port or ports in North America, and back to any port or ports of discharge in the United Kingdom James Elliott and seven others were engaged as part of the crew for the voyage, and signed the usual ship's articles or mariner's agreement. The Haidee sailed from Plymouth on or about the 17th of August, and arrived at Quebec on or about the 1st of October following On the 15th of the same month of October, Robert Kellow was discharged by Mr. Ritchie the owner, and Michael Keane was appointed master in his stead, and his appointment duly entered upon the register of the vessel. On the 5th of November following Elliott and the seven other seamen before referred to, having wilfully disobeyed a lawful command of the new master, Michael Keane, were by him brought before John Maguire Esquire, Inspector and Superintendent of Police, and a Justice of the Peace for the District of Quebec, and having admitted the agreement entered into at Plymouth, were convicted of the offence; and were severally sentenced to be imprisoned in the common gaol for a period of one week, and were committed accordingly The ground upon which these men attempted to justify their disobedience was, that the master had been changed since they signed the agreement; but this defence, Mr. Maguire correctly held to be invalid. On the 6th of November, Kellow instituted proceedings in this court, for wages alleged to have accrued to him. On the 7th, the ship being ready for sea, and the services of Elliott and the seven seamen being required on board, Mr. Maguire, at the request of the master, issued a warrant, under the power given by the Merchant Shipping Act, for their discharge from gaol, and their conveyance on board the ship, for the purpose of proceeding on the voyage, and they were accordingly conveyed on board; but on the same day they went to the office of John O'Farrell, Esquire, Advocate, where René Gabriel Belleau, Esquire, a Justice of the Peace attended, (as stated in his evidence,) and swore each of them to a claim and complaint against Robert Kellow, as master of the Haidee, for wages alleged to be due to them respectively for services on board the ship from the 14th of August to the 7th of November, on a voyage from Plymouth to Quebec, and as if the services they had engaged to perform had terminated. Upon these complaints summonses to Kellow were taken out by Mr. O'Farrell, dated the 7th of November, returnable at noon on the eighth; these were served in the Court House, on Kellow, who was attending there, a quarter of an hour before noon, and the constable who served them states that they were delivered to him by Mr. O'Farrell, and that they were returned into court immediately afterwards, that is to say, within a quarter of an hour, and the trials were had immediately before Mr. Belleau and Pierre Martial Bardy, Esquire, another Justice of the Peace, Mr. Maguire having then, according to what is proved to be his usual custom at that hour, gone away for a short time The constable George Neilan, who made the service, states Mr. Maguire generally hears and decides complaints of seamen for wages: and Mr. Maguire himself states that it is quite unusual to make any summons to the Police office returnable at noon. Kellow appeared, but does not seem to have made any proper defence, or to have shewn that he had ceased to be master of the ship, or that the complainants were engaged for a voyage which had not terminated, and which by the articles of agreement was to terminate in Great Britain. Nor does it appear that the magistrates were made aware of or inquired into these points; and an order was made in each case by Messrs. Belleau and Bardy in favor of the complainants; the sums awarded for wages amounting to £60 7s. 7d., and the costs to £20, which sums Kellow was commanded immediately to pay. By the Merchant Shipping Act, under which the proceedings were had, if, after wages are lawfully due by the termination of the voyage, an order is made for the payment thereof, on a party who is then master or owner of the ship, and the amount is not paid by the time and in the manner prescribed in the order, the Justices who made the order may direct the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel Kellow was not master, nor had the voyage terminated, but Messrs. Belleau & Bardy on the same 8th of November, (1855,) issued under their hands and seals, eight warrants of distress, directing the sums mentioned in the orders and costs to be levied by distress and sale of the vessel These warrants were on the same day handed by Mr. O'Farrell to George Neilan, a constable, who went to Cap Rouge to execute them, but found that the Haidee had been removed, whereupon he returned to Quebec and gave back the warrants to Mr. O'Farrell. On the next day, (the 9th November,) Mr O'Farrell put the same warrants into the hands of Paul Thibaudeau, with instructions to execute them on board the Haidee, then lying at anchor in the harbour of Quebec, near the Island of Orleans. Thibaudeau assisted by Godfroi Prendergast and by seventeen men engaged by Mr. O'Farrell, who went with them, proceeded to the Haidee; the master was absent, and the pilot having refused to pay the sums mentioned in the warrants, Thibaudeau caused the anchor to be weighed, and the ship to be towed back to O'Brien's wharf in Diamond Harbour. When there Richard Pope, Esquire, Advocate,—having, as he states, at the instance of Mr. Ritchie, the owner of the ship, obtained from Mr. Bardy, one of the Justices who issued the warrants, what he terms an order addressed to Mr. O'Farrell, to abstain from any further proceedings, upon receiving from Mr. Ritchie a guarantee that he would pay Mr. O'Farrell all claims, costs and charges which the seamen might have against him or the vessel, in the event of the orders being confirmed on appeal or on *certiorari*,—presented the same to Mr. O'Farrell on board the vessel, with a guarantee signed by Mr. Ritchie to the required effect. Mr. O Farrell accepted this guarantee, and gave up possession of the vessel, and ordered the bailiff and his men to leave her and go on shore, telling them he had been satisfied by Mr. Ritchie The vessel then proceeded to sea.

In the year 1856, Thomas Hobbs, (the promoter) purchased the Haidee, and has ever since been the sole owner and in possession of that vessel. And she has since been commanded by five different masters; and has made five different voyages to Quebec, arriving there respectively, on the 19th of May, 1856,—on the 29th of September, 1856,—on the 26th May, 1857,—on the 8th of September, 1857,—and on the 30th of August, in 1859.

On the 8th of September, 1859, Mr. O'Farrell put the eight warrants issued by Messrs. Belleau & Bardy, on the 8th of November, 1855, into the hands of Richard Kinsley, a Bailiff and Constable, and instructed him to seize the Haidee, unless the full amount mentioned in them were paid him on demand Kinsley accordingly, accompanied by one Patrick Ford, went on board the ship, then lying at a wharf in the harbour of Quebec, and on the refusal of Kempthorn, the master, to pay the sums demanded, seized the ship with her tackle. Mr. O'Farrell immediately afterwards came on board, and brought fourteen men as keepers, seven of whom remained on board ten or eleven days, until the vessel was released by order of this court, upon security being given to meet the claims under the warrants, if they were found valid; the amount then claimed being,—for wages £60 7s. 7d.—for costs before the Justices £20,—and for costs of distress £125 4s.,—making in all £205 11s. 7d. currency, which sum Kinsley now claims.

Under these circumstances Mr. Hobbs, the present owner, applied for and obtained a writ of possession, against Kinsley as a wrong doer, and the vessel was delivered up to him, on his giving security as before mentioned. (*a*)

Of the jurisdiction of the Court in causes of possession there is no doubt. (*b*) . From the most ancient times the Court of Admiralty had constantly entertained both petitory and possessory suits concerning the property and employment of ships; and although after the Restoration it was intimated by the Courts of Common Law that questions of disputed title were not properly cognisable in the Admiralty, and after that time the Court was very abstemious in the interposition of its authority in cases of mere disputed title, its jurisdiction over *causes of possession* was always retained; nor was any intimation ever given by the Courts of Common Law that the Admiralty should abandon its jurisdiction over causes of possession; and the practice of entertaining such causes has been constant and uninterrupted. The rules of the Court, established by an order of His late Majesty in Council, under the authority of the British Act of Parliament for regulating Admiralty proceedings, contain provisions expressly applicable to causes of possession; and indeed within the last few years the ancient jurisdiction of the Admiralty in cases of disputed title has been acknowledged and confirmed by an Act of the British Parliament Nor can there be any doubt that the case before us is a cause of possession, and within the jurisdiction vested in this court as to such cases. Generally the occasion for the exercise of this jurisdiction arises in cases between part owners who cannot agree respecting the employment of their ships; and the court having in such cases jurisdiction to detain a vessel at the instance of one part owner, it must *a fortiori*, have jurisdiction to detain her at the instance of the real owner against a mere wrong-doer. The enormous amount of mischief and injustice which might be perpetrated if the Court had not such power is too obvious to require comment; and fully justifies *Lord Tenterden's* remark in Blanshard's case, that this jurisdiction of the Court of Admiralty is a most useful part of the jurisprudence of the country (*c*); and if a practical illustration of the correctness of this remark were required, it would be hard to find one stronger than the present case.

Having, then, clear jurisdiction in the cause, this Court has necessarily the right of deciding every incidental question which arises in it: and the validity of the warrants under which the Haidee was seized, and the jurisdiction of the two Justices who issued them are such incidental questions. Now, the seamen, at whose instance the proceedings were instituted in which these warrants issued, were engaged for a voyage from Plymouth to Quebec and back to a final port of discharge in the United Kingdom, and could not therefore under the 190th section of the Merchant Shipping Act, sue in any court abroad for wages, and could not sue at all until the service had terminated, or until they had been discharged. The service had not terminated, and the seamen were not discharged; and it is certain that the Justices could not give themselves jurisdiction in this case, by finding that as a fact which was not a fact (*d*). They were therefore absolutely without jurisdiction, and the whole proceedings were *coram non judice*, and the orders and warrants founded on them were of course also void. The two Justices may have been deceived; but from the hurried and unusual manner in which they allowed the whole proceedings to be conducted, it is clear that the necessary amount of precaution to avoid deception, was not used by them The very ship's articles were not produced or required, though it is proved by Mr. Maguire, and by Mr. Pope, that the seamen had in the previous case before Mr. Maguire admitted the articles, and their Attorney Mr. O'Farrell must have known that no seaman could be legally brought from the United Kingdom to Quebec without articles: and if the claims for wages had been brought in the usual manner before Mr. Maguire, he would undoubtedly have required the re-production of the articles before him; and want of jurisdiction, arising from the non-termination of service, being thus made patent, the cases must have been dismissed. But the Justices were further deceived, inasmuch as Kellow, against whom the proceedings were taken and the orders made, was not then master of the ship, and had not been so since the 15th of October, or for upwards of three weeks before the proceedings were insti-

Quebec 19 April 1815

John Stewart Dr. to Sundries						
Do Col. Taschereau	£80	days	full pay	72	17	1 10/19
Do Major Lafone	£80	"	"	68	11	5 2/19
Do Major Panet	£80	"	"	68	11	5 2/19
Do Paymaster Jones	£80	"	"	64	5	8 8/14
Do Surg Painchaud	£80	"	"	48	11	5 2/19
Do Asst Surg Fortier	£80	"	"	32	2	10 4/19
Do Qrm. S. Coaty	£80	"	"	27	17	1 10/19
Do Capt Panet	£80	"	"	45		
Do Capt Mackay	£80	"	"	45		
Do Capt Delagorgendiere	£80	"	"	45		
Do Capt Tonnancour	£80	"	"	45		
Do Capt Fonblay	£80	"	"	45		
Do Capt Gauvry	£80	"	"	45		
Do Capt Faribault	£80	"	"	45		
Do Capt Pinsonnault	£80	"	"	20	10	8 8/14
Do Capt Rolette	£80	"	"	45		
Do Capt Lepailleur	£80	"	"	45		
Do Lieu Fortier	£80	"	"	27	17	1 10/19
Do Lieu Lane	£80	"	"	27	17	1 10/19
Do Lieu Perreau	£80	"	"	27	17	1 10/19
Do Lieu Faribault	£80	"	"	27	17	1 10/19
Do Lieu Mackay	£80	"	"	27	17	1 10/19
Do Lieu Methotte	£80	"	"	27	17	1 10/19
Do Lieu Galarneau	£80	"	"	27	17	1 10/19
Do Lieu Laurent	£80	"	"	27	17	1 10/19
Do Lieu Johnston	£80	"	"	27	17	1 10/19
Do Lieu Buck	£80	"	"	27	17	1 10/19
Do Lieu Payser	£80	"	"	27	17	1 10/19
Do Lieu Savage	£80	"	"	27	17	1 10/19
Do Lieu Lamoy	£80	"	"	27	17	1 10/19

IN THE SUPERIOR COURT.

MONTREAL, SATURDAY, 28th February, 1857.

PRESENT:

The Honorable Mr. Justice DAY.
" " " SMITH.
" " " MONDELET.
" " " BADGLEY.

Judgment was to-day rendered in the following cases by the Hon. Mr. Justice BADGLEY:—

JEAN BAPTISTE DORION *vs.* THE ÆTNA INSURANCE CO.;

AND

JEAN BAPTISTE DORION *vs.* THE PROTECTION INSURANCE CO.

Attorneys for Plaintiff, Messrs MOREAU, LEBLANC & CASSIDY.
Counsel, C. S., CHERRIER, Q. C.
Counsel for Defendants, JOHN ROSE, Q. C., & S. C MONK.

These actions are brought for the recovery of the amount of an insurance effected by the Plaintiff on certain property at St. Polycarpe, destroyed by fire on the 28th of August, 1847. The buildings insured in the two Companies are the same, and the refusal of the Defendants in each case to pay, rests on the same ground, viz: misrepresentation and fraud.

The contract of Insurance is defined as essentially one of indemnity, and the insured is in consequence bound to establish the loss of the articles for which indemnity is sought, and also the inclusion of them in the terms of the agreement. It is also a contract of speculation on the part of the insurer, and being so, it demands a full and accurate disclosure of the facts on which the insurer is to base his calculations. Good faith must attend the whole transaction, any deviation from this condition being sufficient to nullify the contract; but further than this, the hazardous nature of the insurer's undertaking makes it indispensable, that he should have accuracy of information, and it is one of the primary rules of insurance, that a misrepresentation of facts in any way material to be made known to the insurer, whether by suppression of the truth or by wilful or inadvertent misstatement or omission, is sufficient to make void the contract. The circumstances usually lie within the knowledge of the insured only; it is therefore essential that he should not use his superior knowledge, to lead the underwriter into the belief of any thing which is untrue. During the continuance as well as at the inception of the contract, the best of faith is required, and the insurer must be made aware of any change likely to affect in the least the risk he has assumed. Gross carelessness is also sufficient to release the insurer from his liability. Apply these principles to the cases under consideration,—a Grist Mill, Saw Mill and Engine, or Boiler house, were insured with certain conditions, and under a certain description given in the policy. The boiler house was to be detached from the mills, and to have no connection with them except by a shaft working the machinery; the roof was to be covered with tin, and the boilers surmounted by arches of brick,—none of these most important conditions were observed. There were no brick arches over the boilers, the roof was not tinned and there were several communications with the main buildings by other means than the shaft. The case of McMorin, *vs.* The New Castle Insurance Company, though not offering such strong points as the present one, is in some respects very similar and may well be cited. By the insurance policy then given, the pipe leading from the engine to the chimney was to be not more than three feet long; it was however in reality six feet long. The Court of Session, the cause having arisen in Scotland, deemed this variation immaterial, but their decision was reversed by the House of Lords. It is proved that the discrepancy between the real facts and the representations of the Plaintiff in the cases before us was so great that had the defendants been aware of the truth they would on no account have taken the insurance, the instructions given to the agent in Montreal being to avoid any such risks, and with reference to the conduct of the insured subsequent to the insurance, it is to be observed, that gross carelessness, to use no harsher phrase, is imputable to the Plaintiff. The mills were insured in July, and though they were not in operation, the fire took place in August. It is established by evidence, that instead of being reserved for their proper uses, the grist mill was made to afford stabling to horses, and hay and straw were kept in them. Several barrels of tar are also known to have been in the building, and late in the very night of the fire, a man was seen in the mill with a light. An extreme over-estimate of the damage caused by the fire seems to have been attempted by the Plaintiff almost, if not quite sufficient of itself, to have indicated bad faith. The highest valuation by competent men sent from town, falls by a large sum short of the Plaintiff's estimate. Taking all these matters into consideration, we have no hesitation in saying that the Plaintiff's demands are improper, and unfounded, and his actions are dismissed with costs.

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52 7 11
49 19 4
319 5 6

Capr Jarbault Dr to Company
To balance of Salary — 10 9 5

Juba 22 April 1815

. Sundries Dr. to Cash			
. Capt Tonnancour in full 24 March	26	5	2
. Lieut Beaulieu his 80 Days pay	27	17	1
. Capt Rolette pay 24 Mar 15.8.9			
his 80 days 45.00	60	8	9
£	114	11	"
. Cash Dr to Jos Colbath			
. ℔ amt of Sundries	3	4	3
. Capt Tonnancour Dr to Company			
. ℔ balance of latter	2	9	2
. Capt Rolette Compy Dr to Cash			
. ℔ balance in full . . .	22	4	5
24			
. 2 W Coats Dr to Sundries			
. To Jones ℔ Lodging Money wood &c. 33.10.5			
. To Dr Savage ℔ Lodging Money 6.15.11			
. To Cash ℔ Buttons &c . . 1.16.10	42	3	2
. Cash Dr to 2 W Coates			
. ℔ his Lodging Money 3 Sepr to 24 Dec 1813 —	11	3	1
℔ his 165 days Forage money to 31 Dec 1814	4	8	4
℔ his 200 " Bat Forage money for year 815	10	14	3
℔ amt of Lieut Johnstons Lodging money from 3 Sepr to 24 Dec 1813	7	8	10
℔ amt of Ensign Brunets Lodging money from 3 Sep to 24 Dec 1813	7	8	10
℔ amt of Maj Mayor OConnors Lodging money from 3 Sep to 24 Dec 1813	6	3	10
℔ Short Cr of the 200 days Bat Forage ℔ entry of 4 June 1814 —	1	6	9
£	48	13	11

Law Intelligence.

(Reported for the "Montreal Gazette.")

SUPERIOR COURT,

March 21, 1857.

Present:—Hon. Mr. Justice Smith,
" " " Mondelet,
" " " Badgley.

WEBSTER *vs.* GRAND TRUNK RAILWAY.—GRAND TRUNK RAILWAY *vs.* WEBSTER.—Smith, J.—These two actions might be considered as one, and had to be decided on the same principles. He would here express his opinion that it was a great pity that these cases were ever allowed to come before the Court. The questions involved were those merely of account, and ought to have been settled by Accountants, who were thoroughly conversant with such matters. But as they had come before the Court, the Court had no other alternative than to arrive at the best conclusion in their power, after a most laborious and searching investigation into every one of the books, vouchers, &c., produced by the parties. The first action was instituted by Webster against the Company for the recovery of £300 for six months salary. The declaration set out that he had for some years previously been in the employ of the St. Lawrence and Atlantic Railroad Company as Secretary-Treasurer, and latterly as Superintendent, and that after the amalgamation of the last named Company with the Grand Trunk he was continued in office as Superintendent until his dismissal in September, 1853. That at the time of such dismissal there were 4 months salary due him, and he also claimed for the next 2 months in order to complete his year's salary, on the ground that he had been discharged without cause. To this the Company replied that the Plaintiff was only entitled to demand 4 months salary, or £200, that is to date of discharge, and further, that as to that sum, he could not now recover it from them, inasmuch as by certain acts of the Plaintiff in connexion with Ebbo, Vale & Co. the Grand Trunk Company had lost the sum of £300, and had, therefore, a right to set off that sum against the Plaintiff's demand. The Company, Defendant, further alleged that owing to certain errors and improper entries made by the Plaintiff, while acting as such Secretary-Treasurer, the Company had lost the further sum of some £2,200, on account of which Webster had only paid about £1,400 to the Company. Then followed a special action by the Company against Webster for the purpose of recovering that amount. The whole case then turned upon these two points; 1st. Whether or not Webster had been properly dismissed; and 2nd. Whether the errors and irregularities charged against Webster really existed. As to the first point, the grounds alleged by the Company as justifying their dismissal of Webster were:—1st. Disobedience to the orders of Mr. Bidder, who was the General Manager of the Company; and 2nd. Improper deportment on the part of Webster in keeping his accounts. As to the first ground, the Court were of opinion that it was not clearly or satisfactorily proved. There was no doubt but that a letter from Mr. Bidder existed, which called upon Mr. Webster to ascertain the particulars of an accident which had just occurred on the line, and which had resulted in the death of a person. Webster, instead of going himself, sent some other person to ascertain these particulars. This, Webster said, he thought was sufficient. Finding, then, that there was no absolute disrespect to his superior officer or actual disobedience of orders, the question arose as to whether it was not the duty of Webster to have gone personally, without any special order to that effect. The Court had no hesitation in saying that it was his duty, acting as he did as Superintendent. In these days, it would never do to allow a Superintendent to send a man instead of going himself, on the occasion of an accident resulting in death. Nothing short of a personal visit could satisfy the Company; and the Court thought, that on that ground alone, the Company were justified in dismissing him. We now come to the second ground, namely, Whether there were such irregularities of accounts, as alleged by the Company? It was impossible to look over the accounts, without feeling convinced that such irregularities existed; and the fact that Webster had refused to give any explanation concerning them, was also sufficient justification of the Company in the course they had adopted; and, under these circumstances, there could be no doubt but that the claim for salary must be reduced to £200. We now come to the question of compensation in damages set up by the Company. The amount set up, some £2200, was the amount found by the accountant employed to audit the accounts, and who stated that on Webster being notified of such error, he at once paid £1400 under protest, declaring that he had already paid that amount out of his appropriations and denying that there was any deficiency, as alleged by the accountant. This, however, could not be looked into by the present action. If Webster had paid that sum wrongly, he had his action to recover back the money. Speirs, the accountant, then swears that on the errors being pointed out to Webster, he paid that sum, so that the Court has now nothing to do with that portion of the case, and the first twelve items must be set aside. It remained then to ascertain whether the company had any other claim against Webster which they could set up in compensation. The other claims consisted of 10 items, amounting in all to £771 16s. It was the duty of Webster, in his capacity of Secretary-Treasurer, to receive the amount of all appropriations, which he paid over when ordered on the production of the proper certificates. The only question was, has he accounted for his cash. The Court had nothing to do with any irregularities that might exist in the journal or other books, as they could not affect the cash account, if correct. The only way that Webster could be charged as Cashier, was by alleging that by the cash book it appeared that he had received so much, and asking him to produce his vouchers. The 1st item of £100 appeared to have been entered twice in the journal, but not in the cash book, and there was therefore no proof that the company had been charged twice. The same remarks applied to the 2nd item of £100, so that with respect to this sum of £200, the company had no claim against Webster. The 3rd item of £150 assumed a different aspect, for here was an entry in the cash book of a previous payment of that amount, and also the company is charged with the full payment of the whole appropriation; and in the absence of any voucher, the Secretary-Treasurer must be held liable. His Honor would remark here that he was far from intending to convey the idea that the mistake in question was intentional on the part of Webster; so far from that, for his part he thought it wonderful that mistakes had not more frequently occurred, when it was taken into consideration that the books of the company had not been credited for a space of six years, and that a sum amounting to almost a million of pounds had passed through his hands during that time. With respect to the 4th item of £225, there could be no doubt but that there was a double charge, but it did not sufficiently appear that Webster was responsible for it. The mistake might have occurred at the Sherbrooke Office, over which Webster had no control. This item, then, must be rejected. As to the remaining items, it would be found that they were entered in the cash book as having been paid, and at the same time they were entered to the credit of other persons, who made a charge against the company in cash for the same amount. The Court was of opinion, therefore, that the total of these six items should be added to the item of £150, forming together the sum of £346 16s for which Webster was liable to pay the company, and which, when set off against the £200 due to him for salary, would leave a balance of £146 16s against him, and for which judgment is awarded in favor of the company. Before concluding, he wished to add that in charging Webster with these errors, the Court did so without charging him with any improper conduct; it was, in fact, astonishing that the errors were so few, as before stated. It was a great pity that this case was ever brought into Court; but having been once brought there, the Court could only come to a conclusion on the books and papers produced, and had only to ask whether the cash-keeper had produced vouchers for all his payments. They could not help expressing their opinion that they thought this a very hard case, that a man, after so many years of service, and during which time such a large amount of money had passed through his hands, should now be held liable for such a small amount.

DAY, J.—Wished it to be understood that he did not sit in the case.

MONDELET, J.—If the pretention for discharging Webster was grounded on the fact of disobedience alone, he, for one, had considerable doubt whether the Court would be justified in coming to any such conclusion. But the pretention is also founded on the right that the Company had to discharge him under all the circumstances of the case, and he had no hesitation in expressing his opinion that the fact of Webster not attending personally at the scene of the accident, laid him open to be discharged. There was also another ground, namely, that the Company were justified in discharging him on account of the manifest errors in his accounts, and this without imputing to Webster any fraud. There could be no doubt of an employer's right to discharge a servant in such a case; otherwise by keeping an incompetent person in his service he might be liable to suffer great loss. As to whether Webster was guilty of making intentional errors, he could only say that if he was so charged, he might impute it to his own obstinacy in refusing to give any explanations, but at the same time he thought it due to an honorable, though obstinate man, to state that it did not appear that he was guilty of anything dishonorable, and as a Judge, he was happy to be able to say that he did not think there was any intention to defraud on his part.

BADGLEY, J.—Did not differ from the conclusions arrived at by the other members of the Court, but did not concur altogether in the means by which said conclusions were so arrived at. This was an action by a servant against his master for a wrongful discharge. The plea was justification on the ground of disobedience to order and irregularities in his accounts. As to the latter ground the figures had been set up in the printed factures, and there was no necessity for going over all these points again. It was always a very difficult matter to lay down any fixed rule as to what would constitute a right to discharge. This however was a peculiar case. Webster was not a common servant, but was in the employ of a Railway Company, where a vast motive power was under his charge. It was therefore absolutely necessary that all servants in Railroad Companies should be peculiarly active in the discharge of their duties, not merely as regarded their employers but on behalf of the public, and ought not only to obey all orders but be prompt in investigating all accidents. One thing was quite clear that Bidder was the General Manager of the road, and it was therefore his duty to direct the person in charge as Superintendent to ascertain all the particulars of the accident. Webster ought therefore to have gone, but he did not do so. Possibly there was no disrespect intended, but it was his duty to have assisted the General Manager. and he considered that there was a kind of disobedience or at any rate a nonfeasance of what he ought to have done. The letter produced at all events proved that Webster had a knowledge of the accident. It was very difficult to lay down a general rule in these cases, but one thing was certain, that the master was justified in discharging his servant in all cases, when the law justified the discharge. It mattered not whether the motive assigned by the master would justify it or not. Another ground was pecuniary irregularities. There could be no doubt but that if such were found to exist they would constitute a good ground for discharge. Here, too, Webster only paid over the monies after the errors had been discovered by an Accountant without any assistance on his part. Under these circumstances there was sufficient justification in law for his discharge, and he had no reason to complain of it because he had paid the monies afterwards. He could not help feeling sorry that the balance of accounts stood as it did, for he felt convinced that if more attention had been given to these errors by Webster he would have been able to explain them away, as it was evident they arose from mere error. However, the Court was obliged to judge in accordance with the evidence alone, although in his opinion the case could have been far more equitably adjudged out of Court.

COURT OF QUEEN'S BENCH.

(APPEAL SIDE) December

Morin and others,
Appellants,

vs.

Symes and others,
Respondents.

PRESENT:—Sir Louis Hypolite Lafontaine, Bart., (Chief Justice,) Hon. Justices Duval, Mondelet, and Badgley.

Judgment was rendered in this case during the last sitting of the Court, confirming the judgment of the Hon. Mr. Justice Meredith in the Superior Court. The particulars will no doubt be read with interest, as they involve a question of custom with Brokers, Commission Merchants and Consignees of vessels in the port of Quebec.

In March 1854, Geo. P. Oxley & Co., Merchants, of Liverpool, chartered, the Appellants' vessel, the "William Vail," to carry out from Liverpool to Quebec a certain specified cargo, in consideration of certain freight, "payment whereof to become due and made payable, sufficient for ship's disbursements on arrival, in cash, remainder on true delivery of cargo."....."The vessel to be addressed to George P. Oxley & Co's correspondents at the port of discharge, subject to a commission of two and a half per cent *on amount of freight*." The ship arrived at Quebec the 26th May 1854, consigned to Messrs. G. B. Symes & Co., the Respondents, and her cargo was discharged on or before the 21st June following, at which time she was entered for loading. The consignees' adcounts having been presented to the Appellants, they objected to one item, the charge of £26 17s., as two and a half per cent commission on £1073 19s 3d, moneys paid out by Messrs G. B. Symes & Co., and the Appellants maintained that they were entitled to receive their freight without this deduction. The Respondents insisting upon the right to make the charge, the present action was brought.

The Judgment of the Superior Court was as follows: "The Court having examined the proceedings and evidence of record and heard the parties by counsel on the merits; considering that it is proved that when the ship 'William Vail' mentioned in the pleadings in this cause reached the port of Quebec, in the spring of the year 1854, the captain of that vessel caused the disbursements required to be made for her in this Port to be made by the Defendants instead of obtaining from them the means of making the said disbursements himself as he might have done under the charter party, and

Quebec 24 april 1815

. Sundries Dr to Cash			
. Lieu Lukin & Buttons &c.		2	9 11
. Lieu Mackay & Ditto		2	9 11
. Ens Decourcy & Draft to Fortune	1 10.		
& balance due on draft to arnold	3. 13. 8	5	3 8
. Ens Louisignan & draft to Louisignan p[d] to Gauvreau		1	10 "
. Ens Vernault & balance of dft to Davidson	3. 12 10		
paid Ferguson & Cairns	3. 15. 0	7	7 10
. Lieu Burke & paid & Rec[t]	5 0 0		
paid Ferguson & Cairns	13 14		
& a sword	8. 1	26	15
. Ensign Edge & Buttons &c.		1	12 6
. Regimental Fund paid Lelievre Notary for engagements		3	" "
. Ens Gauvreau & his 80 days full pay		22	10 "
. Music Fund paid Regimental the balance in full —		63	7 9
27th			
. Lieu Laurent & his pay of Feb[y] & March		18	7 6
. Lieu Johnston & his 80 days full pay		27	17 1
. Regimental Fund & paid Barrack dispensary for 25 Men at Montreal		9	5 5
. J. Jones L. & Buttons &c.	1. 15 10		
paid Downey and	6. 7	7	16 5
. Capt Panet his pay 25 Feb to 24 March omitted		14	18 9
. Capt Panets Company & balance in full		5	7 4
. Lieu Lacroix his pay 24 March handed to Lelievre		9	8 9
		229	17 10

that it is also proved that a commission of two and a half per cent on the amount of the disbursements so made is a reasonable charge and the usual charge for the services so rendered by the Defendants, doth declare that the Defendants were entitled to charge the said commission on the disbursements so made by them; but seeing that the disbursements for the said vessel amounted to £705 19s. 3d, and that the Defendants erroneously charged the said commission on £1073 19s. 3d., thereby subjecting the Plaintiff to a charge of £9 4s. which they were not liable to pay, doth in consequence condemn the Defendants, jointly and severally, to pay to the Plaintiff the sum of £9 4s. with interest thereon from the 22nd day of November 1856 until paid, and costs of suit as in an action for that sum."

In pronouncing this judgment the learned Judge delivered his opinion, as follows:—By this action the Plaintiffs seek to recover £27 17s. for which they allege, the Defendants have improperly taken credit, in an account between them and the Plaintiffs. The facts are as follows:—In the month of March 1854, the Plaintiff's chartered a vessel called the "William Vail," to Messrs. Geo. P. Oxley & Co. of Liverpool: it being agreed by the charter party that that, vessel was to receive a cargo of about 700 tons at Birkenhead, and thence proceed to Quebec where the cargo was to be delivered as customary, in consideration of freight at the rate of 20 shillings sterling per ton. By the charter party it was also agreed, that the freight should become due and be payable "sufficient for ship's disbursements on arrival in cash remainder on true delivery of cargo"; and also, that the vessel should be addressed to George P. Oxley & Co's correspondents at Quebec, "subject to a commission of two and a half per cent on amount of freight:" In pursuance of this agreement, the cargo in questions was taken on board the "William Vail" at Birkenhead, and was delivered at Quebec where in accordance with the charter party the freight was collected by the Defendants in this cause as the correspondents of George P. Oxley & Co.

The *William Vail* arrived at this port about the 26th day of May 1854 and during the same month, one of the Defendants received by mail from George P. Oxley & Co., a copy of the charter party. On the arrival of the ship here, the captain did not, as he might have done, demand from the Defendants the funds necessary to disburse the vessel. Had he done so, and then disbursed the ship himself, there would have been no grounds whatever for the charge in question. Instead of doing this, the captain allowed the Defendants to make the disbursements for the ship; and several witnesses swear that for the service thus rendered 2½ per cent. on the amount of the ship's disbursements is a fair and reasonable charge. It is also incontrovertibly proved that the usual commission in this port, for making disbursements for a ship is 2½ per cent. when the person making the disbursements has funds in hand, and five per cent. when he has not. These commissions are irrespective of the usual commission of 2½ per cent for collecting freight; the two services being quite distinct. In the present case the captain although as has already been observed, he might have done otherwise, allowed the Defendants to make the disbursements, and therefore they are entitled to the usual commissions for the service thus rendered by them. I therefore hold that the Defendants are entitled to charge the several commissions proved by their witnesses, and that their account has been prepared according to a right principle, but I am of opinion that the 2½ per cent commission charged for making disbursements for the ship, has been extended to 2 items not subject to that charge. It is to be remembered that the Defendants received freight to the extent of £897 9s. 3d. currency for the collection of which they were entitled to receive and have deducted 2½ per cent commission, leaving a net freight under charter party £875 0s. 7d. Upon another part of the cargo of the same vessel the Defendants collected a further sum of £320 13s. 8d., from which deducting the usual commission of 2½ per cent, there remains £312 13s. 4d.

To this action the respondents pleaded, that, by the usage and custom of trade at Quebec, the respondents were entitled to charge a commission of 2½ per cent. on advances, and that the account had been closed and settled on the 23rd September, 1854. The appellants, by special answer, alleged that, under the charter party, they were only bound to pay one commission of 2½ per cent. on amount of freight. Evidence was adduced on both sides—on the part of the respondents to establish that by the usage of trade they were entitled to a commission of 2½ per cent. on their advances. The Respondent's Counsel submitted the following questions for the consideration of the Court.—1st. Was there a custom or usage of trade in Quebec which justified G. B. Symes & Co. in charging a commission of 2½ per cent. on advances? 2nd. If there was such a custom, did the charter party between Oxley & Co. and the appellants, bind G. B. Symes & Co., who were no parties to it, to make advances without remuneration?

After argument being heard on both sides, this Court, as stated above, confirmed the judgment rendered by the Hon. Mr. Justice Meredith in the Superior Court.—Hon. Mr. Justice Badgley dissenting.

HOLT and IRVINE, for Appellants.
F. C. VANNOVOUS, for Respondents.

July 1864

INTERESTING DECISION RESPECTING SCHOOL-RATES.

In the case of the School Commissioners for the Scholastic Municipality of the town of Levis against the St. Lawrence Dock, Ware house and Wharfage Company, which was an action brought to recover £50 for school-rates, and which was argued before Mr. Assistant Justice Taschereau, in the Circuit Court, by Mr. Jean Langlois, on the part of the plaintiffs, and by Mr. Holt, Q.C., on the part of the defendants,—it was held, by the judgment of the Court, rendered on the 21st ult., that the right of the trustees of dissentient schools to receive the assessments imposed on dissentient inhabitants does *not* depend upon the observance of the formalities specified by the 57th section of chapter 15 of the Consolidated Statutes for Lower Canada, by which it is declared that "Whenever Trustees of Dissentient Schools have been chosen and have established one or more Dissentient Schools in any School Municipality, and the said trustees are not satisfied with the arrangements antecedently made by the School Commissioners of the municipality relative to the recovery and the distribution of the assessment, they may, by a written declaration to that effect, addressed to the Chairman of the School Commissioners, at least one month before the first day of January or July in any year, acquire the right of themselves receiving for the following and all future years, during which they continue to be such trustees, the assessments levied on the inhabitants so dissentient, and who have signified their dissent in writing, as hereinafter provided." That although this clause is positive in its terms, it is controlled and rendered of no effect by another clause in the same Act, viz, the 58th which says:—"The trustees of Dissentient Schools shall alone have the right of fixing and collecting the assessment to be levied on the inhabitants so dissentient." That inasmuch as it appeared that the real property of the defendants was within the limits of the Dissentient Schools in the said town of Levis, which schools were in fact in the exercise of their powers, openly and publicly, and with the knowledge of the Superintendent of Education, and had alone the right to impose and receive the assessments of the rate-payers; and that the defendants were assessed for the support of the said Dissentient Schools, had been so assessed for a number of years, and had in fact paid to the trustees of the Dissentient Schools their assessments for the year 1859 and 1860; that the rate-payers so paying to the trustees of the Dissentient Schools, a body established and exercising its functions *de facto*, could not be disturbed by the School Commissioners or other persons pretending that the trustees were not a legally established body; that if the School Commissioners asserted that the trustees of Dissentient Schools had not the power or rights which they claimed, a writ of *Quo Warranto* was the proper remedy, and not an action against the rate-payers who were willing to support the Dissentient Schools; and, moreover, that the plaintiffs could not in any case have succeeded in the present action, because, as pointed out by the defendants' counsel, the plaintiffs had failed to shew that they had in their proceedings observed the formalities required by law. The action was, therefore, dismissed with costs, *sauf à se pourvoir*.

IMPORTANT COMMERCIAL CASE IN MONTREAL.

Aug 1864

Mr. D. A. P. Watt, a commission agent and wheat buyer in Montreal, actively engaged in carrying on a large business, and who hitherto has always met his engagements honorably, has been bound over to appear at the Quarter Sessions, on a charge of obtaining property with intent to defraud. The charge is based on his having given in payment for a purchase of wheat, a cheque for $9,000 on the Bank of Montreal, without having funds at the Bank to meet it. The evidence before Justice Coursol showed that the cheque was dishonored, but that Mr. Watt had been in the habit of having large sums at his credit in the Bank, amounting sometimes to as much as $150,000. The following is the judgment pronounced by Justice Coursol, in committing Mr. Watt for trial:—

"The inquiry involves a charge of obtaining property with an intent to defraud, against the defendant, who appears to have been one of our business men, actively engaged in carrying on a large business, and who, before this transaction, always met his engagements honorably. The offence is one newly created by a recent statute of our Provincial Legislature, 18 Vic., cap, 92, section 11, now section 73 of cap. 92, Consolidated Statutes of Canada. No enactment corresponding to this one is to be found in any Imperial statute, and, therefore, I am without any precedent to guide me. For these reasons, I have taken time to consider the conclusion I ought to arrive at, as to whether the accused should be committed for trial or discharged. In the first place it is necessary that I should call attention to the marked distinction made by our statute between this offence and that of obtaining property by false pretences with intent to defraud. In the latter, apart from the intent to defraud, there must be evidence that a false pretence was used to induce the proprietor to part with his property; whereas the clause of our statute above referred to renders the party obtaining property, with intent to defraud, simply liable to prosecution for misdemeanor. The subtle distinction to be found in every book as to what constitutes the false pretence, within the meaning of that statute, proves that, in England, much uncertainty prevailed respecting this crime, and I take it for granted that our Legislature had in view to punish fraud when practised without any false pretence, lessening only the punishment to imprisonment in the common gaol instead of in the Penitentiary, which may be given when false pretences are used, and it will hereafter be argued, and no doubt decided by competent authority, whether such a clause applies to this case,—and whether it extends to all cases of commercial dealings, between buyers and sellers, where fraud may be imputed. In the present case the facts sworn to are:—1st. That the accused obtained from Cuvillier & Co. a large quantity of wheat, the sale having been made by Mr. Heward, as agent, for cash on delivery. 2nd. That on the 22nd of June last this delivery was completed, and upon a demand for payment made on the 24th, the defendant said he could not pay before Monday, the 27th, but would send Cuvillier & Co. a cheque on the bank, which would be good at one p.m. on that day. 3rd. That the cheque was presented twice on that day, and payment refused. 4th. That on the 24th of June the defendant had no funds in the bank, but that on the following day he had funds there sufficient to meet the cheque, but later on the same day he withdrew part of them, if not all, by different cheques. 5th, That the defendant knew he was in difficulty, and would not be able to pay for the wheat, as one of the witnesses verily believes. It is evident, therefore, that all the material facts are established, and that which remains only is to judge of the intent. Was there or not an intent to defraud? I consider that it would not be proper for me to express any opinion whatever upon that point, as I would, in doing so, assume the functions of a jury. A jury is the proper tribunal to consider the question of intent, and it is therefore on that ground that I have come to the conclusion to require bail from the defendant for his appearance at the next Court of Quarter Sessions, where the learned Crown Officer prosecuting, as well as the learned counsel for the accused, will have every opportunity of being heard, I believe, in this, the first important case that has arisen upon that clause of our statute, and in which the commercial community at large may be said to be interested. Having distinctly stated that I would express no opinion as to whether the accused had an intent to defraud, I make no allusion to the circumstances elicited in the cross-examination, namely, that it sometimes happened that merchants in good credit gave cheques when they had no funds, and that it is not unusual to post-date cheques. This usage may or may not be fraught with danger, but it is not for me to express now my views upon it. The defendant to appear on the first day of September next, at the Court of Quarter Sessions, and in the meantime bail to be taken, himself in $5,000, and two sureties of $1,000 each.

Dubuc 28 April 1815

. Cash Dr. to Sundries				
. To Capt. Mackay ℔ Half Yearly allowances from 25 Oct to 25 Mar	21. 2. 11			
℔ 200 days Bat & forage for year 1815	45. 10. 8		66	13 7
. To Capt Delagorgendier ℔ Half Yearly allowances from 25 Oct to 25 Mar	21. 2 11			
℔ 200 days Bat & forage money	45 10. 8		66	13 7
. To Capt. Finlay ℔ Half Yearly allowances from 25 Oct to 25 Mar	21. 2 11			
℔ 200 days Bat & forage money	45 10. 8		66	13 7
. To Capt. Faribault ℔ 200 days Bat & forage			45	10 8
. To Lieu. Burke ℔ " " " "			9	7 6
. To Lieu. Mackay ℔ " " " "			9	7 6
To Lieu Lacuoy ℔ " " " "			9	7 6
. To Doct Fortier ℔ " " " "			9	7 6
. To Lieu Larkin ℔ " " " "			9	7 6
. To Lieu Perras ℔ " " " "			9	7 6
. To Lieu Baby ℔ " " " "			9	7 6
. To Lieu C. Burke ℔ " " " "			9	7 6
. To Ens Decourse ℔ " " " "			9	7 6
. To Ens Edge ℔ " " " "			9	7 6
			£339	6 5

29

. Sundries Dr. to Cash			
. Lieu. Burke ℔ dft to Lamontagne		37	4 8
. Ens L. ℔ Delagorgendier & Fortiers Mess & Music funds		10	15 "
. Capt. Delagorgendier ℔ balance of his pay & allowances		93	17 6
. Ens Venault ℔ balance of his pay		15	2 2
. Lieut A. C Bourke ℔ balance of his pay & allowances ℔ order fav of Lewis Thomas		19	18 4
	£	180	17 8

THE EXTRADITION CASE.

JOHN ANDERSON IN THE COURT OF COMMON PLEAS.

NEW AND NICE POINTS RAISED.

ARGUMENTS OF COUNSEL PRO AND CON.

John Anderson, the excaped slave, from Missouri, accused of murdering Thomas F. P. Digges, who attempted to capture him while he was making his escape, was brought up in the Court of Common Pleas on Saturday, under the Writ of *habeas corpus* issued by that court to the sheriff of Brant, the officer to whose custody the prisoner was committed pending the decision of the Government on the application for his surrender to the United States authorities. The Judges, Chief Justice Draper and Justices Hagarty and Richards, took their seats on the Bench at half-past ten o'clock. The Court was crowded with spectators, but through the admirable arrangements of the sheriff there was no confusion, and the proceedings suffered no interruption.

The writ having been handed in by the Sheriff of Brant, the various documents in the case, consisting of the original commitment, the order of re-committal issued by the Court of Queen's Bench and the depositions of the various witnesses taken before the committing magistrate, were read by Mr. FREEMAN, Q.C., and then filed among the records of the Court.

Mr. FREEMAN then proceeded to say that his learned friends Mr. M. C. Cameron and Mr. Hodgins appeared with him on behalf of the prisoner, when

The Court interposed, and said that only two counsel could be heard on each side.

Mr. FREEMAN said that being the case, he would state briefly some of the propositions which, with his learned friend, Mr. Cameron, he should submit to the Court. He should contend that the prisoner was entitled to the writ by which he was brought before the Court, and to have the matters which had been brought against him inquired into; that the evidence was not sufficient to put him on his trial for the crime of murder, assuming that he was entitled to the protection of the British law; that the treaty required that the charge should be first laid in the States, and that the evidence did not show that any charge had been there laid against him.

Chief Justice DRAPER—Do I understand you to mean simply before any one of the States or before the Federal Government?

Mr. FREEMAN said the charge must be made before some authority appointed by the Federal Government. He should contend further, that, even if we were bound to administer the law of Missouri, the evidence did not show that the State had any power to pass such a law as that proved, and it would not be presumed that she had such a power, she being a mere municipality in relation to the General Government; that the word "murder" mentioned in the treaty meant murder according to the laws of both countries, and if not, that by the treaty itself and our statute the crime charged was to be determined by the laws of Canada. The learned gentlemen proceeded to argue at some length in support of the first proposition—namely, that the prisoner was entitled to the writ of *habeas corpus*—and was proceeding to quote "Hurd on Habeas Corpus" in support of his view, when

Mr. ECCLES, Q. C., rose and said it might save the learned gentleman some trouble if he were to state at once that the Attorney General did not take any objection or exception to the writ or to the right of the Court to inquire into all the circumstances under which the prisoner had been arrested and committed. So far from such being the Attorney General's desire, he (Mr. Eccles) might state that that Minister had given every assistance in furtherance of the prisoner's object. Indeed, not only had he given his assent to the course pursued, but he had undertaken to pay all the expenses of his learned friends.

Chief Justice DRAPER—Then, do I take it, the first point is conceded.

Mr. ECCLES—Yes, your lordship.

Mr. FREEMAN then said the second point on which he should argue was, that the evidence was not sufficient to put the prisoner upon his trial for murder, assuming that he was entitled to the protection of the British law. He should not enter into a discussion here of the reasons why the law of murder should be as it was. He believed if there was one law better understood than another, it was that of murder. The principles upon which the law of murder were governed were so simple, that they were better understood than those of almost any other law. It was, therefore, enough for him to say that homicide was not necessarily murder—that the illegal slaying of an individual was not necessarily murder. To amount to the crime of murder, the homicide must be committed under circumstances which, in law, implied malice aforethought by the party committing it; for homicide might be excusable or justifiable, or it might be simply manslaughter and not murder. There was no doubt that, under the British law, a man had a right to protect himself by force from the loss of life, the deprivation of his liberty, or to prevent any one of his natural rights from being taken away from him. Not only could he do this by the exercise of his natural strength or physical power, but, by express provision of the law, he had a right even to resort to the use of arms. It was proper, therefore, that they should consider, first, what were those rights, and, second, whether Anderson was about being deprived of such a right as, according to British law, he was at liberty to defend. He should refer briefly to a celebrated authority on the subject—Blackstone. In page 130 of that work, Carr's edition, there was a passage peculiarly applicable to this part of the case. After summing up several articles on the subject of human rights—the right of private property, the infringement of those rights, the security of the personal enjoyment of those rights, &c.—the article finally said:—"In these several articles consist the rights, or, as they are frequently termed, the liberties of Englishmen, liberties more generally talked of than thoroughly understood, and yet highly necessary to be perfectly known and considered by every man of rank or property, lest his ignorance of the points whereon they are founded should hurry him into faction or licentiousness on the one hand, or a pusillanimous indifference and criminal submission to the other. And we have seen that these rights consist, primarily, in the free enjoyment of personal liberty and of private property. So long as these remain inviolate, the subject is perfectly free; for every species of compulsive tyranny and oppression must act in opposition to one or other of these rights, having no other object upon which it can possibly be applied. To preserve these from violation, it is necessary that the constitution of parliament be supported with full vigour, and limits, certainly known, be set to the Royal Prerogative. And, lastly, to vindicate these rights, when actually violated or attacked, the subjects of England *are entitled, in the first place to the regular administration and free course of justice in the courts of law; next, to the right of petitioning the sovereign and parliament for redress of grievances; and, lastly, to the right of having and using arms for self-preservation and defence.*" These, then, being the rights of the subjects of England, the next question which arose was what was the position in which Digges and his four slaves wished to put this man, and what was the extent of the deprivation which they sought to accomplish when they were hunting him, and when he was resisting their violence? What was slavery, and what did it involve? What was the state to which a man in slavery was reduced? It was to nothing less than that of a mere brute—a condition in which he did not possess one of those rights referred to by Blackstone—a condition in which, as Mr. Cobb said in his book on slavery, after repeating the words of the above extract, there was an absolute deprivation of everything that Blackstone said belonged to the British subject. Mr. Freeman was proceeding to read extracts from Cobb, to show the helpless condition of the slave, when he was interrupted by

Chief Justice DRAPER who inquired if any of the opinions expressed were the result of adjudged cases?

Mr. FREEMAN said he had several adjudged cases, and proceeded to quote a case from Cranch's Circuit Court Reports (American) where an indictment for cruelly beating a horse in the street was referred to in the argument to justify an indictment against a master for killing a slave, showing that a slave, in the eye of the law, was only on the footing of a brute, and could only resort to the laws applicable to brutes to obtain any satisfaction for any wrong, in the form of ill-usage, which he might receive at the hands of his master. Mr. Freeman then proceeded to read, at great length, from the reports of the anti-slavery society and other documents, including advertisements of runaway slaves, in order to show the wretched condition of the slave and the barbarous cruelties to which he was subject without a remedy, contending that, in attempting to free himself and secure the privileges of a free man, he was fully justified in taking the lives of those who resisted him, if such resistance was likely to be successful. If Anderson were guilty of any crime at all in slaying Digges, it certainly, in his (Mr. Freeman's) opinion, did not amount to murder. The next point which Mr. Freeman said he would discuss was—did the evidence show that Anderson did more than was necessary to secure his freedom? Here he would refer to the judgment of the learned Chief Justice of the Queen's Bench; and he regretted he felt it his duty to say he could not concur in the conclusions which his lordship drew from the facts. He (Mr. Freeman) had to complain of the way in which his lordship described the transaction. He spoke in two places of Anderson having turned upon Digges and stabbed him. Now he (Mr. Freeman) wished to warn their lordships from assuming, as such statements as these might possibly lead them to do, that Digges, who was going towards Anderson, really was not a party to the meeting, and that Anderson turned out of his course, for such was not the fact. The judges ought really to be careful that the evidence was not made

Quebec 9 May 1815

. Sundries Dr. to Cash			
. Eus Decourse on full & Bordeau	37	12	10
. Lieu Vigneau on full of Do money	7	8	10
. Lieu Mackay on full of Pay Do	41	3	5
. Lieu Lutkin on full & bordeau	39	3	5
. Capt Mackay on full & dillo	102	13	11
19			
. John Jones Dr. to 2 Hours Rent 32.0.0			
& 2 Vigneau — 3.10.0			
— pas. Expences to & from Montreal — 17.13.0			
paid auction &c to White & Languedoc — 41.4.0	94	7	"
. Lieu Baby on full & bordeau	37	4	7
. Capt Tonnancour on &c	21	"	
. Lieu Peras on full	9	7	6
25	399	1	6
. Capt Tarbault Dr to Sundries			
. To Col Taschereau & his sum £17.10.			
. To Cash & Balance on full 16.8	33	10	8
1 Jun			
. Go a Judgt Dr to Sundries			
. To Ch Boyington & his pay from 25 Aug to 8 Mar. 15.12.4			
. To Cash paid T. Douglas on full being his Executor — 85.15.6	101	6	10
5			
. Sundries Dr. to Cash			
. P Lanoir on full 37.4.7			
. Col Taschereau do 209.5.0			
Jun 8. Dr. Fortier on do & 9.7.6	255	17	1

but stronger than it deserved to be. The Chief Justice in another part of his judgment, used the phrase "rushed upon him and stabbed him," implying that an indefinite number of blows was struck until death was accomplished. The evidence, in his (Mr. Freeman's) judgment, carried no such conclusion. He would briefly quote that part of the evidence which had reference to this matter. The first witness who described the scene was Baker, as follows:—"Digges said he told him to go in and eat dinner and he would go to Givens' with him. He further stated that he started to go to the house. He (Digges) thought Anderson was going in. He then broke and ran away. He (Digges) called out to the black boys to catch him. They ran in a circle and after running for some time, when Digges was going over a fence, Jack *came in contact with him and stabbed him.* I saw one cut on his right side. When I saw him, the Doctor said he would die from the wounds. Digges was going to stop him and return him to his master, McDonald, in slavery. It was in that pursuit that Digges was stabbed and got his death blow. As they were making a circle Digges was getting over a fence Jack was coming towards him. Digges tried to stop him and he, Digges, was going to take hold of him to stop him. Jack was coming towards him and stabbed him. As Digges got over the fence they came in contact, and he received the stab. Digges had gone to the fence to stop him, *so he said to me.*" Benjamin F. Digges, son of the deceased, in his evidence in reference to this point said:—"Father also ran after him. Don't remember if he hollowed, *but he went after him. The nigger and our men ran in a circle, father and I went across; and father had just got over the fence. The nigger and he met; did not hear any words pass.* They had run across our woods pasture before this happened."

THOMAS P. DIGGES, also a son of the deceased, testified as follows:—"My father told him he could not let him go without a pass, as he would be held responsible. He told him to go to the house and get his dinner, and he would go with him to Charley Givins' and see about the matter. He started into the house. The nigger was going very quietly. All at once he started off and ran. He said he told his niggers to catch him. *They started after him, and he went with my brother; he was not able to go so fast. After they ran round some time the nigger met him. The nigger ran at him and stabbed him. He had a little stick in his hand, and as the nigger ran at him he struck at him. The nigger cut him a little in the wrist. Then he stabbed him in the breast. The blow stunned him, and he turned to leave and his foot caught in something, and while he was in the act of falling, or had fallen, he stabbed him again in the back.* My father was about thirty miles from McDonald's. He died in the same county.

Chief Justice DRAPER pointed out that the treaty seemed to provide that evidence should be taken in the country where the offence was committed, and this requirement seemed to have been overlooked.

Mr. FREEMAN said the only evidence before the court was that taken before the committing magistrate. He then proceeded to dwell on the fact that the extracts which he had just read did not warrant the construction put upon them by Chief Justice Robinson. There was not the slightest warrant for believing that more than a moment's time elapsed between the striking of the first blow and the striking of the second; there was no evidence to show that Anderson could have any reason to believe that the first blow had been effective so far as to relieve him from the violence which Digges was using and urging others to use; and so far from Anderson having turned out of his course of flight to meet Digges and stab him, the evidence showed that they met solely through Digges and his party having crossed his path. Even the violence which Anderson did use was not enough to save him from further pursuit. Although Digges was lying on the ground, the slaves continued to chase him; his capture seemed paramount to everything else; even the life of Digges; showing clearly that Anderson did not misjudge his peril, and that the blow which he struck was indeed a stroke for his liberty.—The peril in which he was placed when intercepted by these people—the cruel and merciless torture he would have to undergo if he again fell into the hands of his master—was no doubt fully present to his mind. It could not be expected—it would be unreasonable, and contrary to all law to expect—that an individual placed in his situation should be held accountable for murder, even though it were true that, after striking the first blow and continuing his flight, he did turn back on seeing the pursuit continued and strike a second time. Mr. Freeman contended forcibly and at some length that, under all the circumstances, the homicide was quite justifiable, or, at the most, it only amounted to manslaughter; and that the Judges, who were the interpreters of the law, could determine this point without reference to a jury. It was a proposition of law and not one of fact—to be drawn from the evidence—whether Anderson had, or had not, been guilty of murder. The question for the minds of the Judges, he (Mr. Freeman) apprehended, was not whether a jury *might* come to the conclusion that it was a case of murder, but whether a jury *ought* to come to that conclusion. Mr. Freeman's third proposition was that the charge should be first preferred in the States; and he contended that, even if the words of the Treaty did not require it, as he clearly thought they did, the nation demanding the extradition of a fugitive should initiate the proceedings in its own country in order to show what their law was, and that the fugitive was amenable to it. The fact of criminality ought, in the first place, to be clearly established by them, more especially if our country was required to render up criminals according to laws existing in their country which did not exist in ours, and not according to our laws, which, under the circumstances of such a case as this, would afford them protection. Having dwelt for some time on the words of the treaty, to show that the intentions of the framers was as he had represented, Mr. Freeman proceeded to his next proposition, which was that, even if we were bound to administer the law of another country, we were not bound to administer the law of Missouri which Halliday had been called to prove, because there was no evidence that the State had the power to make the law, or, if it had, that it had been legally passed. The treaty under which the Court was acting was a treaty between England and the United States; Missouri was not a government capable of making treaties with foreign powers; she did not occupy the dignity and majesty of a nation. At least, as he had said, they had no proof of it, and the proof to make such a law, in the absence of absolute sovereign authority, must be the first step before this country could listen to any demand for the surrender of a fugitive. Mr. Freeman's next proposition was that the word "murder" in the treaty meant murder according to the law of both countries. In support of his argument, he quoted from "Phillimore on International Law," volume one, page 413, where it was laid down distinctly that two circumstances were to be observed in case of extradition—first, that the country demanding the criminal must be the country in which the crime was committed; and, second, that the crime charged must be a crime equally known in both countries. He also referred to the case of one Kane, whose extradition was demanded from the United States, reported in 14 Howard 103, in which this argument was used by the American lawyers.

Mr. Justice HAGARTY—Was there a *habeas corpus* in Kane's case?

Mr. FREEMAN—Yes, my lord, a writ of *habeas corpus* was got, but I don't find any decision upon it. Mr. Freeman then went on to say that his last point was that, by the treaty and our statute, the crime charged was to be determined by the laws of Canada. The treaty contained a proviso to the effect that, such and such things should be done, upon such "evidence of criminality" "according to the laws of the country in which the fugitive has taken refuge," as would justify the apprehension and committal of the party "if the offence had been there committed." The import of this language, he conceived, was very plain, and could bear no other construction than that which he had put upon it. There would have been some show of reason in demanding a prisoner under the laws of the country from which he had escaped, instead of under the laws of the country in which he had sought an asylum, had there been no such proviso as this. The interpretation which the Chief Justice had given to the words was, he thought, opposed altogether to the correct meaning. It was not intended by the Legislature to provide that a prisoner should have the benefit of the ordinary rules of evidence, for he would have that under any investigation conducted in this country; but it was intended to provide expressly that the "evidence of criminality"—the facts, in other words—should be fully established according to our laws before he was given up. He would now refer to a couple of rules of construction, adopted by the United States Courts, which he thought were important in referrence to this subject. In 2 "Cranch's Circuit Court Reports," 390, he found the following: "Where rights are infringed, where fundamental principles are overthrown, where the general system of the law is departed from, the legislative intention *must be expressed with irresistible clearness* to induce a Court of justice to suppose a design to effect such objects." In 7 Mass. reports, 523, he read:—"The natural words of any legislative act, according to the common use of them, *when applied to the subject matter of the act*, is to be considered as expressing the intention of the legislature, *unless, the intention so resulting from the ordinary import of the words be repugnant to sound acknowledged principles of national policy. And if* that intention be repugnant to such principles of national policy, then the import of the words ought to be enlarged or restrained, so that it may compat with those principles, unless the intention of the Legislature is clearly and manifestly repugnant to them." Then, again, Lord Coke, in 8 reports, page 817, said:—"The good expositor makes every sentence have its operation to suppress all the mischiefs; he gives effect to every word of the statute; he does not construe it so that anything should be vain or superfluous, nor yet make exposition against express words, but so expounds it that one part of the act may agree with the other and all may stand together. For the best expositors of all acts of Parliament in all cases, are the acts of Parliament themselves—by construction and conferring all the parts of them together. All acts of Parliament shall be taken by a reasonable construction to be collected out of the words of the acts themselves, according to the true intent and meaning of the makers." There was another rule laid down by the Barons of the Exchequer in Heyden's case and to be found in 3 Reports, page 7, as follows:—"For the sure and true inter-

Quebec 30 Aug 1815

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. Do of Mr Coates for his proportion		3	18 8
. Do Capt Grant	do	6	8 8
. Do Capt Mackay	do	6	8 8
. Do Capt Delagorgendiere	do	6	8 8
. Do Capt Fraser	do	6	8 8
. Do Capt Finlay	do	6	8 8
. Do Capt Campbell	do	6	8 8
. Do Capt S Mackay	do	6	8 8
. Do Capt Fauteaux	do	6	8 8
. Do Capt Rolette	do	6	8 8
. Do Capt Lesperance	do	6	8 8
. Do Lieut Forsyth	do	3	18 8
. Do Lieut Larue	do	3	18 8
. Do Lt Perreau	do	3	18 8
. Do Dr Fauteaux	do	3	18 8
. Do Dr Mackay	do	3	18 8
. Do Dr Mekette	do	3	18 8
. Do Dr Galeneau	do	3	18 8
. Do Dr Laurent	do	3	18 8
. Do Dr Johnston	do	3	18 8
. Do Dr Burk	do	3	18 8
. Do Dr Fraser	do	3	18 8
. Do Dr Savage	do	3	18 8
. Do Dr Larocque	do	3	18 8
. Do Dr Prudergast	do	3	18 8
. Do Dr Larkin	do	3	18 8
. Do Dr Beaulieu	do	3	18 8
. Do Dr Perras	do	3	18 8
. Do Dr Montigny	do	3	18 8
. Do Dr Baby	do	3	18 8
		197	18 "

pretation of all statutes in general, be they penal or beneficial, restrictive or enlarging of the common law, four things are to be discerned and considered:—1. What was the common law before the making of the act? 2. What was the mischief and defect against which the common law did not provide? 3. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth? And, 4thly, the true reason of the remedy. It was then held to be the duty of the judges at all times to make such construction as should suppress the mischief and advance the remedy, putting down all subtle inventions and evasions for continuance of the mischief, and adding force and life to the cure and remedy according to the true intent of the makers of the act." The primary rule laid down seemed to be to inquire into the intention of the parties. Now he (Mr. Freeman) need hardly say that the efforts of the British government had been persistently directed, for half a century or more, against that which the people of Missouri now asked them to do. Not only had the British people and government taken a permanent stand against slavery, but they had earned a name and fame enjoyed by no other nation of ancient or modern days for the philanthropy which they had exhibited in furtherence of their humane principles. Not only had they at the sacrifice of millions of money, emancipated all the slaves in their own colonies, but they used all their efforts with foreign nations by diplomacy on land and by force on the seas, to induce them to do the same. The emancipation of the serfs of Russia, which took place the other day, was initiated and brought about through the intervention or influence of England. And in the face of all this, was it to be believed that, in the treaty with the United States Great Britain had retrograded from this high position, so far as, without any consideratian whatever to surrender the principle of freedom and liberty to serve the interest of the slaveholder? She had done nothing of the kind! The first principle of construction as applied to the treaty showed that it was framed for the very reverse object, even had they not the testimony of its framers to that effect. Mr. Freeman then read the opinions expressed by Lords Brougham, Abinger, Denman and others, on the Creole affair, on the 14th of February, 1842, which he read in arguing the case before the Court of Queen's Bench, and which were published at the time in *The Leader*; also long extracts from the speeches of the Attorney General, Lord Palmerston and others, when the act was under discussion by the Imperial Parliament; contending, at much length, that this was strong evidence that the feeling of the people of England was utterly opposed to such a construction as that of the Chief Justice of the Queen's Bench and opposed to such a claim as that set up in this case. The second rule to be applied in the construction of the statute was—the evil that was to be remedied by it. What was the evil, he would ask, which this treaty was entered into to remedy? It was plain enough that people committing offences of the description named in it sought refuge and fled from justice from one country to the other; and this was the evil which the treaty struck at. This was obvious. Now if full effect could be given to the statute passed in accordance with the treaty, he submitted that it was against all reason to say that the enlarged construction could be placed upon those words when the statute was not expressed in irresistible clearness. He urged that when fundamental principles of justice were to be encroached upon, when natural rights were to be destroyed under color of law, it was only to be done when the legislature had expressed with undoubted clearness upon the subject. The object of the treaty being mutually to deliver up criminals, the court should inquire whether the construction sought to be placed upon it would not do a wrong instead of remedying a known evil. He read a case from 7 Mass. rep., 523, to support the argument he advanced. The learned counsel then read and commented upon a portion of the judgment of Mr. Justice Burns, and after citing a case where in a slave State the money of a slave, whether earned by labor or bestowed upon him, was held to be the property of the master, he (Mr. Freeman) proceeded to argue that that interpretation put upon the treaty which would require the surrender of the prisoner was never intended by the British Parliament and people. The law, he contended, was perfectly mutual, and based upon the doctrine laid down by Phillimore that the act for which the person was demanded must be a crime in both countries. Why then should we be required to give up a man who in the State from whence he came was looked upon as a brute. In the proposition to render him up, we must look upon him as a man. They who demanded him looked upon him also as a man when he committed what, according to their laws, was a crime; but when they made use of him and enjoyed the proceeds of his labor, they considered him only in the light of a brute animal. The learned counsel then closed his argument, remarking that he had taken the liberty of referring to the judgment of the Court of Queen's Bench. If in doing so he had used language he ought not to have done, he hoped it would be overlooked in consequence of the deep interest he had taken in this man's case. That judgment stood between him and his liberty and would have consigned him to the merciless grasp of the slave-owner. Feeling as he did that to uphold freedom was noble, he had taken it to be his duty to speak freely and as strongly as he could against that judgment; and he thought he had not shown any disrespect for the high position which the learned judges who had given it deservedly held in Canada. He was sensible that they were impressed with the tone of public sentiment in this case, and would gladly have yielded to it, but that they felt the majesty of the law demanded of them to sacrifice the finest feelings of the heart; and he believed they wished with him that their lordships of this Court might come to a different decision—a decision that would emancipate this man and bid him go forth from this temple of justice in the dignity of a British subject, in the majesty of a free man.

Mr. M. C. CAMERON said he appeared also on behalf of the prisoner. The first point his learned friend had discussed was the question whether the prisoner was entitled to the writ of *habeas corpus*. He (Mr. Cameron) thought there could be no question about that, as that writ had been granted on the treaty on several applications in England. Our statute certainly differed from the English Act in adding to the words in the commitment "until he is required by the demand of the United States," until he is discharged by due course of law; but that had reference to the clause which provided that if the demand were not made within two months after arrest. He contended that the court could not amend the commitment, nor look at anything behind it; and that if the commitment were defective the prisoner must be discharged, even though what was behind it was good. In support of this argument he cited a case in which Lord Denman held that ground.

Mr. Justice HAGARTY asked whether Mr. Cameron considered the warrant of commitment charged Anderson with murder.

Mr. CAMERON said he had not, and proceeded to argue that the charge should have been made in the United States. He cited the judgment of Baron Platt, in the Queen *vs.* Clinton (*Law Times* rep., vol. 6, page 66,) who said that "the statute must be construed by the rules of justice, not those of technicality;" "and also" that 'being charged' meant 'there charged,' which showed that unless proceedings were had in the United States the inquiry could not be originated here. He referred to this case on two grounds—first, to show the manner in which the statute was to be construed, and second, that there was to be no more literal construction than the words would necessarily import in their ordinary signification. In using these words the rules of justice as understood in a British court would apply to the nature of the act which was charged as being the offence; and if it appeared according to our law that the prisoner was resisting an act against his liberty, and killed a man in that resistance it could not be called murder, but must be reduced to manslaughter, which did not come within the treaty. He submitted that if there was the possibility of a doubt with regard to the offence, it must be given in favor of our own law instead of that of the United States, because we were called on to give up a person who had been a resident in this country for some time.

Chief Justice DRAPER thought no other principle could be applied than if he had come here only yesterday.

Mr. CAMERON did not urge the point that an hour or a year could make any difference; but it was to be assumed that he had come here for a lawful purpose, unless it was made clear that that which he had committed was crime within the meaning of the treaty. So if there were any doubt, that doubt should be in his favor, in favor of liberty. He did not think any subject of the United States, who had not put the law in motion in the States had a right to come to this country and by making a charge here against a man demand his surrender.

Chief Justice DRAPER said there might be some force in the argument if they looked no farther than the treaty; but the difficulty was with the first clause of our own statute, which departed apparently from the treaty. He had looked into the English extradition statute with France, and found that no proceeding could be had in England until commenced in France.

Mr. Justice HAGARTY remembered that there was a case in Scotland in which the person was claimed before proceedings had been taken in the country where the offence was committed.

Mr. CAMERON said the text writers on the subject seemed to think it necessary that there should be proceedings had in the country where the act was done. Otherwise there might be a detention and no proceedings ever taken, when the person would be imprisoned illegally. He then proceeded to say that we could not look upon the accused as a slave, because in this country we did not know any such thing as a slave. We could only look upon him as a man; and treat him as a freeman; and in committing the act charged, as a person who was in danger of being reduced into a state of bondage, possessing the right to resist even to the shedding of blood. If we looked at slavery at all, we must look at it with all its surrounding circumstances. Then it would be found he was not to be considered as a person, because a person means a man having all the rights and attributes of freedom. But in the United States a slave was only a chattel, according to their laws

Quebec 19 Sep 1815

.	Sundries Dr. to Cash				
.	Major Lafora in full of Musp fund	9. 10. 5			
.	Franc Laurent do	3 18 8			
.	Capt G Tonnancour do	6. 8. 8			
.	Ensign Tavernau do	3. 3. 1			
.	Capt Rolette do	6 8 8	29	9	6
	26 Oct				
.	Sundries Drs. to Cash				
.	Lt. Pendegast in full of Musp fund	3. 18. 8			
.	Major Pant do	9 15 5			
.	Ensign Venault do	3. 3. 1			
.	Lieu Faribault do	3. 18 8			
.	Adj' Hunters do	5. 3 9			
.	Lt. Melhotte do	3 18 8			
.	Regimental Fund paid Lafora and for articles for the Band	4. 15. 9			
.	Capt Ganiepy in full of Musp fund	6. 8. 8	41	2	8
	13 Nov				
.	Sundries Dr to Cash				
.	J. Jones L. paid Lt Faribault for his Music fund	1. 1. 4			
.	Capt Faribault for balance of his Musp Fund	. 8. 8			
.	Lt Bernier in full of Musp fund	3. 18. 8			
.	Lt Larue in full of ditto paid Lt Sherwood	3. 18. 8	9	7	4
	28 March 1816				
.	Sundries Dr. to Cash				
.	Capt Mackay in full of Musp Fund	6 8 8			
.	Music fund paid Wilson 25 July	0. 8. 9			
	paid Brown for advertising Montreal	1. 5. 10	1. 14. 7	8	3 3
				88	2 9

and it was said that Congress had no power to make laws affecting the character of the slave; so that if a law were passed giving them freedom, it would be repudiated by those States where slavery was recognized, and declared null and void. He referred to the fourth point of the Dred Scott decision to substantiate his point, and read also the following from the same decision, reported in 19 Howard, page 393: "Every citizen has a right to take with him into the territories any article of property which the constitution recognizes as property; and the constitution of the United States recognizes slaves as property and pledges the Federal Government to protect, and Congress cannot exercise any more authority over property of that description than it may constitutionally exercise over property of any other kind. The Act of Congress prohibiting a citizen of the United States taking with him his slaves when he removes to a territory to reside is an exercise of authority over private property which is not warranted by the Constitution, and the removal of the slave to the territory gave him no title to freedom." In considering matters between Great Britain and the United States, continued Mr. Cameron, we must consider the state of things as known in the two countries. In the United States every State had separate laws; and what might be murder in one State might not be murder in another. The United States had a criminal code of laws for the Government of the District of Columbia, the forts and arsenals of the Federal Government, and also its territory; and what was murder according to that code was declared to mean murder at common law. It was so held in the case of the United States against McGill, 1 Wash. Cir. Ct, 463; and he contended the murder we had to deal with was the murder declared in that law, and not what might be termed murder in the local law of the State of Missouri. The prisoner could not be adjudged guilty of murder unless the facts showed it clearly, and he held that a man who killed another in defence of his liberty was not guilty of that crime. He referred to a case in England where a writ for a man's arrest was directed to one person and another received and proceeded to execute it. The party arrested deliberately shot the man down, and upon being tried it was held that the offence amounted only to manslaughter. He referred also to the case of Stevenson (19 Howell's State Trials, 846), in which it was held that "where a man unlawfully attempts to arrest another and is killed, the crime at most is manslaughter." He argued from this that the prisoner was not guilty of murder in slaying his pursuer, who, unless we recognized Missouri law, had no authority to detain him. No case was found in which a slave was held responsible under British law for any offence committed necessary to assert his right to freedom; and he (Mr. Cameron) thought the law laid down in Somersett's case good law, and that a slave had the same right to assert his liberty as a freeman. He quoted from the judgment of Lord Mansfield in that case, as follows:—"The state of slavery is of such a nature that it is incapable of being introduced on any reason moral or political, but only by positive law which preserves its force long after the reasons occasion, and time itself from whence it was created is erased from memory. It is so odious that nothing can be suffered to support it but positive law; whatever inconvenience therefore may follow from the decision, I cannot say this case is allowed or approved by the law of England, and therefore the black must be discharged." Then, Mr Cameron argued, laws made in any state applying to slavery could not be acknowledged in this country; and referred to Story's "Conflict of laws" (sec. 104, p. 191) in support of the point—"The state of slavery will not be recognized in any country whose institutions and policy prohibit slavery." He also referred to Cobb, who, in his work on slavery, p.128, said, "If the residence of the slave in a new domicile be *animo remanendi*, there can be no doubt that to continue his status as a slave would be to introduce a new system of servitude violative of the policy of his domicile where such a system is not recognized but may possibly have been abolished by law, no nation could gain of another through comity to change its social system or to establish within its bounds an institution contrary to the policy of its laws. The conclusion is manifest, that a master removing to a non-slaveholding state with a view to a change of domicile, and carrying with him his slaves, would thereby emancipate them." If this doctrine was true, the moment Anderson put his foot on our soil it gave him his original rights, and we could not recognize any law which would have the effect of reducing him back to a state of slavery. He then again read from Cobb—"The ingredients necessary to place a slave in a state of insurrection or rebellion are, that he should be openly resisting lawful authority, and that this resistance should be by such force as indicates an intention to maintain it to the shedding of blood;" and argued from this that Anderson in resisting Digges was in rebellion and in killing him was not guilty of murder, but of manslaughter, and that his offence was a political one, for which he could not be surrendered. Assuming that some of those seceding gentlemen at the south shot Major Anderson and afterwards sought refuge in Canada, would we give them up? No, for the offence would be a political one. Now, if a slave be considered as always at war with his masters and the law, the moment he got away or attempted to arrest his liberty, he placed himself in rebellion and was guilty of a political offence.

Chief Justice DRAPER said the citation was merely a text-writer's opinion, and must go for what it was worth. It was not judicial authority.

Mr. CAMERON assumed that if a man was not recognized as a citizen and was kept in slavery, he must be considered as an enemy and as hostile to those who kept him in servitude when he resisted the authority of the law, in the framing of which he had had no voice whatever. He spoke at some further length upon this point, and went on to say that under the Dred Scott decision the people of the United States had no right to legislate in any manner by which the property of any citizen would be taken away. Now, he would assume that Anderson, being an escaped slave, had committed a murder in Canada, and fled back to his master, when he again became a chattel, according to American law. The United States had no power to give up chattels; so that if a demand were made by Canada for Anderson, he could not be surrendered. Such would be the legal effect, if the Dred Scott judgment were correct; and it seemed to him (Mr. Cameron) that if a slave were a chattel and not to be surrendered by the United States, he could not be considered as a person and demanded by them under the treaty. He did not mean to say that a slave could not be guilty of murder; but if he committed an offence in the attempt to gain his freedom he could not be held as a criminal by the law of England or by our law. In interpreting the law of treaties Blackstone in his commentaries, (book 4, page 67,) stated it thus:—"No state will allow a superiority in another; therefore neither can dictate or preserve the rules of this (international) law to the rest, but such rules must necessarily result from those principles of national justice in which all the learned of every nation agree, or they depend on mutual compacts or treaties between the respective communities, in the construction of which there is also no judge to resort to but the law of nature and reason being the only one in which all the contracting parties are equally conversant and to which they are equally subject." So that in construing a treaty, the court had to consider all the circumstances of it, and decide according to our own law, and rules of construction. And Mr. Justice Porter, in the case of Saul and his creditors (17 Martin's rep. 569, 595 and 596) laid down the doctrine that "whenever doubt exists the court which decides will prefer the laws of our country to those of a stranger." Mr. Cameron also referred to the case of Andrews and his creditors, Louisiana rep. 469, and proceeded to argue against the municipal law of Missouri being recognized in our courts, quoting from Justice Best, Justice Story and other authorities to sustain his views. He next alluded to the speech of Senator Benjamin of Louisiana, on leaving the United States Senate—a speech the sentiments of a portion of which he (Mr. Cameron) adopted as his own, but which coming from a Southerner who held a large portion of his race in bondage, seemed to him to be monstrous and abhorrent to reason and common sense.

Some conversation followed between Mr. Cameron and their lordships upon the amenability to law of the slave, in which suppositious cases were raised and discussed.

Mr. CAMERON concluded his argument by saying that, according to Blackstone, life and liberty was a man's natural right; and Lord Chatham had declared that "Whatever was a man's own was absolutely his own; no man had a right to take it from him without his consent. Whoever attempts to do it attempts a wrong; whoever does it commits a robbery." In reference to this language, who could say that this man, when he was claiming that which was his own, was guilty of a crime when he stabbed him who attempted to prevent him gaining his freedom. He contended that Anderson must be discharged, that he was entitled to his freedom. If it was a crime, it was one which was taken up by millions of men, and when they spoke some heed should be given to them. He meant to say that the opinion of the people should have great weight in courts of justice, not that it should prevent their doing what under the law they ought to do, but he would say that opinion guided the law and gave meaning and intention to the law. It was undoubtedly the opinion throughout the length and breadth of the Provinces that any man who had stood in the position of a slave, and who had asserted his right to freedom even to the shedding of blood, should not be given up. That opinion should be considered, though of course it was not to change the course of the court in judging of what the law was. It would be hard to hold this man guilty of murder, and that that signification should be given to his act in order that he should be given up to bondage and slavery.

Mr. Justice HAGARTY asked whether Mr. Cameron, laying aside all question of slavery, contended that if a man killed another who was arresting him for violating some local law or by-law of Canada—not known in Missouri, and sought a refuge there, he would be given up on demand.

Mr. CAMERON thought he would, because he would possess the same rights as other people.

Mr. Justice HAGARTY—Ah, that is the slave again—there is the difficulty.

Mr. CAMERON said that the rights of the slaves and the rights of freemen were so dissimilar, it was almost impossible to give any example. If they re-

Dublin 28 Sept 1816

1814	John Stewart Esq Dr To Cash		
Nov 5	paid Certificate for apprehending		
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that England had entered into no bargain to deliver up slaves charged with crime; and that in this particular case, it must be shown that the offence was murder according to our laws, and all the circumstances must be considered before surrender.

Mr. Freeman made a few remarks in support of the proposition that the treaty was never intended to apply to slaves.

Mr. Hodgins said he was not engaged in the case, but would like to call the attention of the court to an extract from Bouvier, a learned writer on American law, which he would like to read.

Mr. Justice Hagarty said no doubt he would be able to find the work in the library, and could refer to it.

Mr. Eccles, Q.C., said Mr. Harrison and himself appeared to represent the Attorney General. As he had stated at the opening of Mr. Freeman's argument, it was the desire of the Attorney General to aid the prisoner as far as he could do so consistently with his duty as the chief law officer of the Crown, and to give him every facility in his power for procuring the judgment of the highest Courts of this Province. His learned friend, Mr. Freeman, had addressed the Court at very great length on the various points which he thought were material to the interests of his client, and he (Mr. Eccles) endeavored to follow him through the greater portion of his argument in order that if he heard anything from his learned friend in the nature of a legal point he might notice it and answer him. But he must say that both his learned friends appeared almost to have forgotten their position. They had seemed to imagine that they were addressing the Speaker on the floor of the House on some new law which was advisable or necessary as a safeguard against slavery, or were addressing some public meeting on the hardships which the slaves endured. Now he (Mr. Eccles) had no pamphlets, no anti-slavery books, no advertisements of lost slaves. He had come into the Court to argue a plain proposition of law, just the same as if it were a matter of contract between two men, because he could not view it in any other light. The construction of the treaty was the simple question, and it was a contract short, concise and plain in its terms; and if his learned friends had read from Chitty on contracts they would probably have found more law and have rendered more assistance to the Court. Now, the division which he made of the points was—1. Was the law of Missouri to be called in to aid in determining the question of murder, or forgery, or any other crime mentioned in the Treaty; if so, then, 2. Did such a law exist there as proved by Halliday; 3. Was Digges acting in obedience to that law at the time he was stabbed; 4. If Digges was acting legally, then the question of excess on the part of the prisoner might arise on the trial, if a trial should take place; and, 5, the question under the treaty and the statute was not whether the prisoner was guilty of murder, but whether the evidence of criminality were *deemed* sufficient by the justices according to the laws of this Province. He laid stress on the word "deemed," because the treaty did not say that it was to depend on the sufficiency of the evidence, but rather upon what the justice before whom the prisoner was brought deemed sufficient. Now, as to the first head, whether the law of the foreign state was to be brought in to aid the Court in disposing of the matter, the question was made a point of argument when the matter was before the Queen's Bench; and he (M. Eccles) then contended what he would now contend before this Court. Suppose instead of this being a case of murder it came under one of the other heads of crime mentioned in the treaty; suppose it to be a case of forging some instrument in violation of some particular State law of one or all of the United States, but which was not a forgery either by the laws of England or the laws of Canada—what would be the result? That the accused should be surrendered? Certainly. The crime of forgery was within the treaty, and was it to be used as an argument against the surrender that it was not a forgery according to the laws of England or Canada? He (Mr. Eccles) did not think such argument could be advanced for one moment, with any reasonable hope of its having weight with the Court, because it was contrary to all reason. Such a state of things never could have been intended when the treaty was entered into. In a case of slavery, how could they draw a distinction? Laws of the State of Missouri which made slavery legal and which rendered the traffic in slaves as unobjectionable as the traffic in pork and beef, must be looked upon just the same as laws of the same State against forgery; and it was no answer to say that because such laws were inconsistent with ours that, therefore, the stipulations of the treaty must not be carried out. They must inquire what was legal there, or how were they to know whether the man was in the words of the treaty, "a fugitive from justice,"—a person who had escaped from the penalties of the laws of the land which he had left. If, then, this Court did as the Queen's Bench had done, look at the law of Missouri to know what the extent of Digges' authority was, then the next question would be whether Digges was acting in obedience to it. A question had been raised as to the sufficiency of the proof of such a law existing. Well, all he could say was, it had been proved in the same manner as all other matters of fact were proved—namely, by witness. A professional man had been put in the box, and he had shown section by section the existence of the law under the authority of which Digges had endeavored to arrest the prisoner. He (Mr. Eccles) understood it to be urged as an objection that Digges was arresting the man with the view of returning him to his owner and not taking him before a justice of the peace, as shown by one of the sections he should have done. Now the simple answer to this was that Digges' intention could not be inquired into. He had authority to arrest, and therefore the arrest was legal. His intention, in the face of the authority to do what he was doing, was quite immaterial. This had recently been determined in their own Courts in a case of trespass, where a party under the authority of a landlord's warrant had entered a house for the purpose of turning the people out of it. The question, then, was the law as it was in proof before the Court sufficient to justify Digges as far as he went. He thought there could be no question about it; it did not admit of argument. If Digges, then, was clothed with legal authority for what he was doing, then came the question was any resistance to him justifiable, or were the consequences of any such resistance justifiable under any ground whatever? That was a point, too, upon which there could not be two legal opinions. It was as well understood as the first principles of A B C. A resistance to legal authority was unquestionably illegal, and if death was the consequence it amounted of necessity to murder. It was unnecessary to quote any authorities on that head. Well, supposing the Court should be of opinion that the law of the State of Missouri was not to be considered here, then came another question. Assuming Digges had no authority to arrest but was himself a trespasser, did this justify the resistance offered by the prisoner. They all knew it did not. They all knew that by the law of England and Canada, every man was allowed to defend his person and property with only just such a degree of force as the circumstances warranted. But if he once exceeded that, subject to certain rules, then he was deprived of that justification which otherwise he would have been able to plead. From the evidence, they saw that Digges was endeavoring to check the flight of the prisoner and prevent him escaping from those whom he (Digges) had himself put in motion. Under the circumstances, very little resistance would have been necessary. The evidence told them that Digges was a small man; comparatively weak; not a man who was likely, without the aid of any deadly weapon, to have inflicted any injury upon the prisoner; or, in fact to have been capable, from lack of physical power, to have stopped him in his course. So it was evident, as he had said, that a very small degree of force on the part of the prisoner would have been quite sufficient for his purpose. But they had it in evidence that, after he had used the knife once and made a thrust which might have been fatal, he turned and inflicted another. Now he (Mr. Eccles) did not ask the Court to decide if that was an excuse which deprived the person guilty of it of any right, if he ever had any; but he did ask it to decide that it was a question necessary to be referred to a jury to say whether it was so or not. Now as regarded the general proposition laid down by Mr. Freeman, that not only was liberty a right inherent in human nature, but it became a second nature to fight for, and that every man had the right to protect his liberty to the utmost of his power, were no doubt such as they all agreed in; but in applying them to this particular case, he had gone all astray. Mr. Freeman supposed a State of slavery, such as existed in Missouri, to be something horrible and revolting to all mankind. But he (Mr. Eccles) could suggest to him a series of questions which might arise in England. The Court was aware that at certain times it had been found necessary to press into the Queen's service, both military and marine, such persons as could be laid hold of. Such persons being pressed against their will, they were bound just as much as any slaves, and were bound to fight, not for their own freedom, but for their country. The law which sanctioned this was still the law. If it became necessary to-morrow to enlarge the navy or the army and a sufficient number of persons were not to be found ready to volunteer, persons would be pressed into the service against their will, and they would be made slaves to all intents and purposes. Suppose, under such circumstances, a soldier or sailor has some conscientious scruples in the matter or would prefer remaining neutral, and suppose in endeavoring to make his escape the authorities of the army or the navy are told to arrest him, and in a struggle for freedom he kills one of these persons, most unquestionably he was a murderer. Such a case as this, he thought, destroyed all the force of his learned friend's argument, and drove him back to the original proposition. He must come come back ultimately to the point, was the law of slavery in existence at the time of the homicide of Digges, and at that particular place? That was the question. Now they all knew that as far as the British army and navy were concerned the laws were much harsher than any to which his learned friend had referred. They knew that any soldier for a serious breach of discipline was made a target for a regiment to shoot their bullets at. They all thought this very severe, but it had been found necessary in order that discipline might be preserved, and discipline was as necessary among the slaves of the Southern States as among soldiers and sailors. He (Mr. Eccles) was

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sure no one felt the desire stronger than he did that all the slaves in the world should be free and at liberty to make contracts to work when he pleased and at what he pleased. This was an idea which he and and they had learnt in childhood. But when they were before a Court of Law simply to discuss and construe law all these ideas with which their minds were filled should not for one moment obtrude themselves before them. Therefore he only answered to the very broad manner in which Mr. Freeman had made the proposition that every man had a right to fight for his liberty, that it must be only a fight for liberty where the law of the place entitled the person to liberty. So in this case the question was not whether this man Anderson had a right as a man to fight for his liberty, but whether the laws of the State of Missouri allowed him a right for his liberty. Then with regard to the words used as to the manner in which an inquiry was to be made here, and the reference to the laws of Canada, he must say that when the matter was before the Queen's Bench he was not prepared to treat the matter in the same way in which the learned Chief Justice was disposed to treat it. His lordship gave more weight to those words than he was disposed to urge in the argument, but he supposed that his lordship was right. The question raised was whether the proviso of the treaty and the wording of the act required that the evidence should be sufficient according to our laws, or whether the offence itself should be sufficiently established by evidence as an offence within the meaning of our laws. It did strike him before that the only meaning that could be placed on these words were that it should be an offence against the laws of our country, or within the meaning of those laws, and that only where it was so could the justice apprehend or retain. But the learned Chief Justice had put a rather different construction upon it, and that construction seemed by all those who had written on the subject in England—he meant all those competent to write—to have been fully concurred in. And, therefore, he supposed their lordships would treat the proviso as applying simply to the evidence. He did not mean as applying to the simple rules of evidence, or as applying to the admission or rejection of certain evidence, but rather as referring to the evidence being itself sufficiently strong to sustain the charge. That is, in all cases of murder to be tried here, there must be evidence of some sort, either direct or circumstantial, that homicide has been committed by the individual arrested. If there was no such evidence, then it would not be evidence of criminality "according to the laws of this Province," and as applied to this case, the prisoner could not be committed. The *Law Times* of England had just arrived, and in speaking of the Court of Queen's Bench it took the same view as the Chief Justice. It was well known that all who wrote for that valuable paper were men of the first class as law writers. The paper which he held in his hand—[*The Leader*]—contained what he presumed was a correct copy of that article. True, as an article, it could not be quoted there as an authority to guide the court, any more than could be quoted as authorities to guide the court the numerous blue, red, green and yellow books and pamphlets which his learned friend had read from; but, like them, it could be urged by him as part of his argument. [The learned gentleman then read from the article in support of the views he had urged.] Now he could not understand the argument of Mr. Freeman that the word "murder" in the act meant murder according to the laws of both countries. He could not understand him unless he meant that there could not be a murder committed in either country unless it was equally a murder if done under the same circumstances in both countries. If that was his argument, then there could be no such thing as murder arising in either country under a state of things specially provided for by act of parliament. Take, for example, such a case as an act being passed giving express authority to a collector of rates, or any other public servant, to distrain under certain circumstances if they thought proper, and such a person in a particular case did distrain, and the person distrained upon took down his gun and shot the officer on the spot—were they to say that that was not murder in this country, because we had not the same act? So that was an argument that hardly required an answer. Most undoubtedly murder, in its original signification, was the same in all countries. That which was murder in the United States was necessarily murder here and all over the world. But if his learned friend meant that the circumstances under which homicide amounts to murder must be the same in both countries, then the treaty would be of no use, because in nine cases out of ten homicide arises out of some peculiar statutory provision which is in force in one country and not in another. His learned friend spoke of the power of the State to make such a law as that which was in evidence. Well, he (Mr. Eccles) never heard that argument before. It was certainly entitled to the credit of being a purely original one. He had always understood that the law of a foreign country must be established in every court in which it was necessary that it should be shown. But that they should go a step further and prove the power to pass the act in the country where it has been in force perhaps for years was something that he had never heard mentioned before; and he fancied all he need say in answer to that was that the court would presume that which was shown to be in existence as a law, that a law properly passed. It was well known that the acts of justices of the peace sometimes became the subject of litigation, and it became necessary to show that the person professing to be a justice of the peace was a justice of the peace. How was that done? Not by producing his commission from government but by showing that he had acted, and the Court presumed he had done so legally. This was a proposition well understood, so the Court could not do otherwise than presume that an Act of Parliament passed by a foreign State was passed legally and with proper authority. There was another argument used in the *Law Times*, the paper from which he had read, and which had been urged in support of the prisoner in this case. The word "person" which was used in the Treaty was italicised, and this word it was contended meant a free citizen who shared in the protection of the laws of the State and not a slave who was looked upon as a mere chattel. This was a point which he thought his learned friend might have pressed further; for he thought if ever the case was decided in England, it would be decided on the broad basis that the slave was not a free agent and therefore could not be guilty of a crime; and he thought, after all, that on their lordships coming to a decision the whole question would turn on the free agency of the slave. The second proposition of his learned friend was that the evidence was not sufficient. He (Mr. Eccles) was afraid the evidence was too strong to admit of any such argument. There could be nothing clearer. The identity of the man was beyond question, the proof of the facts was indisputable. It was true that they were mere youths who gave evidence; that several years had elapsed since the transaction of which they spoke; and that their memories could not be so thoroughly relied on as those of older persons. But at the same time they must bear in mind that the child who saw his father receive his death blow was not likely to forget it. Put aside the evidence of the slave Phil—lay aside, also, the dying declaration of the father—take simply the evidence of the boys, and it is conclusive on the subject of the homicide, but not on the subject of the identity. That, however, was established beyond question by the other witnesses. Now, he repeated, this case lay in a very small compass. The legal construction of the treaty was the first point to be settled, and that would be more easily determined than the construction of many ordinary bonds and contracts. When the meaning of that was ascertained, they had to look to the law of Missouri and see what that was. That was very plain from the evidence. They had to see whether Diggs was acting under the authority of that law when, in endeavoring to enforce it against a slave who was unquestionably twenty miles from home and on the eve of escape, he received the fatal wound which terminated his life. If all these points were found to be in the affirmative, then the prisoner was clearly guilty of murder, having escaped from justice on the other side, and has nothing to fall back upon but the bare question of whether a slave is a sufficiently free agent to commit a crime.

Chief Justice DRAPER inquired whether the learned Counsel had nothing to say on the objection taken to the legality of the form of the commitment?

Mr. ECCLES said his learned friend had, he believed, looked into the authorities and might assist the court on the point.

Some discussion took place on the subject between the Judges and the learned Counsel, but Mr. Eccles, while expressing the opinion that the warrant should have charged "murder" or killing and slaying with malice aforethought" instead of "feloniously and maliciously killing and slaying," could not venture to say whether the warrant might be amended, or whether the order of re-committal of the Queen's Bench rendered it good.

Mr. R. A. HARRISON said the arguments in which he had to address on behalf of the Crown resolved themselves into eight propositions—first, to determine whether the act is crime or not, we must look to the laws of the place where the act was done; second, while investigating the facts to see whether the crime has been committed, our law of evidence is to govern; third, that to slay an officer or other person having authority to apprehend or detain, is murder within the treaty; fourth, that we are bound to look at the law of Missouri and what has been done under it, to determine the question of legal custody; fifth, that under the treaty we have only to look at the fact of legal custody, and have no right to sit in judgment on the laws of Missouri; sixth, that it is for the magistrate here to investigate, not to try and determine; seventh, that if the fugitive be surrendered we have nothing to do with the consequences of the surrender with regard to the trial, whether it will be just or not,—that is, the result has nothing to do with the judgment of this Court; and eighth, that whether the law of Missouri is looked at or not the evidence shows that if the prisoner were a white man accused, there is sufficient to put him on his trial on a charge of murder. He (Mr. Harrison) admitted that no sovereign State was in any manner bound by the local or municipal laws of another State; and he admitted also that slavery was a local or municipal law; but contended that it was one thing to be bound by a slave law and another thing to look at incidentally. We were not bound to look at it in the sense of returning a slave. If a slave escaped, he was free, and we were not obliged to recognize the right of his master to take him back. But Anderson was not demanded by his master as a slave, but by the United States for an alleged crime of

murder committed in Missouri, one of the United States, against the laws of that State. Now, crime could not be separate from locality. Crime was an offence committed by an individual within the jurisdiction of a State against the laws of that State, and subjected him to punishment. He referred to 1 Heath J., Mure v. Kaye, 4 Taunton, p. 1. A person had remained in the State of Missouri, the facts adduced were unquestioned, there is no doubt he would have been punished by that State for the act he had done. In order to escape that punishment he fled to Canada; and the question was whether Canada, or whether Great Britain by treaty, was under any treaty or obligation to surrender to that State for punishment. Now, if all nations had the same laws of crime and punishments, there would be no difficulty in surrendering fugitives who had fled from justice. But that was not so; what one State might call a crime another might laud as a virtue; and what one would call a just and impartial trial, another might call a cruel mockery. And thus it was that a treaty or compact became necessary between two sovereign powers for the rendition of fugitives. Between Great Britain and the United States we had the Ashburton treaty; and the question whether Anderson was to be surrendered, was one of law, determinable under that treaty and that enabling statute passed to give it effect. He took it to be our first duty to see that our laws were properly administered, that our statutes were properly construed, and not to be carried away by our feelings against slavery to assist in what we might think a righteous, but what might be an illegal act. As mentioned by his learned friend, Mr. Eccles, this case was simply a question of law upon a contract. The treaty, it was singular, was not restricted to the subjects and citizens of either power. It was not stipulated that either power should give up to the other only citizens or subjects, but persons charged with the commission of the crimes enumerated. It was perfectly true that in the Southern States the slaves had not the rights of a citizen; but we must bear in mind the distinction between the rights of a citizen and the liability to punishment for crime of persons within their jurisdiction. The question was whether Anderson, although a slave, was liable to commit crime. That he was liable from the law of Missouri, which expressly declared that slaves so acting should be deemed guilty of crime, and also by other laws to the effect that if a slave committed a crime he should be punished for it, in some cases by death, in which event the master was compensated by the State. Therefore he (Mr. Harrison) submitted that Anderson was capable of committing a crime and liable to be punished, as any white man was liable. He then read the clause of the treaty relating to the surrender; and contended that there was sufficient legal evidence according to the laws of Canada or Great Britain to establish a *prima facie* case of murder. The Crown said it was murder because when Anderson killed Digges he was in lawful custody in the State of Missouri. Now, it was contended on the other side that we must shut our eyes upon this law of Missouri; that as it acknowledged slavery, it was so horrible we could not look at it. That position had not been maintained universally in England. There were cases even in that country—and modern cases too—where she had not only looked at the law of slavery, but had carried it out and allowed judgments to go against her own subjects for interfering with the rights of slave-owners. He referred to the case, 1 Dodson, 95, and the case of Louis, 2 Dodson 210; also Santos v. Illidge, 3 L. T. repts. Oct. 13, 1860, page 155. It was contended that murder in the treaty meant murder common to both countries. He had not been able to find any authority under the statute, but by analogy to the constitution of the United States, in which there was a clause in some respects resembling our extradition treaty. It provided "that a person charged in any state with treason, felony or other crime who shall flee from justice and be found in another state, shall on demand of the executive authority of the state from which he fled be delivered up." The facts in connection with this, to which he desired to direct attention, were these:—By the laws of California certain frauds were made statutable larceny. A resident of that State committed such an offence and fled to New Jersey. His surrender was demanded, and resisted on the ground that the crime intended by the article of the constitution must be common to both States, and as New Jersey had no such statute as California she was not bound to surrender. The court held that the crime was against the laws of California and need only be made according to the laws of that State, and ordered the fugitive to be delivered up. (*In re* Fitter, 3 Zabriskie's New Jersey Repts., 311-321.) He (Mr. Harrison) submitted that slavery had really nothing to do with the determination of this case. It had been said that if we delivered up Anderson, and he were acquitted, he would be returned to a state of bondage; but that, he submitted, was no answer to the duty which existed on our part to surrender him. It was none of our business, in deciding upon the case, to consider whether he would be acquitted or [illegible]. The treaty provided that certain things should be done before the party should be delivered up, evidence must be adduced to [illegible] evidence must be the same as if we were investigating a crime committed in our jurisdiction; and we must not go out of our way in the hearing of evidence. Legal evidence must be produced according to the laws of Canada. That was the well understood law of the land.

Mr. Justice Richards asked whether Mr. Harrison went so far as to say that whatever was declared murder by the laws of the United States must be regarded as murder in Canada.

Mr. Harrison said he would have to go so far if he wished to make his argument and that of Mr. Eccles sound. He went on to say that it was the duty of the court to determine the question of law, not to judge of the degree of the crime. He next proceeded to argue that the offence could not be reduced to manslaughter, for Anderson had used more force than was necessary to accomplish his object, supposing Digges to have had no authority to detain him, which he had. But this was a question for a jury to determine; this court was called upon only to say whether evidence had been adduced sufficient to put him upon his trial, if the offence had been committed in Canada. He then explained the difference between the English and Canadian statutes, and said that if the latter went beyond the treaty we were bound by its provisions. It was an obligation into which we had voluntarily entered, the reduction of the comity of nations into a positive rule which gave the United States the right to [illegible] all we had bound ourselves to give. Looking at our statute it would be found that several of the objections raised were answered. In the first place it was objected that the crime was not a federal crime. Under our statute, however, it was sufficient if it was a crime against any one State. Canada thereby agreed to treat each of the States as contracting parties. Another point raised on behalf of Anderson was that he should have been charged in the United States before our legal machinery could have been put in motion. Now, in answer to this, he (Mr. Harrison) submitted that the word "charged" meant "accused," and in support of this referred to the English statute, in which he pointed out that the words were used indiscriminately. He contended that all that was required was that the person should be "accused" of the crime. Now, he would suppose that "charge" meant something more than "accused"—that it meant a legal charge, some act done in the administration of justice; yet there was nothing in the treaty to say that that act should be done in the United States, or to show where it was to be done; but if they referred to our statute strong evidence would be found that it should be done in Canada (sec. 1.) It might be replied that the statute provided for receiving copies of evidence taken in the United States (sec. 2), but that had universal application. It did not say that in every case copies "must" be produced, but that they "may" be produced. The intention, he submitted, was that in cases where the original warrant was issued upon depositions, those depositions might be produced; but it did not require that they should be produced. He argued from this that a charge in the United States as a foundation for proceedings in Canada was unnecessary. In regard to the warrant of commitment, it was contended that it was defective for two reasons—first, that it did not expressly charge the crime of murder; and second, because the prisoner was committed until discharged by due course of law, and not until surrendered. As to the first objection, it was submitted that it was not necessary in a warrant to have the same technical precision as in an indictment; and that where the warrant came into court contemporaneously with the *certiorari* and the evidence the Court would not discharge upon this defect, if any, in the warrant.

Mr. Justice Hagarty asked whether the Court was to look behind the warrant to ascertain the jurisdiction of the magistrate.

Mr. Harrison said he did not look upon the warrant as evidence of the magistrate's decision; he reported that to the Government.

Chief Justic Draper—How then shall we see that the prisoner has been committed for murder?

Mr. Harrison said he started with this proposition; that it was not necessary to have the same particularity in a warrant as in an indictment. He admitted that in an indictment it was necessary to have the word "murder," but in the commitment were the words "maliciously and feloniously stab and kill."

Chief Justice Draper—Do they amount to charge of murder.

Mr. Harrison—If Anderson killed with malice aforethought it was murder, but the difficulty was to say whether the killing was with malice aforethought. Both Mr. Eccles and himself felt very much impressed with the objection, but there was nothing to show that murder was not apparent on the warrant, even although the word was not there.

Chief Justice Draper said that might be, but here they had certain words which imported one offence, that of manslaughter; how could they say then that they imported another offence, which could have been technically described.

Mr. Harrison said the only thing indicating the intention of the magistrate was the word "maliciously;" but he did not wish the Court to judge of the intention from that. The depositions were before the Court, and it had not only the right but was bound to look to them as to the value of the charge. On this point he referred to the King against Taylor and others, 7 Donelly and Ryan, 622. It had also been said

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that the warrant was bad because it did not set out the evidence. He submitted that it was not necessary to set out the evidence, and there was authority to show that it was not—King against Walters, 8 McCedern, 75. It had further been stated that the warrant was bad in not following the treaty in the words "there to remain until surrendered." He pointed out a difference between the English and Canadian statutes on this point. In the first it was simply "there to remain until delivered pursuant to requisition," while ours was "there to remain until such surrender or until such person be discharged according to due course of law." He felt very much impressed, as he had said, before with the objections as to the insufficiency of the warrant, but was of the opinion that the commitment of the Court of Queen's Bench supplied the defect in the original commitment.

Mr. Justice HAGARTY—Can you give us any authority for that opinion?

Mr. HARRISON said he had looked for authority, but was unable to find it. He finished his argument by remarking that he had no desire unduly to press the case against the prisoner.

Chief Justice DRAPER felt that Mr. Harrison had done only what it was his duty to do—to press every point that ought to be pressed in order that the law might be perfectly satisfied.

Mr. FREEMAN replied very briefly, merely putting forward again one or two of the arguments which he had previously urged.

Chief Justice DRAPER said the Judges would desire to dispose of the case as quickly as possible, but he was very much afraid it would not be in their power to do so before the close of term, which was on Saturday next. They would not however, feel it necessary to go into the merits of the case should they decide against the legality of the form of the commitment. In this event, the prisoner might be brought up for judgment on Saturday. He would accordingly be remanded until then.

The Court then rose at half past seven o'clock, the case having occupied eight hours without any intermission.

THE GLASGOW MURDER.

REPORT OF THE TRIAL

Jessie McLachlan sentenced to be Executed

GREAT EFFORTS TO SAVE HER.

A NEW INVESTIGATION ORDERED BY THE CROWN.

The trial and conviction of Jessie McLachlan, at Glasgow, for the crime of murder, have caused an almost unprecedented excitement in the public mind in Scotland, and in Great Britain generally. The case is a very mysterious one, and opinion is divided as to McLachlan's guilt. Meanwhile the press are discussing the pros and cons of her guilt, and numerous public meetings have been held throughout the country for the purpose of memorializing the Home Secretary for respite until further inquiry into the mysterious circumstances attending the case shall have been made. Just before the last steamer sailed, a monster meeting for this object was held in the city Hall, and another also took place in Edinburgh. The proceedings at both meetings were orderly and unanimous. In deference to public sentiment, the Crown had ordered an official inquiry into the case, to discover if any new facts could be established which would entitle the condemned woman to the clemency of the Crown. Pending this inquiry, we propose to place before our readers a *resume* of the facts, and of the evidence adduced at the trial.

DISCOVERY OF THE MURDER.

A person named John Fleming, accountant, occupied a house in Sandyford Place, Glasgow, but during the summer his family resided at Dunoon, and he generally visited them from Friday to Monday morning. On Monday, the 8th of July last, after one of these visits, about noon, after spending the morning at his country home, he went to his house which was occupied by his father with a servant named Jessie McPherson during his absence. His son, who had come with him in the morning from Dunoon, opened the door, and what followed we give from his evidence at the trial:—

"His son said to him, 'There's no use sending anything in for dinner here to day, as the servant has run off, and there's nobody to cook.' Alluding to the old man, he said, 'He says he has not seen her since Friday night;' and he added, 'He says her room door's locked.' She may be lying dead for a' that he knows.' This statement had surprised the witness, who immediately proceeded to inspect the premises, in company with his son and old Fleming. On going into the kitchen they noticed that the fire was out, but saw nothing to attract attention. From thence they passed to the servant's bedroom door, which was locked, the key being gone. He then went into the pantry, from the door of which he took a key, applied it to the bedroom door, which opened at once. On entering the room, they found it in a half darkened state, the blinds of the two windows of the room were down, and the shutters half closed. The room appeared to be in a state of confusion. The servant's bed stood at the back of the door, projecting about a foot or a foot and a half from the wall. The bed stood along the wall, with its foot towards the back of the door, and its head towards the window. The back of the bed was close to the wall. On passing to the foot of the bed, witness discovered the servant's body naked from the small of the back downwards. The upper part of the body, including the head, was lying with the feet towards the window and the head towards the opposite side of the room, inclining towards the door in a slanting direction. The body was covered with some dark clothing. He exclaimed, 'Good God! here she's lying here!' or words to that effect. His father and son reiterated similar words of surprise, and said, 'This is dreadful,' or something to this effect. He did not touch the body or remove the clothing in any way, but immediately left the room and went out to get some of the neighbours in. He failed in this, however, as most of the gentlemen residing in the row were from home, and one—a Mr. Dawson—whom he met on the street, declined to enter the house, saying, 'You've said enough to frighten me from my dinner.' He succeeded in finding Dr. Watson, North street, who accompanied him to the house. On going into the deceased's room, he (Dr. Watson) placed his finger upon the body, and said, 'Quite cold; dead for some time.' The police came soon after. Mr. Chrystal, the grocer, likewise came in—then the police. He and Dr. Watson went down stairs to where the body was. The covering over the body seemed to be a dark piece of cloth thrown over it rather than a dress. The body was not in a dressed state, only the dark cloth thrown over it. Soon after the police took charge of the house."

Suspicion under the circumstances naturally fell upon the old man, notwithstanding the improbability that a man, said to be 87 years of age, would perpetrate such a crime. He was arrested, but after a short time released; a variety of circumstances appearing to bring home the crime to one Jessie McLachlan, who had formerly lived in the house, and continued on the most intimate terms with the murdered woman. The principal links in the chain of evidence adduced against the woman accused, consisted of certain articles of clothing belonging to the deceased, and which were traced as having been sent by the accused along the Great Western Railway to Ayr; and some silver belonging to Mr. Fleming, which she had pledged at a pawnbroker's in Glasgow. Her husband was arrested as an accomplice, but finally the *onus* was considered as resting on Jessie McLachlan, who was committed for trial for the murder of Jessie McPherson Richardson.

JESSIE M'LACHLAN'S DECLARATION.

In Scotland, when a person is arrested charged with a crime, the authorities examine the accused, and take down what he or she may chose to state with regard to the matter of accusation. The statement thus taken down is called the prisoner's declaration. In the present case the prisoner's declaration was taken on the 14th July. She said she was 28 years of age, and the wife of James McLachlan, second mate of the steamship *Pladda*. She last saw Jessie McPherson in her own house at the Broomielaw, on Saturday evening, the 28th June last. On the evening of Friday the 4th July, about seven o'clock, she went to see her landlord's agent, but, not finding him in, immediately returned home. She was not again out of her house till after 10 o'clock, when she went out to convoy home a Mrs. Fraser, a seaman's wife, living in Anderston. She reached home at a quarter past 11, and soon after went to bed, not getting up again till between seven and eight o'clock, on Saturday morning. Her son, a child three years of age, kept in bed with her. She went on to describe how she was occupied till 12 o'clock on said Saturday, when she went to the pawn office of Mr. Lundie, to pawn some silver plate, which she said old Mr. Fleming had brought to her the previous evening, shortly after eight o'clock, asking her to pawn it for him. He said he was short of money, but did not wish his name to be given, and directed her to pawn it in the name of Mary McKay or McDonald. She obeyed these instructions, and got £6 10s or £6 15s from the pawnbroker. In the afternoon Fleming came and received the money, and offered her £5 for having done his message, requesting her not to mention it to any person. She said £5 was too much, but finally accepted £4. This £4 she paid the same day to her landlord's agent. She had other money of her own, however, in the house at the time, amounting to £5 10s. the balance of £11 10s which she had got from her brother, John McIntosh, in April and May, on his return from New York and Quebec, by the "St. George" and "United Kingdom," on which steamers he had served as a seaman. She went on to say that on the same Saturday she took to a dyer's a brown merino dress, to be dyed black, and a grey cloak to be cleaned, both of which articles she wore the previous night when convoying Mrs Fraser home. On the same Saturday she sent a girl named Adams with a box to the station of the Hamilton Railway, addressed "Mrs. Bain, Hamilton, to lie till called for." It was empty. She had intended that it should lie at the Glasgow station, her intention being to put some clothes in it at the station, when she started on a visit she proposed to pay to a Mrs. Shaw at Hamilton in a few days, the clothes being too heavy for the girl to carry. She mistook Mrs. Shaw's name, and made it Mrs. Bain. She did go to Hamilton on the following Tuesday, and got the box lying at that station.

On the 16th July the prisoner Jessie McLachlan was again examined. In her declaration then made, she gave more particulars about the box sent to Hamilton and her own visit there. She also stated that on the 8th or 9th of the month, she despatched to Ayr, by the Ayr railway, a tin box, addressed "Mrs. Darnley, Ayr; to lie till called for," and containing two silk dresses, two cloaks, and a plaid, which belonged to the murdered woman Jessie McPherson. These dresses, &c., were sent to her house from Jessie McPherson by a little girl on Friday, the 4th July, with a message that they were to be sent to certain places to be dressed and cleaned. Hearing of the murder, she got frightened and adopted this mode of getting rid of them.

It will be seen below that the prisoner afterwards made a statement, which gave an entirely different version of her connection with the murder.

THE TRIAL.

On Wednesday, the 27th September, the trial commenced, and an immense concourse assembled, and after the usual preliminaries, the prisoner pleading "not guilty," a special plea was put in to the effect that the murder was committed by the elder Mr. Fleming.

The younger Mr. Fleming was then examined, and subsequently his son, who testified to the occurrences of Monday, as already noted.

OLD MR. FLEMING'S EVIDENCE.

The following is the evidence of old Mr. Fleming:—

James Fleming, residing with John Fleming, accountant, examined by Mr. Gifford—How old are you, Mr. Fleming? I am very deaf, sir. (The question being repeated.) I am 87 years of age the 9th August last. What is your employment? I am employed in my son's office; generally useful, hanging on and going about. I take charge of house property for my son. I take charge of the letting of the property, hiring mechanics for work, and so on. I live in my son's house, in Sandyford Place. I have lived with him for two or three years—all the time he has been there. I've been aye stopping there. I have stopped with my son ever since he had a house in Sandyford Place.

Did you know the late Jessie McPherson? Yes.

When did you first know her? When she was a servant with Mr. Fleming the first time.

How long is it since she left the first time? She went to take up a bit shop for herself. I canna tell you exactly, but she went with another comrade with her to take up a shop, and they sell't grocery goods.

Is that a few years ago? Yes.

Then she came back to Mr. Fleming's again? Yes.

How long is that since? Years ago, I reckon. In July last, my son resided part of the time in Dunoon. He had a cottage there. He spent part of the week in Glasgow, and part in Dunoon.

Who had charge of the house? Jessie McPherson; she had the whole charge at Sandyford.

Two other servants were at Dunoon? Yes; there was still another servant at home, too.

Besides Jessie? Aye; there was another servant who assisted her in the kitchen.

Did that servant go to Dunoon? No.

What was her name? She's a witness here, Sir; I canna tell you her name.

Is it Martha McIntyre? I dare say it is.

Or is it Margaret M'Innes.

The Court—No matter; she will tell you herself.

Do you remember Friday the 4th of July last? Yes.

Did you breakfast in Sandyford Place that

morning with your son and grandson? I did breakfast that morning in Sandyford Place.

Did Jessie McPherson serve you that morning? Yes.

Tell us where you went on Friday? She had been throng for three days with washing, and she was finishing the clothes and dressing them.

What o'clock? All her master's shirts were laid by, and mine were finishing, and they were hanging on the screens at the side of the fire. I came hame to my dinner at the usual time, about four o'clock. I took my dinner, and after I took my dinner I had a custom of going to the West End Park to take a walk after dinner. I went up, and after a couple of hours I came back again. I was fashed with cold feet, and there was no fires in any of the rooms. I went to the kitchen fire to get my feet warmed. I went down to the kitchen, and Jessie McPherson made my tea.

What o'clock? It would be weel on for eight o'clock.

She made me tea, an' poored it oot, an' took a cup alang wi' me.

Lord Deas—Was that in the kitchen?

Witness—Yes; in the kitchen. Efter I got the tea by, I yoked to read. I had always the papers i' my pouch, an' I was i' the habit o' reading them. Then I stopped till about half past nine o'clock ——

Mr. Gifford—In the kitchen?

Witness—At the kitchen fire. About half-past nine I said I would go an' mak' ready for bed. I then went to my bed up the stair.

Mr. Gifford—What o'clock did you go to bed?

Witness—It would be about half-past nine, and I left Jessie McPherson workin' awa' in the kitchen, ye ken; an' i' the mornin' I was waukened wi' a lood squeel.

Mr. Gifford—On what flat of the house was your bed room?

Witness—The flat above the kitchen. I was waukened i' the mornin' wi' a lood squeel; efter that ollowed ither twa squeels—no sae lood as the ither, but it was a very odd kind o' squeel I heard. I jumped oot o' the bed, an' heard no more. All was by i' the course o' a minute's time. It was'na past a minute till a' was quiet. I heard nothing an' saw nothing. I took oot my watch. I was i' the habit o' keepin' it under my pillow. It wis exactly about four o'clock, an' a very clear mornin'. Well, I gied awa' to my bed efter I thought a' wis quiet. I thocht Jessie had got somebody in to stay with her. There was a body she ca'd a sister, and wis stoppin' wi' her, or else some ither body. So when I heard a' was quiet, an' na noise, I gaed awa' to my bed again, and was'na lang in till I fell asleep again, and I lay till about sax o'clock i' the mornin'. She used always to come up wi' a little parritch an' milk to me i' the mornin' about eight o'clock. She didna come that mornin'. I was surprised that she didna come as usual, and I lay still till nine o'clock. Then I raise an' put on my claes. I forgot whether I wush mysel' or no, but I went coon the stair exactly after that. I went to her door and I gave three loud chaps, an' nae answer; an' I tried the sneck o' the door—the latch—an' the door wis locked. There was no key i' the door, so I gaed to the store room door. The store room door and the bed-room door is quite adjoinin' each ither maistly, an' there's a bit window for goin' doon into the area for cleanin' the window, an' it was thrown open—standin' open. It didna used to be that way; I never saw it up that way before. I drew it tae and gaed up to the kitchen again. The fire was wake an' I put on some coals on it, as it was still burnin'. This was on Saturday mornin', you know. After that, gentleman, the bell was rung at the main door, and I gaed up to see who it was. I found that it was the next door neebor—I forget his name—his servant, and she wanted the len' o' a spade you ken, frae the place at the back door. She said to me that their people were all doon the coast the night before. As I said, she was wantin' the len' o' a spade, so I gaed down to the washhouse to get the spade. When we got down there the door was locket, and there was no key in it. I did not get the key, and the girl did not get the spade. At the same time, you ken, when I went out to get the girl the spade, the back door was locket, and the key in the inside of the door, you ken.

Mr. Gifford—What o'clock was that?

Witness.—It would be about four o'clock, Sir, I think. After that Mr. Watson, the baker, his van came to the door, the bell was rung, and I gaed up. But I'll tell you first of all aboot the main-door being not locket. (Mr. Gifford—Yes, tell us that.) It was not locket; the key was in the inside. The door was on the latch; just snibbed, you know, not locket. They had gone oot by that door—there is no doot of it. And so Mr. Watson, the baker, his van came shortly after, after the servant girl was calling for the spade, and I took half a quarter loaf from him. The man was sitting on the van, but he had a little boy to hand me the half-quarter loaf at the door. So always looking and wearying, wondering what had become of Jessie that she had not made her appearance, I stoppit in till ungan 12 o'clock. I then thought I would go into the office; so I locket for the check-key, and I got it on the shelf in the pantry. So I locket the door and went away to the office to Glasgow, and stoppet a wee while there, and then went awa doon tae the Briggate to some property that I had the charge o' there. There was a water-pipe burst there some two or three days before that, and I went doon tae see if it was a' richt, and to see whether they had plastered it up; it had to be plastered up wi' lime ye ken. It was a' richt, and I cam up again to the office, and stoppet a wee while, till I suppose it would be after two o'clock. When I gaed up a' was quiet, and nae appearance o' Jess. So this would be aboot twa o'clock. I didna go oot after that that night, and I made myself some dinner, and got shot bye. And aboot seven o'clock at night the bell was rung, and a young lad cam to the door. He said he was frae Falkirk. I axed his name, and he said it was Darnley. He said he had promised to call upon Jess when he cam to toon.

I said she wasn't in, so he went away. This was just about seven o'clock on Sat—— aye on Saturday night. Weel, my shirts—there were a dozen o' them—they were on the screens on the side o' the fire, I thought I would put them bye in a set o' auld drawers I had to put them in. The screens were lying in the kitchen beside the pantry door. They had been laid or driven down. There was a pantry they kept their things in, and the screens were either laid or driven ower upon it. So I took my shirts off the screens. There was a room off the kitchen that my drawers and shirts stood in. So I laid by my shirts. There were two o' them marked wi' like blood on them. I laid them a' by, and I laid the twa on the top of the ithers. After that I made mysel' a cup o' tea.

Mr. Gifford—When would that be?

Witness—It would be eight o'clock, I'se warrant. I looked for Jess, aye thinking she wad mak' her appearance. I thocht if she had went away wi' any freen's or acquaintances, she wad mak' her appearance. However she never did. I sat up till after nine o'clock, and then gaed awa' tae my bed—made ready for bed. On Sabbath morning the bell was rung, but it was the milkman, and I didn't answer.

Mr. Gifford—You supposed it was the milkman?

Witness—Aye, well, I made my breakfast again—a cup o' tea, and I biled a herring till't, and that was my breakfast, and then made ready for the church. I went to the church in the forenoon—Mr. Aikman's church in Anderston. The church skail't and I cam' straucht home. When I was gaun to the church there was a gentleman, Mr. M'Alister, who was coming out of his own door. I spoke to him. That was a' I saw. I stayed till the afternoon kirk was going in. I took a bit of bread and cheese, and gaed awa' tae the kirk again—came home, and didna gang oot that nicht again; and the lad Darnley, that had ca'd on the Saturday nicht, ca'd again when the kirk skail't, after I came home, and axed if Jessie M'Pherson was in. I said, "No." Says he, "Is she at the church?" I said, "I did not know." He says, "If she comes oot to the toon will she come this way?" an' I said, "I suppose so." That was comin' o' the toon, ye ken. And so he went away, and I had no more calls that night, I think, that I recollect of. I stopped up till about half past nine, and I gaed awa' to my bed. On Monday morning, we had always to rise a little sooner. I had to rise about eight o'clock, and gang through the properties. We had two or three properties that paid monthly. Some paid on one week and some on another, but we had to collect it every Monday morning. So I cam' into the office, and gaed awa' to collect, and got through them, and got what I could, ye ken. I went up to the office after heud, and gaed aff my cash, what I had gotten; and then I gaed awa' hame till Sandyford again. I think it wad be aboot atwixt ane and twa o'clock. I couldna pointedly say the verra time. And a' was quiet—naething, no a word, nor naething. I kent that Mr. Fleming wad be hame; that he wad come up the water in the morning, and that he wad be oot till dinner. So about four o'clock, or may be after, young John cam' in, and his faither followed him, and I tell'd him what had ta'en place—that I had not seen Jessie McPherson since Friday night.

(At this stage of the examination the witness's son and grandson, who were in Court, were desired to leave the Court.)

Examination resumed—I told my son I had not seen the servant since Friday nicht; and he was astonished and ran away down the stairs, and his son ran with him, and me; and he gaed to the door and found the door locked; and he had the recollection to try the store-room key that was in the door, and it opened her door. And when he opened it he saw the murdered woman lying near the empty bed, and her head there, with a shirt or white sheet covering her, and a' blood, and her body was naked as she was born, downward, and she was lying on her face. So he was in an unco state tae, and he ran and got in some o' the neebors, Mr. Chrystal and some more o' the neebors. They were in directly; and then he went to the Police Office, and the police came directly and took possession, and Dr. Fleming and Dr. Watson were called. They were both on the spot directly; an' it was of no avail, you ken, the woman was gone; but it was regular that they should be called. I made all my meals frae Friday till Monday nicht. I used nae silver spoons or forks, exceptin', may be, a teaspoon. (Shown silver spoons.) Is that your son's plate? Yes. Were these things used in the house? Always when he was at home the silver plate was used. I took none of the plate out of the house. I did not give any of it to anybody on the Friday, Saturday, Sunday, or Monday. I know the prisoner. I knew her first when she was servin' wi' John. That wad be about three years ago; but my memory's no vera guid. I had seen her since she left John's service. She cam up alang wi' her husband payin' a veesit to Jessie McPherson. I saw her that night in the house in Sandyford Place. That'll be a twelvemonth ago. She and her husband invited us down to see their house, and I gaed doon. That is a year past. I saw her again since that. The Sheriff showed her tae me. I never gave her these articles or asked her to pawn them. I did not see her on the night that Jessie went amissing, or on the Saturday. I never got any money from her. I did not give her money on the Friday or Saturday. I have a little money in the bank—£150 in the Savings' Bank, and £30 in the Royal. (Shown pass-books of the Savings' Bank and the branch of the Royal Bank.) These books are mine. When I went into the pantry on Saturday morning I found the wicket open. I pulled it tae. It opened straucht outwards, and I put oot my hand an' drew it tae. It was a bit window made in the inside o' the big window, ye ken. The window was open, else I wouldna hae gotten oot my hand to hae drawn it tae me. (Laughter.) I opened nothing, but just put oot my hand and drew it tae.

Cross-examined by Mr. Clark.—My watch was correct on Saturday night. It gangs verra reg'lar; when I waukened it was exactly four, an' a fine, clear mornin'. I didna leave my bed till 9 o'clock. The first body I spoke to that mornin' was the lassie that asked me for the len' o' the spade. That wad be aboot 11 o'clock. There was naebody in the house that I saw before that time. The milk comes always between 8 and 9 o'clock. The milk comes on the Mondays same as other days, but I didna need ony that mornin' as I left early. I don't remember whether the milk boy ca'd on Saturday mornin' or no. As I said, I didna need milk on Monday mornin', as I had to gang awa earlier to town, and there is a milkshop in our property in the Briggate. I went into that shop and got a ha'penny roll and a mutchkin of milk, and that was all the breakfast I got on Monday morning. (A laugh.) I don't think the milk cam on Saturday mornin'. It's aye brocht tae the front door. I did not hear the milk-boy ring at the front door on Saturday mornin'. I did not open the door before I opened it to len' the lass the spade. I afterwards opened it to the baker. Interrogated.—Did you refuse to take in the milk that Saturday morning? I refused to take the milk. I did not require it.

By the Court.—Are you sure, Mr. Clark, that he fully understands the question?

Mr. Clark—I am persuaded he does, my Lord. (To witness)—Did you say to any one that you did not require any milk that morning? Did you mention such a thing to the milkboy? I told him I did not need it.

I did not require milk on Saturday morning. I would jist say to the milkboy, "I don't need any milk." I could speak to the boy without opening the door. I think I left it on the chain. I waited some time before I went to the door. It is likely that I would go down before I was dressed that morning. When I first saw the door that morning it was just on the latch. I can swear to that. I heard the squeel about four o'clock. When I jumped off my bed and heard a squeel I thought it might be on the street. Next there followed twa o' them; then I heard it was doon below. It was jist a kind o' squeel as if something was in distress. I thocht that Jessie had got some person in to stop with her after I had got into bed. I could not say what caused the squealing; but I heard it like as if some person was in great distress, and it was a' by in a minute. It was a' quiet after a while, and I never thocht o' going doon. If the noise had continued, then it would have been more alarming, and I would have had to

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go down or call for the police. Though she didna come back, it never adverted for me to send for the police, indeed, I was looking for her back every minute, always expecting that she had gone away wi' some of her friends. I thocht she would come back. It never occurred to me trouble or murder, or anything of that kind—I saw no marks nor anything in the house, neither on Saturday, Sunday, nor Monday. I noticed that my shirts were marked when I was laying them bye, but I never thocht upon murder, or any trouble of the kind. It never struck me that there was onything wrong. I mentioned to the Fiscal and them that examined me that I saw one or two of the shirts marked with iron ore or something like that. I thought that it might be blood. Darnley mentioned that he was a friend o' Jessie's, but I never thocht o' telling him that she was missing. I had nae business tae tell him. I never told onybody ony thing aboot it. I made no enquiry at shops about her. I never had ony quarrell or disagreement with her of any kind. There was no milk taken on Sunday, Monday, or Tuesday. Sometimes I did not even open the door when the milk came.

EVIDENCE OF OTHER WITNESSES FOR THE PROSECUTION.

Drs. Watson, McLeod and Fleming, were examined as to the condition of the body. They stated that on the body there were nearly forty wounds. The following conclusions were arrived at by the medical gentlemen from a *post mortem* examination :—1st, that the woman was murdered with extreme ferocity ; second, that her death had probably taken place within three days ; third, that a severe struggle had taken place before death ; fourth, that such an instrument as a cleaver, or a similar weapon had been used, and would most likely cause death ; fifth, that the injuries had been inflicted before or immediately after death ; sixth, that all the wounds on the neck and head, with the exception of those on the nose and forehead, had been apparently inflicted by a person standing over the deceased as she lay on the ground ; seventh, from the degree of penetration of the wounds, it appears probable that it was a female, or at least not a strong man who had inflicted them ; eighth, that the body had been drawn along the obby from the kitchen to the room in which it was found, by the head, the face being downwards, and the feet and legs dragging along the ground.

Christina Fraser—On Friday, 4th July, about half-past nine o'clock, I went to see Mrs. M'Lachlan at her house in Broomielaw. I went out of the house along with the prisoner ; we went along the Broomielaw, and up Washington street, to the corner of Stobcross street, where I parted with her. She crossed the street towards the Gushet House. It might be ten o'clock, or five minutes past ten, when we parted. I could not say what way she was going. She had on a grey cloak and a velvet drab-coloured bonnet, and it seemed to be a dark dress which she wore.

Mrs. Campbell, who occupied a portion of prisoner's house, testified to the prisoner leaving the house the evening in question, and to the following circumstances as having subsequently occurred : I could not say when I fell asleep. I did not wake till next morning, at half-past five o'clock. I was awakened by the crying of the prisoner's child. I went into the prisoner's room, and took the child out of bed and dressed him. The prisoner was not in the room. The child was alone. I dressed the child. Mrs. M'Lachlan came in about nine o'clock on the Saturday morning. She rung the bell, and I, opening the door, let her in. She had her own bonnet and cloak on. She was carrying a bundle —a large bundle—under her cloak.

Did you observe her dress? I noticed that she had on a dress which I had never before seen on her—a merino dress of reddish colour, and the back of it "pleated," and I think it was trimmed with blue velvet.

Several witnesses were examined about the box sent to Hamilton, also as to the box sent to Ayr.

Evidence was also adduced of certain articles of clothing stained with blood being found in a part of the country, in the vicinity of which the prisoner had been seen, and a quantity of plate marked with the letter F., the property of Fleming, was found to have been pawned by the accused on the night of the alleged murder.

Elizabeth Brownlie, the servant girl who called at Fleming's on the Saturday morning, to ask for the loan of a spade, corroborated Fleming's evidence on that point. He told her that the girl Jessie was out.

EXCULPATORY EVIDENCE.

George Paton, a milkman, stated that on the Saturday morning, he called with his cart at Mr. Fleming's door, about half-past seven. His boy Donald rang the bell, and it was answered immediately. He could not see who opened it. No milk was taken in. He went again on the Sunday and the Monday, and no milk was taken.

Donald McQuarrie, the milkman's boy, said he rang the bell only once, and old Mr. Fleming opened the door. He was dressed in black clothes, and said he was not for any milk. He had never known Mr. Fleming answer the bell before.

Mary Smith testified that she was in Jessie McPherson's company on the 28th June, and that, speaking of Fleming, she said : "He is just an old wretch ; he is an old villain." She said she would tell her more about him at another time, but did not like to do so in the presence of the husband of the witness.

Mary McPherson, foster sister of the deceased, testified to a conversation with deceased a month before her death, when she said that her health was quite broken with that old man.

Robert Jeffrey, police constable, spoke of finding a bag in old Mr. Fleming's bed room, on which there was a spot which he took to be blood. He found also in the room a stripe of cotton, having, as he thought, some marks of blood on it.

Alex. McCall, Assistant Superintendent of Police, gave evidence corroborating Jeffrey's.

THE VERDICT.

The presiding Judge, Lord Deas, on the fourth day of the trial, charged strongly against the prisoner McLachlan, and the jury, after an absence of twenty minutes, returned into Court with a verdict, unanimously finding the prisoner guilty of both charges, theft and murder, as libelled. The prisoner, on hearing the verdict, put her handkerchief to her face, and seemed tremulous for a moment or two, but she soon recovered her firmness. During the time taken by the Clerk of Court in making up the record, she communicated with her counsel and agents ; and at that stage, when the Judge was ready to pass sentence,

Mr. Clark said that the prisoner wished to be permitted to make or read a statement, or that some one be permitted to do it for her.

Lord Deas said that the prisoner, or her counsel for her, was at liberty to make any statement she chose.

The prisoner said—"I desire to have the statement read, my lord, for I'm as innocent as my child, which is three years old this day."

Mr. Clark then read the following document :—

MRS. M'LACHLAN'S STATEMENT AFTER THE VERDICT.

"On Friday night, the 4th July last, I went up to Fleming's house to see Jessie M'Pherson. I had been up seeing her that day fortnight, and had promised to come up that night. We generally arranged on Friday night for my coming, as she then had the most time, none of the family but the old man being at home ; and I usually went late to let the old man away to bed, because, being of a jealous and inquisitive turn, he prevented us talking freely. The old man was always very glad to see me, and very civil any time he happened to be in the kitchen when I went to see her. I put my child to bed at half-past nine o'clock. I went up North street to the house of Mr. Fleming in Sandyford place. I went to the front door, and Jessie answered the door. She told me the old man was in the kitchen, but took me down stairs. The old man was sitting in the big chair in the kitchen, when I went in. He said, 'oh, is that you, Jessie? How are you?' There was bread and cheese, and a tumbler and glass and two plates, on the kitchen table. I sat down on a chair at the end of the table next the door. Soon after the old man, without saying anything, rose and went up stairs. I gave Jessie the bottle I had brought. She filled out a glass of rum for me, part of which I took, and then poured out a glass for herself, and she took it, and then put away the bottle and glass in the press. Soon after the old man returned with a bottle and glass in his hands. He filled out scarcely a glass of spirits, and gave it to me. I tasted it, and he told me to take it up, but I did not, and he poured the rest back into the bottle. Jessie, in a displeased way, said to him that was not the way to treat a person—that he ought to send it round. He said, 'you ken, Jess, we have had twa, or three since the afternoon'—that he wouldna mind, but that Mr. Fleming had said before, when they were left in the house, that they had done well in drink, and spoke about them using so much, although the old man said that it had been used by young John. He added, 'however, if you hand your ill tongue, I'll give you half a mutchkin if you'll go or send for it.' She said, 'I've a tongue that would frighten somebody if it were breaking loose on them.' The old man said something as if to himself, but I did not hear what. He poured the whiskey into a tumbler on the table, and handed the bottle to me, and at the same time gave me one shilling and twopence, and made me (prisoner) go out for half a mutchkin. When I got back to No. 17 Sandyford place, I opened the lane door, and went in and locked the door behind me. I found the kitchen back door shut, that which I had left open. I knocked, but received no answer, I then went to the kitchen window and looked in. The gas was burning, but I saw nobody in the kitchen. I rapped at the door, with the lane-door key, and after a little old Fleming opened the door. He told me he had shut the door on 'them brutes o' cats.' I went into the kitchen, and put the money and bottle on the table. The old man locked the door and came in after me. I told him the place was shut, and I could get nothing I then said 'Where's Jessie? It's time I was going away home.' He went out of the kitchen, I suppose to look for her, and I went out with him. When in the passage and near the laundry door, I heard her moving in the laundry, and turned and went in past the old man, who seemed at first inclined to stop me. I found Jessie lying on the floor, with her elbow below her, and her head down. The old man came in close after me. I went forward, saying, 'God bless us what is the matter?' She was stupid and insensible. She had a large wound across her brow. Her nose was cut, and she was bleeding a great deal. There was a large quantity of blood on the floor. She was lying between her chest and the fireplace. I threw off my bonnet and cloak, and stooped down to raise her head, and asked the old man what he had done this to the girl for. He said he had not intended to hurt her. It was an accident. I laid her hair all down, and she had nothing on her but her polka and her shift. I took hold of her and supported her head, and bade him fetch some lukewarm water. He went out into the kitchen. I spoke to her, and said, 'Jessie, Jessie, how did this happen?' And she said something I could not make out. I thought he had been attempting something wrong with her, and that she had been cut by falling. He did not appear to be in a passion, and I was not afraid of him. He came in again, bringing lukewarm water in a corner dish. I asked him for a handkerchief and some cold water, as the other was too hot. He brought them in from the kitchen, and I put back her hair and bathed away the blood from her face, and she said she was sore cut. I said to the old man 'However did you do such a thing as that to the girl?' and he said he did not know, and seemed to be vexed and put about at what had happened. I asked him to go for a doctor, but he said she would be better soon, and he would go after he got her sorted. The old man then went ben the house again, and I supported her, kneeling on one knee beside her. In a little she opened her eyes, and came to herself, but was confused. She understood when I spoke to her, and gave me a word of answer now and then, but I could get no explanation of things from her, so I just continued bathing her head. I bathed it for a long time, till she got out of that dazed state and could understand better. I asked her whether I would not go for the doctor, and she said 'No, stay here beside me.' I said I would. I did not trouble her much with speaking to her at that time. While I was sorting at her head, the old man came into the room with a large tin basin with water, and soap in it, and commenced washing up where the blood was all round about us, drying it up with a cloth, and wringing it into a basin. I had raised Jessie to sit up, and was sitting on the floor beside her. As he was near us, he went down on his elbow, and spilled the basin with a splash when he was lifting it. He spilled the water all over my feet, and the lower part of my dress, and my boots were wet through. After Jessie had quite come to herself, I tied a handkerchief which the old man brought me at my request round the cut on the brow. I assisted her to rise off the floor, and took her over to a chair, near the bedside. She was very weak and unsteady on her feet, and she asked me to put her into bed. I was not able to do it, and asked the old man to help me, and we put her into bed just as she was. After she was put into bed I continued bathing away the blood from the nose, which continued bleeding a little. When put to bed, I took a crotchet night cap, which was hanging on the looking-glass, and put it on the top of the handkerchief. The old man was drying and redding up the blood and the water that had been spilt over where Jessie had been lying. When she had been put to bed, she appeared to be getting weaker, and lay with her eyes shut, and I said to the old man the doctor should be got now. He came and looked at her, and said, 'No, there was no fear, and that he would go for the doctor himself in the morning.' I thought she was asleep, but she had heard what was said, and turning her eyes to me, she said 'No.' I understood her to mean that she did not wish a doctor brought at present. She lay in bed till the morning was beginning to break, or till, as I supposed, it would be well on till three o'clock. She had been sleeping, and gradually came to herself again, and I thought there was no danger. Latterly, she spoke a good deal to me as I sat by the bedside when the old man was out. He sat a while by the bedside after redding up the floor ; but he rose and went ben to the kitchen, and was going about both ben the house and up stairs. I heard him chapping up the fire, and moving about ; and when I went ben

to get her a drink of water, I observed that he had put the teapot to the fire, I supposed for her. He was out and in several times, but afterwards came and sat down at the bedside, and remained there till she rose. I was only twice in the kitchen during this period—once when I went in for water to her, and once when I took my boots and stockings (which I took off after the water was spilt on them) to the kitchen fire to dry. She told me that on a Friday night, some weeks ago, there was a gentleman in the house who had remained all Thursday night in it, and until the Friday afternoon, when he left, and that old Mr. Fleming had convoyed him to the station. She said he was a friend, and she mentioned his name, but I can't remember it, and that the old man left with him at four o'clock in the afternoon of the Friday she spoke of, and that he did not return till eleven o'clock, when he was tipsy. He asked her to help him off with his coat, which she did, when she went down stairs, and to bed. Between one and two in the morning, he came down to her room, and in alongside her into the bed, and tried to use liberties with her; that she made an outcry about it, and was angry then and spoke to him next morning about it, and said she would tell his son, her master; that he begged her to say nothing about his having done so, for that he had come home the worse for drink; that unless for the drink he would never have done it; that there had been words between them ever since; that the old man was in terror in case it would ever come out about what she had told me, and that he had offered her money, but that for her own character she never meant to tell Mr. Fleming upon him; but she said she was going to Australia at any rate, and that she was determined to make the old rascal pay well before she left, and she would make him pay for this too. She said that after I went out for the half-mutchkin they had a great quarrel, and he was very angry because he had thought when she said that about her tongue breaking loose she was hinting a threat to tell me. She said they had words on the same subject during the day, and when it began again on my going out, she left the kitchen to take off her stays, which were uneasy, and that she took them off, and had her petticoats untied after that, when she was struck by him. She had given him some words on leaving the kitchen, and he was flyting and using bold language to her in the lobby after she was in the room, and she was giving it him back while loosing her stays; and that when she was there and going to take them off she went and shut the door too in his face, and that he came back immediately and struck her in the face with something and felled her. What I have stated was told me by Jessie during the time I sat with her. It was not told me all at once, but it is the substance of what she said. We did not speak on any other subject. She also asked me if she was badly cut, and I said she was, and she said when the doctor came in the morning she would need to tell him some story or other how she got it. I asked the old man once when he came into the room how he had ever allowed himself to be provoked to strike the girl after his own doings with her. He did not give me a direct answer, but just said, it couldna be helped now, although he was very sorry, but he would make everything right to Jess, and make up for it, as Jess very well knew, and if I would never mention what I had seen, he would not forget it to me. I said it was a pity I had anything to do with it, and that I did not know what to do, as I had left my child without anybody in charge of it. Jessie said the lodger would take care of him; that I could go away before the doctor came, but that if she must tell about this in the morning, or when Mr. Fleming came home, she was afraid she would just have to tell who did it, and why. This was before the old man, who said 'No, no, Jess; ye'll no need to do that;' and begged me never to say anything about this matter, and he would put everthing to rights. I said I had no occasion to speak of it, and I promised never to mention it, and Jessie and he could take their own way. He would not rest content till I would swear it, and he went up stairs and brought down the big Bible with a black cover on, and in presence of Jessie he made me swear on the Bible, by the Almighty God, that I would never tell to man, woman or child, anything I had seen or heard that night between him and Jess, and he said he would swear never to forget it either to her or me. He said that he would make her comfortable all her life. After this he sat at the bedside. About three o'clock, I would suppose it was, Jessie told him to go away ben the house. He said he was very weel where he was. She told me she wanted to rise and make water, and she got up in bed. I told him to go away for a little, which he did, and I helped her out and assisted her. She said after she rose that she felt very stiff and cold, and if she could get ben to the fire. I put a blanket around her, and called to the old man, and he and I took her ben to the kitchen. She walked ben, assisted by us, but I think she could have gone herself. She sat down on the kitchen floor at the fire on a small piece of carpet. The old man at my bidding went ben to the bed-room and brought ben the pillow and bed-clothes, and I put the pillow under her head, and the blankets on her, and tucked them in below her. Some time after that she fell asleep for a while, but wakened, and complained that she was too near the fire, and moved herself, with our help, without rising from the floor to her feet, away from the front of the fire, and turned herself, so that she lay with her feet in towards the fire and her head further from it, and between the table and the press, or in that direction. She lay in this position for a good while. The old man was sometimes about the kitchen, where I remained, and sometimes going about the house. He was ben in the bed-room more than once. After lying there in the kitchen a considerable time, Jessie got restless and uneasy, and complained of feeling worse. I thought she was getting sick, and I brought her water. In a very short time I would suppose at this time it would be between four or five, she got worse very rapidly, and she said to me to go for a doctor. With that I drew on my boots and went into the bed-room, and threw on the French merino dress, which was hanging there over my own, as it was all wet and draggled, and I put on my cloak and bonnet. As I came out of the bed-room the old man was coming down the stairs, and I said to him that Jessie was very ill, and I was going for a doctor, where would I go to? He said he didna ken where any doctor lived near, but wait a minute till I see how she is. I knew there was a doctor in the neighbourhood, and without waiting for him, because I thought he did not want a doctor, and I wished one brought at once, I went up stairs to the front door, but found it locked, and the key was not in it. I went down into the kitchen again, and he was leaning over Jessie with his hands on his knees looking at her. I went forward and asked him for the key, and saw that Jessie had become far worse than when I left her. I thought she was dying. She appeared to be insensible, but not dead, as she was moving. It was the first time I thought she was going to die, and I saw the girl was dying, and I insisted on him letting me out for a doctor. He said he would not. He would do it in his own time. I said I would not wait his time; I would get one word, whether he would or not, and with that I went up stairs again and into the parlour and opened the shutters and put up the back window to see if I could see any one stirring about the back of No. 16, or the other houses, but saw no one. Leaving the parlour to go into the dining room to look out in front I heard a noise in the kitchen, and I turned down stairs as fast as I could, and as I came in sight of the kitchen door I saw the old man striking her with something which I saw afterwards was the meat chopper. She was lying on the floor with her head off the pillow, a good piece along the floor, and he was striking her on the side of the head. When I saw him I skirled out and ran forward to the door, crying to him, and then I got afraid when he looked up, and I went back up the lobby and part of the stair, where I could not go farther, as I got very ill with fright and palpitation of the heart, to which I am subject. My fright was caused by hearing him coming out of the kitchen, and I thought he meant to murder me, and I stopped and leaned or held to the wall on the stair without the power of moving, and began to cry, 'help, help.' He came to the stair-foot and said to me to come down, he was not going to meddle me. I saw he had not the cleaver in his hands as he came; and I cried, 'Oh! let me away.' He said he would do me no harm. I said the girl is killed, and what was I going to do, and entreated him to let me away. He came up and took me by the cloak, and said that 'he kent frae the first she couldna live; and if any doctor had come in he (Fleming) would have to answer for her death, for she would have told.' I was crying, and said, 'Oh, what am I do, out of my house all the night, and Jessie killed.' He said, 'Don't be feart, only if you tell you know about her death, you will be taken in for it as well as I; come down, and I can never be found out.' I went down to the kitchen in great agitation. I did not know what to do. I was terrified because I was in the house and saw the body lying there, and myself connected with her death. He said, 'My life is in your power, and yours is in my power, but if both of us would keep the secret it never would be found out who did it, and that if I would inform on him he would deny it and charge me that I did it.' He said it was as much as our lives were worth if either of us would say a word about it. So he bade me help him to wash up the blood from the floor, but I said I could not do it if I should never move. He took the body by the oxters and dragged it ben into the laundry, and took the sheet and wiped up the blood with it off the floor. The sheet and the blankets he had thrown up off the floor on to the end of the table, and when he took off the sheet to wipe up the blood, I saw the chopper all covered with blood lying beneath it, or else it rolled out of it on to the table. I beseeched and begged of him to let me go away, and I would swear never to reveal what I had seen, in case of being taken up for it myself as well as him. He said that the best way would be for him to say that he found the house robbed in the morning, and to leave the larder window open. He brought the dresses from Jessie's room into the kitchen, and said that if I would take them away and buy a box, and take them by some railway out of the way to some place, or to send the box to some address by the railway, to be left till called for, that it never could be found out what had become of the clothes. He said that I knew very well he liked Jess, but he was sure that from the first she was not able to recover from what he had done to her at first, and when I asked him what tempted him ever to strike her, he said I knew Jess had a most provoking tongue, and that she had been casting up things to him, and he was mad at her. That he had no power of speaking whiles when she was at him, and that he had just struck her in a passion; and that even on the Sunday night before he had just been on the brink of doing the same thing to her. He 'dichted' up the floor and the lobby with a clout, and took ben the blankets and the sheet, and the hacking knife, and the bit carpet into the bedroom. He came back, and burned something, I do not know what—clothes of the girl's. He got some water about the sink in a tin basin, and washed himself. He had taken off his coat, and was in his shirt sleeves since after the time he killed the girl. His shirt was all blood when he took it off to wash himself, so he put it into the fire. He put on a clean one off the screen, and went ben to his own room and changed his trowsers and vest, I think. He then went down to the cellar for coals, brought them up and put them on the fire. The bell rang. He bade me open, but I said no, 'I'll not go to the door, go yourself.' It was the milk boy. The old man took no jug up with him. He was in his shirt sleeves when he went up, but in a coat when he came down again. He brought no milk with him. After that he brought the plate, and said I had better take this, and pawn it in Loudie's pawn in the name of Mary M'Donald or M'Kay, 5, Vincent street, and nobody could trace it. He also said I had better not pawn it, but put it away in some place with the dresses. He told me that I would get a tin box in an ironmonger's for 5s., and to take the things through to Edinburgh where I was not known, and find some water where they could be sunk and never heard of. He took out his purse and gave me £1 7s. I consented to take the things, and promised never to breathe a syllable of what had passed. He said if I did it would be my life as well as his, and that he would set me up in a shop and never see me want. I went out from the house after eight o'clock, it might be half past eight, taking the things in a bundle. He opened the back door for me, and came down and opened the lane door with the key. I went along the lane westward, and home down by Kelvin-grove street, along the Bromielaw, where I met the people coming from their work, and I went up Washington street to avoid them, and down James Watt street again, and in by the back court into my own close by the court door, and up the stair, where Campbell let me in."

[With reference to the above statement, the prisoner's law agents have published an explanation to the effect that, when they first visited her, her story was substantially as given in her first declarations; but that subsequently, on being informed of old Mr. Fleming's discharge, she gave them as her account of the transaction, the substance of the statement read after the trial. This was as far back as the 12th August. They thought it best, however, for the purpose of defence, not to admit that she was in the house on the night of the murder.]

THE SENTENCE.

After a short pause,

Lord Deas proceeded to pronounce sentence upon the prisoner. After recapitulating the facts which the jury had found established against her, he said:—Everything has been done for you that talent and judgment could do; and after all the attention they have been able to pay to the case, you have been found guilty by the unanimous verdict of the jury, in which I entirely concur. You chose to put in a defence to the effect that a gentleman, whose character up to that time has been unstained, was the murderer, and you were not the murderer. You have chosen to repeat that statement now with all the details to which we have now listened—

The Prisoner here ejaculated—"Well, my Lord," but was prevented from proceeding further by the constable beside her touching her to be silent.

His Lordship, after a pause, continued—I sit here, no doubt, primarily to do my duty in the trial, and the conviction, if there is evidence for conviction, of those who are guilty; but I sit here, and the jury also sit here, to protect the

innocent, especially the innocent who are absent and cannot defend themselves, and it is my imperative duty, after what has been now stated deliberately in writing for you, to say that there is not upon my mind the shadow of suspicion that the old gentleman had anything whatever to do with the murder. If anything had been awanting to show how dangerous it would be to the lives and the liberties of the people in this country if the statements of prisoners who are capable of committing such a crime as you have committed, were to be listened to, as affecting the character, the lives, and the liberties of other individuals—if anything were awanting to show the danger of listening to such statements, of giving them the least credibility, I think the example we have now had of the paper which has now been read to us would have been quite sufficient to satisfy us of that danger. I have been counsel for prisoners who sat in the position in which you now do; I have been frequently counsel against prisoners who sat in the position in which you now do; and I have had the misfortune of sitting to try prisoners who have sat as you now do; and I am bound to say that I never knew an instance in which the statements made by prisoners after conviction, were anything else than in their substance falsehoods; and that the result of all the experience I have had in these matters, is to lead me to the conviction that the person who would have committed such a crime as you have committed, is quite capable of saying anything. And if you were to think that statements such as you have now heard are to pass for truth upon the authorities of this country, there would be be an end to the safety of the life and the character of every man. Your statement does not convey to my mind the slightest impression. It conveys to my mind the impression of a tissue of as wicked falsehoods as any to which I ever listened; and in place of tending to rest any suspicion against the man whom you wished to implicate, I think, if anything were awanting to satisfy the public mind of that man's innocence, it would be that most incredible statement which you have now made. I must go upon the evidence and the verdict. The evidence has been led, it has been considered, and the jury have unanimously returned their verdict finding you guilty as libelled. I have already said that I cannot do otherwise than say that I concur in that verdict, and that no other verdict would have been consistent with the ends of justice, or with the proof in this case. In that state of matters it leaves me no alternative whatever except to pronounce upon you the sentence which I have now to read. His Lordship then proceeded to pass sentence upon the prisoner, condemning her to be removed from the bar to the prison of Glasgow, thereafter to be detained, and fed on bread and water, till Saturday the 11th day of October next; and upon that day, to be taken from the said prison to the common place of execution of the burgh of Glasgow, or to such other place as the Magistrates of Glasgow shall appoint as a place of execution, and there, by the hands of the common executioner, to be hanged by the neck upon a gibbet until she be dead, and her body thereafter buried within the precincts of said prison. His Lordship very solemnly concluded by the usual words:—This is pronounced for doom. May God Almighty have mercy on your soul.

On being removed the prisoner, in a voice which was scarcely audible, exclaimed "Mercy! aye, He'll hae mercy, for I'm innocent."

LEGAL INTELLIGENCE.

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Brown v. Gugy, from Canada; delivered February 15, 1864.

Present:—Lord Kingsdown, Sir Edward Ryan, Sir John Taylor Coleridge.

It appeared to their Lordships at the hearing of this Appeal that some of the points both of law and of fact so elaborately argued at the Bar, were immaterial to the decision of the only question which is open to them upon the Record. A further examination of the papers has confirmed that opinion.

The Apellant is the owner and occupier of a water-mill on one side of the River Beauport. The Respondent is the owner of the domain of Beauport on the other side of the river.

In the month of October, 1852, the Respondent erected a wharf on land which he insists is part of his estate.

The Appellant alleged that this wharf was injurious to him; and on the 29th April, 1852, he commenced an action against the Respondent in the Superior Court of Lower Canada, and on the same day filed his declaration.

After setting forth the Appellant's title to the mill, and stating that he and his predecessors in title had for 100 years used the natural current of the river for working the machinery of the mill, the declaration contained the following allegations: that the Beauport is a navigable river, and has, until the grievance hereinafter complained of, been used by the Plaintiff and his predecessors in the floating of bateaux and other vessels employed by them in conveying grain, flour, and other effects to and from the said mill; that the Defendant intending to injure the Plaintiff in his business of a miller did, between the 16th day of October preceding, and the date of the issue of the summons (that is, the 29th October), erect lower down the river than the Plaintiff's mill, and in and upon the said River Beauport, a certain wharf which nearly traverses the whole of the said river, and which materially alters the natural course of the river, and narrows the channel of the same so much that it is now impossible for the Plaintiff to float bateaux or other vessels to the mill as he was used to do; and that the Defendant has further, by means of the said wharf, prevented the waters of the river from running down the natural channel, and compressed the channel to so small a breadth that whenever the waters of the river, from the freshets or otherwise, become higher, the said waters recede or are thrown back upon the Plaintiff's mill, by reason whereof, and by means of the still water thereby occasioned, the mill cannot be worked, and that in consequence of the illegal and tortious acts of the Defendant in erecting the said wharf, the Plaintiff has been, and still is, prevented from using the waters of the river and working his mill as he otherwise would have done, to his damage of the sum of £300 currency.

The conclusions of the summons are—

1. That the Defendant may be decreed within eight days, or such other time as the Court may appoint, to demolish and remove the wharfs, and that in default of his doing so the Plaintiff may be authorized to do so at the Defendant's expense.

2. That the Defendant may be ordered to pay £300 currency for the damage aforesaid, and costs. The whole without prejudice to any further damages that may be sustained by the Plaintiff by reason of the erection of the wharf.

The Defendant in his answer denied generally the allegations of the Plaintiff, and pleaded various special matters both of law and of fact to which it is not necessary to advert.

The cause being at issue, a great deal of evidence was produced on both sides, and in April, 1857, the Court referred it to three gentlemen as experts to make inquires and report to the Court their opinion on several of the matters in dispute, with directions upon one particular point to receive further evidence. (*a.*)

These gentlemen differed amongst themselves, two concurring in a Report, and the other making a separate Report; and after much expense and delay, finally the cause came on for hearing before the Superior Court—Mr. Justice Stuart being the Judge present, when the following Order was pronounced:—

"*February* 1, 1860.

"The Court having examined the proceedings of record, the evidence adduced, and heard the parties by Counsel on the merits; considering that the Plaintiff hath failed to establish in evidence that the Defendant hath erected, or caused to be erected, in and upon the River Beauport, a wharf which crosses the said river in any measure, or which obstructs or diverts the natural course of the same; considering that the River Beauport is alleged and proved to be a navigable river, and that any obstruction to the same would be a public nuisance; and considering that no action by an individual lies for a public nuisance, unless the party bringing such action has received special and particular damage therefrom; considering that the said Plaintiff hath failed to show in evidence that he has received any special or particular damage from the erection of the present wharf,—doth dismiss the present action with costs."

From this decision the Plaintiff appealed to the Court of Queen's Bench, and that Court, by a majority of three Judges to two, affirmed the Judgment, and from the decision of these two Courts the present Appeal is brought to Her Majesty in Council. (*b*)

The only question on which it is our duty to advise Her Majesty is, whether the Judgment dismissing the action ought to be reversed or varied; in other words, whether the Appellant at the hearing below established a case which entitled him, *secundum allegata et probata*, to any relief.

The action is founded on the allegation of damage caused to the Plaintiff by a tortious act of the Defendant. It complains both of injury already suffered before the commencement of the action, and of continuing injury, and seeks appropriate relief in respect of each complaint—compensation, in money for the first; and demolition of the wharf for the

The Courts below have found that the Plaintiff has failed to prove any damage whatever sustained by him from the works of the Defendant, either before the commencement of the action or subsequently.

Can we say that either of these findings is erroneous?

As to the first, its propriety was hardly disputed at our Bar, and, indeed, it did not admit of dispute.

As to the second, although there is a great deal of conflicting testimony, and much room for doubt, two Courts have come to a decision in favour of the Defendant. The question is one upon which the Judges in the Colony are more competent to form an opinion than we can be; and it is not the habit of their Lordships, in this Committee, to advise an alteration of a Judgment, unless they can see clearly that, upon some point, there has been a miscarriage in the inferior Courts. This we are unable, in the present case, to discover. The observations of Mr. Justice Meredith show that he has examined the case with the utmost care and impartiality; and the clearness and temper with which he expresses the conclusion at which he has arrived add great weight to his opinion.

It was said, however,—and this is the point relied on by the dissenting Judges,—that it was unnecessary for the Plaintiff in the action to prove actual damage; that the action might be maintained as one of *denonciation de nouvel œuvre*, and that in such action it is sufficient to prove that the work complained of will, or probably may, be attended with injury to the Plaintiff.

But the action of *denonciation de nouvel œuvre* is of a different description from the present; is founded upon a different state of circumstances; and seeks different relief. In such an action the Plaintiff claims protection against a work commenced, and still in progress, by which, if completed, he alleges that he will be injured.

If such an action be brought it appears that the Judge may either interdict the further progress of the work or require security, to be given by the Defendant to the Plaintiff against any injury which he may sustain; but when the work is completed this form of action is no longer competent.

This appears to have been the law of Rome. In the Dig., lib. xliii, tit. 15, "De Ripa muniendâ," after a statement that any protection to the banks of a public river must be made in such a manner as not to hinder navigation, so that any person who apprehends injury from the work may apply to the Prætor for an interdict to restrain it, and may obtain security, we find this passage:—"§ 5. Etenim curandum fuit, ut eis ante opus factum caveretur. Nam post opus factum, persequendi hoc interdicto nulla facultas superest, etiam si quid damni postea datum fuerit; sed Lege Aquilia experiendum est."

The law and form of procedure of Rome seem in this respect to have been adopted into the law of France.

In Daviel, "Cours d'Eau," tit. "Du Domaine Public," par. 471, it is distinctly laid down that by the old French law, that is, by the law now prevailing in Lower Canada, the *denonciation du nouvel œuvre* could only be maintained if instituted before the work was completed, though by an alteration introduced by the French Code, the law in this respect is now altered, and the action may be maintained in respect of a work either "fait ou commence."

The author says:

"Je dis nouvel œuvre fait ou commencé. Sous l'ancienne jurisprudence la dénonciation n'était plus recevable du moment que le nouvel œuvre était terminé; c'est ce que cette action avoit de spécial, comme aussi la faculté pour l'auteur du nouvel œuvre de continuer son travail en donnant caution et la restriction du droit du Juge a suspendre les travaux sans pouvoir les faire détruire. Mais sous nos nouveau droit la dénonciation de nouvel œuvre est assimilée aux autres actions possessoires par cela que les droits n'ont pas réproduit les conditions particulieres qui la characterisaient autrefois."

In this case there is no doubt that the work was completed before the action was commenced, and the relief sought is different from that which, according to Daviel, could be granted in an action of *denonciation de nouvel œuvre*. But even if the present suit could be regarded as an action of this description it would be equally met by the objection that the plaintiff had failed to prove that the work would be injurious to him.

It was then said that, however the law might be, if the bank on the face of which this wharf is built were the private property

of the defendant, a distinction is to be made, because the bank is, in truth, part of the bed of the river, and a portion of the public domain, and that a work erected upon it is a public nuisance of which any person interested has a right to complain.

That the bank in question is a part of the bed of the river, and a portion of the public domain, is not in terms alleged by the pleadings. The averment was said at the Bar to be contained inferentially in the statement that the wharf erected by the defendant nearly traverses the whole of the river, which it would not do unless the bank formed part of the river. If the fact were essential to our decision in this case, we should feel great difficulty in holding that the plaintiff had either sufficiently put it in issue by his declaration or established it by evidence.

But it is not in our opinion necessary to decide this question. The law of Lower Canada, as we collect it from the authorities, seems to stand thus:—

An officer suing on behalf of the public has a right at his own instance, or on the application of any person interested, to call for the demolition of any work erected without license on the public domain, and he is no more required to prove that the erection has occasioned actual damage to the public than a private person who complains of a wrongful invasion of his property is obliged to prove that it has occasioned actual damage to him. But although such officer may, if he think proper, take proceedings to abate the nuisance, he is not obliged, nor is it in all cases his duty, to interfere. A case of this kind is put by Prudhon, in a passage cited by Mr. J. Aylwin. He says, "It may be that in the case of a dyke erected in the bed of a navigable river the dyke may do no injury to the actual state of the navigation, as being built in an arm of the river where navigation is not practised, and which nevertheless does not on that account cease to be a part of the public domain.'

This supposed case has much resemblance to the present. The particular portion of the river where the channel is said to have been contracted does not appear to have been actually in use by the public for the purposes of navigation.

If the public officer refuse to interfere, an individual who suffers injury is not prejudiced; he has still his *action privee*, by which he may recover damages for injury already sustained, and the abatement of the cause of such injury for the future. The public and private action are said to be not only independent of each other, but essentially distinct in their object. The fact that the place where the work is erected is public property, is of course very important in both cases, in regard to the right of the defendant to do what he has done, but it does not, according to the law, as we can collect it from the authorities, supercede the necessity of the plaintiff in a private action proving that he has sustained injury by the work special to himself, and beyond that which is common to the public at large, and this, as we have already stated, the Plaintiff in this case has failed to do.

Upon the whole, we must humbly advise Her Majesty to affirm the Judgment, and the costs must follow the decision.

We cannot part with this case without noticing two subjects which have attracted our attention in the course of the discussion, though they do not bear directly on the decision.

The first is the manner in which the case has been conducted in the Court below, and the enormous expense and delay which have attended the proceedings. Much of these evils is no doubt to be attributed to the parties, who seem to have been more anxious to indulge their feelings of hostility towards each other than to arrive at a cheap and speedy determination of their rights. But much must also be attributed to the unfortunate course adopted by the Court in directing the reference to experts—a step which appears to us to have been unnecessary and to have led to no satisfactory result, but rather interposed difficulties in the way of the decision, and to have occasioned crimination and recrimination amongst persons acting as officers of the Court, little creditable to the administration of justice.

The other subject to which we think it fit to advert is this: Two of the Judges have sent home long and very elaborate arguments, supported by a citation of numerous authorities, against the decision of the majority of the Court.

It was asserted by the respondent, without any contradiction on the part of the Appellant, that these arguments were not delivered by the dissenting Judges at the hearing of the cause, but were first made known to the parties by being printed as part of the record before us. If the statement thus made be accurate, we must say, with all respect for those learned persons, that the course so pursued by them appears to us open to great objection. We think that their reasons for dissenting from their colleagues should have been stated publicly at the hearing below, and should not have been reserved to influence the decision in the Court of Appeal. (*c.*)

We have thought it due to the general interests of the suitors in the colony to make these remarks, in order to prevent what has been done from growing into a practice, though it may not have produced any mischief in this particular case.

The Attorney General of England, Sir Roundell Palmer, and Mr. Bompas argued the case on behalf of the Appellant, William Brown. Colonel Gugy, the Respondent, argued his own case in person before the Lords of the Privy Council, as he had done in the two Courts in Canada. The argument before the Privy Council took up five days, in the early part of December last.

(*a.*) This order was given by Mr. Justice Meredith, Mr. Justice Morin, and Mr. Justice Badgley.

(*b.*) The majority was composed of Chief Justice Sir Hypolite Lafontaine, Mr. Justice Meredith, and Mr. Justice Charles Mondelet.

(*c.*) These dissenting Judges were Mr. Justice Aylwin and Mr. Justice Duval.

INSURERS AND INSURANCE COMPANIES.

Insurers and Insurance Companies have great reason for congratulation, in the result of the proceedings in Chancery, which were lately instituted by Mr. George Edwin Taunton against the Directors of the Royal. If those proceedings had been successful, public confidence would have been very seriously shaken—Directors and Managers would have been placed in a position of intolerable difficulty—the business of Fire Insurance would have sustained a heavy blow and great discouragement—and an immense amount of mischief would have been done. The decision of Vice-Chancellor Sir William Page Wood is as powerfully commended by considerations of public policy as it is obviously in accordance with reason and substantial justice.

The facts of the case are so familiar to our readers that it cannot be necessary that we should recapitulate them at any length. The Royal Insurance Company engages, by its policies, "to pay or make good all such loss "or damage by fire as may happen to the property insured;" but the contract is endorsed with certain conditions, and one of those conditions is that the Company "will not be "responsible for loss or damage by explosion, "except for such loss or damage as shall arise "from explosion by gas." On the 15th of January last, a fire occurred on board the ship *Lotty Sleigh*, then lying in the Mersey; and the immediate result of that fire was the explosion, with terrific violence, of a large quantity of powder, which had been taken on board for exportation. Many hundreds of houses in Liverpool and Birkenhead were more or less seriously injured; and the first question which occurred to every mind was, whether the sufferers had any remedy, and especially whether the Insurance Companies would make good the loss. The Directors of the Royal lost no time in answering the question for themselves. They met upon the very next day; and, with the promptitude and liberality which have characterised the management of the Company from the very commencement of its operations, they resolved to indemnify every owner of property, who had insured against fire in their office, for the damage which he would otherwise have sustained in consequence of the disaster. It was the propriety of this resolution which Mr. Taunton called in question. He represented to the Court of Chancery that the Directors had exceeded their powers—that the losses which they proposed to recognise, had been occasioned, not by "fire," but by the "concussion of the air"—and that every payment made on account of those losses was, in point of fact, a misapplication of the Company's funds, by which he, as a shareholder, was prejudiced, and of which he was entitled to complain.

Now this species of argument—however plausible upon the face of it—discloses, when carefully examined, a ludicrous confusion of ideas, and is utterly fallacious and untenable. It assumes that the powers of the Directors are strictly and inexorably limited by the legal liabilities of the Company; and that they have no right whatever to settle a single claim which could not, in a court of law, be enforced. It has never, as far as we know, been contended on the part of the claimants—and it certainly has not been conceded on the part of the Company—that the damage, in this case, could have been recovered by any compulsory process. It was not technically within the terms of the policy. It was not damage directly resulting from "fire," and the explosion which occasioned it was not an "explosion by gas." If an action had been brought against the Company, and the Directors had thought proper to resist it, they would have had, no doubt, a perfectly valid defence. But the same thing may be said in a great number of other cases in which claims are habitually recognised and paid. One of these cases was noticed by the Vice-Chancellor himself, in the course of the argument, and is especially adverted to in the affidavit of Mr. J. B. Johnstone, who is officially connected with the Royal, as the secretary of its London Board of Directors. "The policies of the Royal Insurance Company," says this gentleman, "do not in terms "extend to damage caused to one house by "water used in extinguishing fire in another "house; but it is, and has been, the invariable "practice of the Company to pay for damage "so caused, and it would be in the highest "degree prejudicial to the interests of the "members of the Company if the business of "the Company were conducted on the prin-"ciple of paying no more than the Company "could, by law, be compelled to pay." It is unnecessary to multiply illustrations. But there is just one other instance, of very common occurrence, which suggests itself to our own mind. It is the first impulse of every prudent man, occupying premises in the immediate neighbourhood of a burning building, to remove his portable property as rapidly as possible out of harm's way; and we know that, in the hurry of such removals, articles of value are very frequently injured. What would be said to the Insurance Company which should refuse to repair such injuries, or to indemnify the party insured by an adequate pecuniary equivalent? Would not such refusal be scouted as preposterous, and positively dishonest? We are quiet sure that it would; and yet the "loss or damage" would no more be occasioned by "fire" than that which was produced by the blowing up of the *Lotty Sleigh*. In the one case it may be said that, if there were no fires there would be no removal, and, therefore, no injury as the result of that removal. In the other it is indisputably true that, if there had been no fire there would have been no explosion, and therefore no "concussion of the air."

The business of an Insurance Company, in order to be successful, must be conducted, like every other business, in accordance with ordinary commercial principles; and in the application of those principles a very large discretion must be vested in the Directors and Managers. The man who insures his property against fire does it in good faith; and he has a right to expect that, if a loss should occur, the Directors, as men of business, will meet him in a business-like way. But, according to Mr. Taunton, commercial prudence ought to be excluded from the Board-room, and legal hair-splitting to take its place. The Directors should be bound hand and foot. They should have none of the freedom which private individuals are allowed to exercise, and which they do exercise with manifest advantage in the management of their private affairs. They should pay nothing except upon compulsion. They should scrutinise, with jealous apprehension, every clause of every policy upon which a claim is presented, and, with the dread of a suit in Chancery before their eyes, should have a lawyer always at hand to prevent them from doing what they feel to be reasonable and right, if it is not, in plain black and white, "so nominated in the bond." It would be a grievous calamity if such a state of things should ever be brought about by the interposition of the Court of Chancery, or of any other power. The moment you tell a man that he cannot effect an insurance, except at the risk of being confronted with a special pleader, and of having to produce such proof of liability as would pass the scrutiny of a pettifogger, you practically destroy the inducement to insure at all. The confidence inspired by the liberality and fair dealing of directorates composed of English merchants and of English gentlemen, has contributed, more than any other cause, to the rapid growth and marvellous development of the insurance system, with all the social advantages which have resulted from it. To shake that confidence, by systematic handing over of suffering policy holders to the tender mercies of lawyers, would be, in effect, to make insurance a mockery, and to place the whole fabric in peril.

Happily, Mr. Taunton has been defeated. His bill has been dismissed with costs, and we

cannot help thinking that he himself must, by this time, be convinced that, in commencing his suit, he committed, to say the least of it, a very great mistake. Living, as he does, at Brombourgh, he may perhaps be excused for contemplating, with some apprehension, the possible consequences of an explosion on board the gunpowder magazines in the Mersey; and, holding, as we know he does, a large interest in other Insurance Companies, he may possibly have thought, or it may have been suggested to him by some good-natured friend, that his own interest in those Companies would be promoted, if the Royal could be placed in the wrong. He alone can explain the motives by which he was influenced; and he alone can tell to what extent previous misunderstandings between himself and the Directors had provoked a spirit of retaliation. Certain it is that his proceedings were essentially hostile, and that their tendency was to discredit and subvert the sound and liberal policy by which the Company has been made powerful and prosperous, and to which it is largely indebted for its present distinguished position. It would have been monstrous if this subversion could have been accomplished by the action of a single shareholder, representing considerably less than the six thousandth part of the entire capital of the Company, in contempt of the results of experience, and in opposition to the expressed wishes of an overwhelming majority of his co-proprietors. We congratulate the directors on having come triumphantly out of the ordeal. They were the first—as they are always first, when an act of liberality has to be done—to adopt the course to which exception has been taken; but their example has been followed and their policy heartily approved—as the affidavits published in another column prove beyond all doubt—by the representatives and managers of the foremost metropolitan companies. They stand justified, and more than justified, before the world, not only by the judgment of the Vice-Chancellor, but by the testimony of those who may be called their rivals in business; and we have no doubt they will have, in the immediate and rapid increase of their continually growing connection, abundant and profitable evidence of the high appreciation of the public.

VICE-CHANCELLOR'S COURT, Feb. 29.

(Before Vice-Chancellor Sir W. P. Wood.)

TAUNTON, *vs.* THE ROYAL INSURANCE COMPANY.

This case, which rose out of the recent explosion of the ship *Lotty Sleigh*, while lying at anchor in the Mersey, raised a question of some interest and importance as to the discretion of directors of an insurance company to make good losses not covered by the policies of insurance.

On the 15th of January last, the *Lotty Sleigh*, then lying at anchor in the Mersey, with a large quantity of gunpowder on board, caught fire and blew up. The concussion of the air produced by the explosion of the gunpowder caused great damage to property for miles round, and in particular shattered the windows of several houses and manufactories in Liverpool and Birkenhead. Many of the persons whose property was thus injured were insured in the Royal Insurance Company. The directors, acting upon what they termed a liberal construction in favor of the insured, had come to the determination to pay all losses consequent on the explosion which had been sustained by parties insured with the company, and had already paid claims for small sums to the amount of £960. The plaintiff, who was a shareholder in the company, protested against any application of the funds to make good these losses, on the ground that they were not within the terms of the policies, which contained a distinct provision that the company would not "be responsible for any loss or damage by explosion, except for such loss or damage as shall arise from explosion by gas." He had accordingly filed the present bill to obtain a declaration that the application of the funds in making good any loss occasioned by the explosion to persons insured against loss or damage by fire was unauthorized and improper. The bill also prayed an injunction to restrain any such payments, and that the directors might be declared personally liable to make good any payments already made by them.

The directors submitted that although the losses in question were not strictly within the terms of the policies, they had exercised a wise discretion in at once offering to satisfy the claims as a matter of favour, and not admitting any liability, believing as they did that such a course was much more conducive to the real interests of the company than a narrow-minded adherence to the strict letter of the provisions contained in the policies. They had obtained the concurrence of a majority of the shareholders to the course taken by them, and the principal insurance-offices, such as the Sun, the Phœnix, the Royal Exchange, and the Alliance, had taken the same view, and voluntarily paid the losses occasioned by the explosion.

Mr. William James, Q. C., Sir Hugh Cairns, Q. C., and Mr. Woodroffe appeared for the plaintiff; Mr. Rolt, Q. C., Mr. Amphlett, Q. C., and Mr. Lindley appeared for the defendants, the directors.

The Vice-Chancellor said that the question was one of considerable importance as to the management of companies of this description. This Court was extremely careful to prevent the application of money intrusted to directors by the shareholders for any other than the legitimate purposes of the business. At the same time it would not be for the benefit of shareholders that those purposes should be impeded or narrowed. Looking at the provision excluding payment for damage occasioned by explosions except explosions by gas, he was strongly of opinion that the policies would not cover the loss occasioned by the particular accident. The directors themselves thought that they were under no legal liability, but professed to make the payment *ex gratia*, and in order to promote the interests of the company. Could not, then, the whole body of shareholders sanction such a payment? The damage having been occasioned by something analogous to though not falling within the risks insured against by the policy, the question was, whether the company were not entitled, by way of preventing any complaint or litigation to make good these small losses, rather than incur the risk of being damaged in reputation as an illiberal office. Upon this question the evidence of the mode of carrying on business by companies of this nature was very material. It appeared that other offices were in the habit of acting liberally in respect of claims of this description not falling strictly within the terms of the policies. Looking at the usage in this respect there was

COURT OF QUEEN'S BENCH.

Leading 1864

APPEAL SIDE.

ROBERT SHAW, Appellant,
and
THE MAYOR, COUNCILLORS AND CITIZENS OF THE CITY OF QUEBEC, Respondents.

The Hon. Mr. Justice MEREDITH made the following observations on rendering the judgment:

"The appellant was, during the year 1863, proprietor of a building in the city of Quebec, which, according to the admission of the parties, was used as follows: 'In the lower part there were stores in which goods were sold, as well by wholesale as retail. In the upper part were offices.'

According to the judgment of the Recorder, the said building, as so used, has been held subject to a water-rate of two shillings in the pound on its assessed annual value. The appellant complains of that judgment, on the ground that he ought to have been held liable for a water-rate of one shilling in the pound only.

"By the 2nd section of the 16th Vict. Cap. 30, the respondents are authorized to specify and declare, by a by-law, that the proprietors or occupiers of 'houses, stores, or similar buildings' in the city shall be subject to an annual rate or assessment, which shall not exceed two shillings in the pound on the assessed annual value of 'occupied houses,' and one half the amount on '*stores and similar buildings*.'

"And by the 22nd Vict. Cap. 63, Section 13, it is provided that the word 'store' (*magasin*) in the acts respecting the Water-works of the City of Quebec shall be interpreted as meaning 'buildings used for the storing and selling of goods by wholesale.'

"The pretension of the respondents, as I understand it, is this: as the building in question is in one sense of the word an 'occupied house,' and as it is not a 'store (*magasin*,)' within the meaning of the 22nd Vict., that therefore it is subject to the assessment of two shillings in the pound.

"But this pretension is subject to the grave objection that it deprives the words of the statute '*and similar buildings*' of all effect.

"The learned Counsel for the respondent (as might have been expected) has felt embarrassed by the words to which I have just adverted; and in order to relieve the case from the difficulty, has submitted the following argument:

"Quant aux mots, *et autres batisses semblables*, dont se sert le législateur, ils doivent se rapporter au mot magasin, autrement, ils ne signifieraient rien. En effet, qu'est-ce qu'une batisse semblable à un magasin? Rien autre chose qu'une batisse qui, n'étant pas de sa nature un magasin (*store*), (par example, une maison d'habitation convertie en magasin) est employée comme magasin suivant la signification de ce mot donnée par l'acte 22 Vict., (1859) Chap. 16, ci dessus cité.

"But it is plain that a '*maison d'habitation convertie en magasin*' and used for the storing and selling of 'goods by wholesale,' would, when so changed and used, be even in the strictest sense of the words 'a store' (*magasin*) within the meaning of the 22nd Vict.; and therefore, in effect, the interpretation, contended for by the respondents, causes the Legislature to say that the lower rate of assessment shall be payable upon stores (*magasins*) *and no other buildings*, whereas what the Legislature have said is, that the lower assessment shall be payable upon stores and '*similar buildings*.'

"Moreover, under the interpretation contended for by the respondents, wholesale stores would be subject to a water-rate of 1s. in the pound; whilst retail stores would be subject to a water-rate of 2s. Now, the protection against fire, resulting from an abundant supply of water, was one of the grounds upon which the establishment of our Water-works, and the consequent levying of our water-rates, was allowed by our Legislature; and as the property protected in wholesale establishments is often, if not generally speaking, of greater value than the property in retail establishments, I cannot see why the water-rate on a building of the assessed annual value of £100 should be £5, if occupied as a wholesale store, and £10 if occupied as a retail store.

"I shall now in a very few words give my own view of the statute.

"The word 'house' in English, and '*maison*' in French, is frequently, if not most commonly, used as equivalent to 'dwelling house,' and I think it is in that sense that it has been used by the Legislature in the statute under consideration. This reasonably may be inferred from the word 'house,' '*maison*,' being made in the provision in question not as including 'stores and similar buildings,' but in contradistinction to 'stores and similar buildings.'

"With comparatively few exceptions the buildings in a city intended for the use of man may be divided into those used as dwelling houses and those used for the purposes of business.

"This, it seems to me, is the division which the Legislature had in view in the provisions under consideration. All dwelling houses, used as such, come under the head of 'occupied houses'; and all buildings used for the purposes of business come under the head of 'stores and similar buildings.' If the law be thus understood, the reason for subjecting 'occupied houses' to a much higher water-rate than 'stores and similar buildings,' is obvious; it being certain that, generally speaking, the supply of water required for dwelling houses (where water is used for cooking, washing and other domestic purposes) is greater than the supply necessary for houses used for the purposes of business. There are, it is true, some business establishments which require a much larger supply of water than any dwelling house, but such establishments ought to be subjected to a special rate, and it would obviously be unjust to subject all buildings to a heavy water-rate in consequence of a comparatively trifling number of establishments requiring an unusually large supply.

"It is true that if the statute ought to be interpreted, as I think it ought, it could without difficulty have been more clearly worded; but that objection is of no weight, because it could be urged with great force against *any* interpretation of the provisions in question.

"As to the provision contained in the 22nd Victoria, above adverted to, and to which our attention was drawn at the argument, I do not think it can affect the present case, because, although it defines the word *store*, it does not assist us in giving a meaning to the words *similar buildings*, and it is there the difficulty lies.

"Upon the whole, it seems to me that even according to the rules of interpretation applicable to statutes generally, the building of the defendant, in the lower part of which 'goods were sold, as well by wholesale as retail, and in the upper part of which there were offices'—may, as regard water-rates, be considered similar to buildings used for the storing and selling of goods by wholesale; and, therefore, that it ought to be held subject to the lower of the two water-rates. And even if the case admitted of doubt, the appellant ought to have the benefit of such doubt, the rule being that statutes imposing taxes or other burdens upon the subject are to be strictly construed.

Mr. Vannovous for R. Shaw.

Mr. Baillarge for the Corporation.

VICE ADMIRALTY COURT.—LOWER CANADA.

Before the Hon. H. Black, C. B., J. Vice Admiralty Court.

The James McKenzie.

Rule of navigation with regard to steam vessels approaching each other on different courses.

A steamer going up the St Lawrence at night, on a voyage from Quebec to Montreal, saw the light of another steamer coming down the river, distant about two miles; and when at the distance of rather more then half a mile took a diagonal course across the river in order to gain the south channel, starboarding her helm, and then putting it hard to starboard. The steamer coming down having ported her helm on seeing the other, a collision ensued.

Held:—That the vessels were meeting each other within the meaning of the act regulating the navigation of the Waters of Canada, (22 Vict. c. 19.), and the steamer going up the river was solely to blame for the collision in not having ported her helm.

Règle pour la navigation de bâtiments à vapeur s'approchant l'un de l'autre sur courses différentes.

Un vapeur remontant le St. Laurent la nuit, sur un voyage de Québec à Montréal, vit les feux d'un autre vapeur descendant le fleuve, à une distance d'environ deux milles; et lorsqu'il en fut à une distance d'un peu plus de demi-mille il traversa le fleuve diagonalement afin de gagner le chenal du sud, et pour ce mit la barre a tribord, ensuite la mettant en plein à tribord. Le vapeur descendant le fleuve en voyant l'autre mit la barre à babord, un abordage s'ensuivit

Jugé:—Que les vaisseaux se rencontraient l'un et l'autre aux termes de l'acte concernant la navigation des Eaux Canadiennes, (22 Vict. c. 19), et le vapeur remontant le fleuve était seul en défaut par rapport à cet abordage n'ayant pas mis sa bord à babord.

Judgment rendered the 11th August, 1862.

This was a cause of damage brought by Pierre Plante, the owner of the steamer *Fashion* against the steamer *James McKenzie*, to obtain compensation for a loss arising from a collision between these two vessels in the river St. Lawrence, about three quarters of a mile above Lavaltrie island. The following judgment was this day rendered by the court.

The Court, &c.—On the 27th June, 1861, the steamer *Fashion* of 200 tons burthen, and about forty five horse power, owned by and in charge of Pierre Plante, the promoter, as master, left Montreal at about nine o'clock in the evening, without cargo, and drawing about five or six feet water; having on board Joseph Paquin, a branch pilot for and above the harbour of Quebec, as pilot, and having the lights by law in the position which the act requires. In the prosecution of her voyage to Quebec she passed down the north channel, between the Verchères islands and the north shore as far as the eastern end of those islands. She then took the main channel and the proper course for that purpose. At this point the north channel and the south channel or that on the south side of the Verchères islands merge into one, and they together form one channel of about three quarters of a mile in width for vessels such as those concerned in the present case. At the same time the *James McKenzie*, a steamer of about 400 tons, and about one hundred and twenty horse power, and having in tow a barge, partly loaded, so as to draw between nine and ten feet water, was proceeding on her voyage from Quebec to Montreal; having a pilot on board, and proper lights in the position required by law, on board the steamer and her tow. It was then between eleven o'clock and midnight, the night was cloudy, but the lights of vessels could be easily distinguished, according to the statements in the pleadings and evidence, at the distance of from one to two miles. The *James McKenzie* intending to take the south channel shaped her course accordingly for it, the *Fashion* keeping towards the south. In this position the vessels saw each other, the people of the *James McKenzie* say they saw the *Fashion* at the distance of about two miles, and that when the distance between the vessels was rather more than half a mile, the *Fashion* appearing to them to be proceeding in a direct course down the river, the *James McKenzie* took a diagonal course across the river in order to gain the south channel, which is said to be safer and better, starboarding her helm for that purpose. The *Fashion* on seeing the *James McKenzie* ported her helm, in order to pass the *James McKenzie* on the port side, and to the right hand of the middle of the channel, as the law

requires in such cases; and as she approached the *James McKenzie*, the *Fashion* put her helm hard-a-port in order more effectually to avoid her. The *James McKenzie* on the other hand kept her helm to starboard, and afterwards put it hard-a-starboard. Both vessels appear to have stopped their engines, but too late. The *James McKenzie* struck the *Fashion* on the port side about forty feet from the stem, doing her great damage, and sinking her in about four fathoms of water.

The two vessels were undoubtedly meeting each other within the meaning of the act regulating the navigation of Canadian Waters, (1) and that act expressly says, "Whenever any vessel, whether a steam or sailing vessel, proceeding in one direction, merts another vessel, whether a steam or sailing vessel, proceeding in another direction, so that if both vessels were to continue their respective courses they would pass so near as to involve any risk of a collision, the helms of both vessels shall be put to port so as to pass on the port side of each other; and this rule shall be obeyed by all steam vessels, and by all sailing vessels,—whether on the port or starboard tack, and whether close hauled or not,—unless the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to the proviso that due regard shall be had to the dangers of navigation, and as regards sailing vessels on the starboard tack close-hauled, to the keeping such vessel under command." (2) And that, "Every steam vessel, when navigating any narrow channel, shall, whenever it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such steam vessel." (3) And also that, "If any damage to person or proprety arises from the non-observance by any vessel of any of the foregoing rules such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such vessel at the time, unless the contrary be proved, or it be shewn to the satisfaction of the court, that the circumstances of the case made a departure from the rule necessary, and the owner of the vessel in all civil proceedings, and the master or person in charge, in all proceedings, civil or criminal, shall be subject to the legal consequences of such default." (4) The *Fashion* obeyed the law by porting her helm, aud taking the proper side of the channel; and if the *James McKenzie* had done the same, the collision would certainly have been avoided. By her own statement the *James McKenzie* was crossing the course of the *Fashion*, which vessel was where she had a right to be; and though it is probable the *James McKenzie* believed she could pass safely by taking the course she adopted, yet as this course was not that required by law, she adopted it at her peril, and is responsible for the damage which resulted from its adoption. There was no absolute necessity even for her taking the south channel at all, there being water enough in the north; or, she might have stopped until the *Fashion* had got into such a position that there could have been no possible risk of collision, by the *James McKenzie's* crossing her course in order to take the south channel: but she did not choose to do so, and preferred taking the risk which led to the collision. She did this without necessity, for there was nothing whatever in the circumstances to render a departure from the rule necessary in order to avoid immediate danger. I must therefore pronounce for the damage, and refer the amount to the registrar and merchants for their report. (5)

(1) 22 Vict. c. 19.
(2) Sec. 8.
(3) Sec. 9.

LEGAL INTELLIGENCE.

SUPERIOR COURT.

THE ST. ALBANS RAIDERS.

JUDGE SMITH'S JURISDICTION MAINTAINED.

Saturday, Jan. 7, 1865.

Long before His Honor, Mr. Justice Smith, took his seat on the Bench, the Court was crowded with an interested audience, comprising Members of Parliament and leading men of all professions. The Hon. Attorney-General East was present during the whole day. The learned Counsel on both sides were present, as was also the Counsel for the Crown, and citizens of both Northern and Southern States. The raiders with several lady friends occupied the Jury box.

THE JUDGMENT.

Justice SMITH delivered the following judgment:—

THE QUEEN *vs.* MARCUS SPURR.

On the application for extradition.

The examination of the witnesses in the case of the robbery of Brett, having been concluded, Mr. Kerr, on behalf of the prisoner raised a preliminary objection, on the allegation of the total absence of jurisdiction on the part of the examining Judge, on the ground that the arrest of the prisoner was illegal, the warrant of arrest not having been preceded by a warrant under the hand and seal of the Governor General, signifying that a requisition had been made by the authority of the United States for the delivery of the offender.

"That my warrant having been issued without such authority, it was altogether illegal null and void, and that the prisoner was entitled to his discharge."

"The argument was, that there was no law in force in this Province, under which, such warrant could legally issue, except the Imperial Statute 6th and 7th Victoria, chapter 76—and that such law imperatively required the authority of the Governor General, before such arrest could be made, and that without such authority the warrant of arrest was altogether illegal.

"In support of this argument, the Counsel for the prisoner stated several propositions.

1st. That the arrest and delivering up of persons accused of crimes, was entirely within the scope of Imperial authority, and beyond the jurisdiction of a Colonial Executive.

2nd. That there was no provision by Common Law, or by the Comity of nations, to effect this object.

3rd That this matter is regulated entirely by treaty, between independent nations, and that the only treaty which regulated this subject between Great Britain and the United States of America, is the Ashburton Treaty.

Let us assume then, for the sake of argument, that the three propositions above stated are true, and that the provisions of the Ashburton Treaty can alone settle and determine the rights of both nations, on the subject,—and that the starting point in the settlement of the question is that Treaty.

The Ashburton Treaty was finally settled by the two Governments on the 30th day of October, 1842, by the exchange of Ratifications at London.

By the tenth article of this Treaty, it was agreed, "That Her Majesty and the said United States should upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons, who being charged with the crime of murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either of the high contracting parties, should seek an asylum or should be found within the territory of the other."

Provided that this should only be done upon such evidence of criminality, as, according to the laws of the place where the fugitive, or person so charged should be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed. And that the respective Judges and other Magistrates of the two Governments should have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, so that he might be brought before such Judges or other Magistrates respectively, to the end that the evidence of criminality might be heard and considered, and that if on such hearing the evidence should be deemed sufficient to sustain the charge, it should be the duty of the examining Judge or Magistrate to certify the same, &c, &c., &c.

An Act was afterwards passed in the Imperial Parliament to give effect to the Treaty in the 6th and 7th years of Her Majesty's reign, and by one of the clauses of that Act,

It was provided, "That before the arrest of any such offender, a warrant shall issue under the hand and seal of the Governor General, or person administering the government, to signify that such an application had been made by the United States for the delivery of such offender, and to require all Justices of the Peace and other Magistrates and officers of justice to govern themselves accordingly.

By the fifth section of the said Imperial Act, it is provided that if by any law or ordonnance, to be thereafter made by the local Legislature of any British colony or possession abroad, provision shall be made for carrying into complete effect within such colony or possession the objects of the said Act (that is), for giving effect to the Treaty between Her Majesty and the United States of America, for the apprehension of certain offenders, by the substitution of some other enactment in lieu thereof, then Her Majesty may, with the advice of Her Privy Council (if to Her Majesty in Council it seems meet) suspend within any such colony or possession the operation of the said Act of the Imperial Parliament, so long as such substituted enactment continues in force therein, and no longer.

Under the authority of the fifth section of this Act, the Parliament of Canada passed an Act intituled "An Act respecting the Treaty between Her Majesty and the United States of America for the apprehension and surrender of certain offenders," being the 12th Victoria, chapter 19.

By this Act it was stated in the preamble, "that the provisions of the Imperial Statute were found to be inconvenient in this Province in practice, particularly in that part which required the authority of the Governor-General before any arrest of a criminal could be made; and whereas, by the fifth section of this Imperial Act, it is enacted that if by any law or ordonnance, to be thereafter made, by the local Legislature of any British Colony or possession, provision shall be made for carrying into complete effect the objects of the said Act, by the substitution of some other enactment in lieu thereof, Her Majesty might, with the consent of Her Privy Council, if to Her Majesty in Council it seems meet, suspend the operation of the Imperial Statute so long as such substituted enactment continues in force, and no longer"; and then follows the enactments of the bill doing away with the necessity of the Governor-General's warrant.

By the 5th clause of the said Act it was provided that the Act 12th Victoria, chapter 19, shall come into force upon the day to be appointed for that purpose, in any proclamation to be issued by the Governor-General, or person administering the Government of the Province, for the purpose of promulgating any order of Her Majesty, with the advice of Her Privy Council, suspending the operation of the Imperial Act hereinbefore cited, within this Province, and not before; and this Act shall continue in force during the continuation of the 10th Article of the Province, and no longer.

This proclamation was made by the Governor General on the 28th March, 1850, and was published in the *Canada Gazette* at that time.

The order in Council required by the fifth clause of the 6th and 7th Victoria, Imperial Act was passed, and the operation and authority of the Imperial Statute 6th and 7th Victoria was therefore suspended within the limits of this Province, and the 12th Victoria, chapter 19, became the law of the Province.

The effect, therefore, of the passing of the 12th Victoria, chapter 19, was to carry out more completely the stipulations of the treaty. By the 10th article of that treaty; jurisdiction was given to the Judges and Magistrates mentioned in the treaty. By the Imperial Act 6th and 7th Victoria, it was enacted that before these Judges or Magistrates could act under the treaty, an authority from the Governor General was necessary,—so far as this is concerned it was a departure from the stipulation of the 10th article. Suppose the 6th and 7th Imperial Statute, had enacted, that the warrant by a Judge or Magistrate could not be inforced, except a previous warrant had been issued under the hand and seal of the principal secretary of State, surely it would not be contended that such an enactment would not have been contrary to the provisions of the Treaty, and that it would have frustrated the very object of the Treaty so far as this country is concerned; what possible difference can it make that the name of the Governor General is substituted for that of the secretary of State, so far as mere convenience is concerned, the Governor General, who resides at the distance of one thousand miles from the Western extremity of the Province, and the Secretary of State who resides in England, are in a similar position, and the preamble of the 12th Victoria, Chapter 19, declares that the provisions of the Imperial Statute have been found inconvenient in practice in the Country, and that it is necessary to change them.

This act so reasonable in that particular was passed without objection, and it was not even a reserved act. It was passed by the concurrent action of the three branches of the Legislature of Canada, and became complete, so soon as the Royal assent through the Governor General had been given.

But the time for this act to come into force was left to the Governor General to proclaim, so soon as the 6th and 7th Victoria (Imperial Act) should have been suspended, and was only necessary for that purpose; and as it was enacted in the 12th Victoria, Chapter 19, the proclamation announcing the suspension also became necessary.

But the act itself was passed as an ordinary act of Parliament, and passed as the act itself says by virtue of the authority given to the Parliament by the fifth clause of the 6th and 7th Victoria.

The jurisdiction over the subject matter of the Imperial act, and of the Treaty itself in so far as the mode of carrying out the provisions of the Treaty within the Province, is concerned, was given to this country, and it fell by the operation of the Imperial act, under the ordinary jurisdiction of the Canadian Parliament, as all other matters of a local nature fell under the jurisdiction of Canada, by the Union act itself.

The mere fact that the 6th and 7th Victoria was a separate act and provided for its coming into force again, in the event of this country not carrying out the provisions of the Ashburton Treaty by enactments of its own, does not affect the question.

The Union act gave complete and supreme authority over all matters concerning this Province to the Parliament of Canada.

The Act of 6th and 7th Victoria gave complete jurisdiction to this country over the provisions of the Ashburton Treaty, so far as it related to this country, and to the mode of carrying into effect the provisions of the treaty itself within the territory of Canada. There was no limitation to this authority by the act itself. It was enacted that the mode of carrying into effect the treaty should be regulated by the Provincial Government, and if from the nature of the treaty itself, it could only come into force by Imperial authority, the 10th article of the treaty clearly embraced the whole of the dominions of Great Britain, and vested in the judges and magistrates of the two countries all necessary jurisdiction, and authority for arresting and examining the offenders mentioned in the said treaty. So far as mere jurisdiction is concerned, it was absolutely given by the treaty, and the Imperial act in that respect confirmed this jurisdiction. The Ashburton treaty was passed by the Imperial Government for the whole nation, and for that purpose the Imperial authority was supreme.

By the express provisions of the treaty itself, jurisdiction was given to the judges and magistrates of the Province, the consent to this jurisdiction was given by the Crown, 1st, By the ratification of the treaty; 2nd, By the legislative action contained in the provisions of the 6th and 7th Victoria, with the already mentioned restriction of the Governor General's warrant; and, 3rd, by the provisions of the 12th Victoria, chapter 19, expressly doing away with this restriction; and so far as the surrender by the country of persons charged with offences specially pointed out in the treaty, the jurisdiction was complete. Even if the 6th and 7th Victoria had never been passed, it is difficult to conceive on what authority this country could have refused to carry out the provisions of the Ashburton Treaty.

But it is not necessary for me to pursue this point any further, as the full and complete jurisdiction was given to this country by the Act 6 and 7 Vic., and by the 12 Vict., chap. 19, so far as to the manner of effectually carrying out the provisions of the treaty is concerned.

I deduce, therefore, from the previous observations,

1st, That supreme authority was given to the Parliament of this country to effectually carry out the provisions of the Ashburton Treaty within the limits of our territory, as it thought proper, and that this authority is to be found in the fifth clause of the 6 and 7 Victoria Imperial Act.

2d, That by the passing of the 12 Vic., chap. 19, the mode of carrying out the provisions of the treaty is there pointed out.

3d, That so long as the provisions of the 12 Vic., chap. 19, remained in force, the provisions of the 6 and 7 Victoria were suspended in this country.

4th, That the 12 Vict., chap. 19, having received the Royal assent, the right to change the mode of procedure pointed out, to be observed by the 6th and 7th Victoria, and the substitution therefor of the mode of procedure pointed out by the 12th Victoria, chap 19, was an Act clearly within the jurisdiction of this country, otherwise that Act would never have received the Royal assent.

5th, That if the mode of procedure can be changed with the sanction of the Crown, any second change not infringing the provisions of the treaty is also within our jurisdiction, and that the same authority having sanctioned this change, it is absolutely binding on all the inhabitants of this country.

The prisoners' counsel, however, contends that as the 12 Vict., chap. 19, is no longer in existence, that it has been positively repealed, and that, consequently, the Imperial Act of the 6 and 7 Victoria again revived, and became law in this Province.

The argument is, that the 12th Victoria, chapter 19 has been changed by the 24th Victoria, in such a way as to require a second order in Council and a second Proclamation to give it effect.

That as the 12th Victoria, chapter 19, required a Proclamation and Order in Council to suspend the 6th and 7th Victoria in this country, so, also the 24th Victoria also required a second Order in Council again suspending the 6th and 7th Victoria, and a Proclamation to that effect.

In answer to this argument, it may be said that the 24th Victoria does not repeal the 12th Victoria, chapter 19; it simply substitutes three new sections, viz., 1, 2 3, for the 1, 2 3 sections of the 12th Victoria, chapter 19.

That the change in part of the said Act does not operate in law as a repeal—See Dwarris, page 534 and 535.

That the 6th and 7th Victoria does not speak of a repeal or change at all, but simply states that in the event of this Parliament making provision for the carrying into complete effect within this colony the objects of the said Act, by the substitution of some other enactment in lieu therefor, that is, in lieu of the enactments contained in the 6th and 7th Victoria, then the operation of the 6th and 7th Victoria may be suspended.

The 12th Victoria was passed substituting new enactments for those of the 6th and 7th Victoria, and received the Royal Assent, and the operation of the 6th and 7th Victoria in this country was suspended, and remained suspended so long as such substituted enactments remain in force.

The moment then, that the colonial amendments were substituted for the Imperial provisions contained in the 6th and 7th Victoria, the colonial law necessarily superseded the Imperial authority.

The Imperial Act 6 and 7 Victoria does not restrain the Provincial Parliament in any way in the mode of carrying out the provisions of that Act, viz., to carry into complete effect the Ashburton Treaty; and the same Act gave to the Colonial Parliament the same authority in this country that it had itself, and delegated to the Canadian Parliament the duty it had itself assumed towards the United States within, the Province of Canada, viz., to carry out the stipulations of the Ashburton Treaty, and it consequently fell under the ordinary jurisdiction of the Canadian Parliament, as all other matters of local concern under the Union Act.

If the Canadian Parliament had a right, therefore, to deal with the subject at all, it had a right to amend its own Acts in that particular.

I think it will scarcely be denied that if the right to legislate upon any particular subject exists, that it includes the right to amend its own Acts. Now the 24 Vict. was a mere amending Act, and was assented to in the same manner as all other Acts of Parliament were.

It was not even a reserved Act. The same authority which assented to the 12th Vic. assented to the 24th Vic., in so far as the inhabitants of this Colony are concerned, and all Magistrates and Judges are bound by it. As well might it be pretended that any other law in the Statute Book is illegal as to say the 24th Victoria is not the law of the land.

It was in fact doing what the 6th and 7th Vic. authorized the Parliament to do, namely, to substitute Canadian enactments for Imperial ones, thereby the more effectually to carry out the provisions of the Ashhurton Treaty.

It was to do what by the fifth section of 6th and 7th Victoria this country was authorized and empowered to do, and the effect was, as then stated, to suspend the operation of the 6th and 7th Victoria so long as any substituted enactments existed in the country for carrying out that Act, and by this law, 24th Vic., no proclamation and no Order in Council were necessary. It was not necessary by the Treaty, and the Order in Council was only necessary by the Act of 6th and 7th to declare the suspension of the Imperial Act.

If no such Order in Council had been made, the local Act would not have had the less force. It was the enacting clauses which declared the suspension of the Imperial Statute, so soon as a Canadian Act was passed, and from the moment the 12th Vic., chap. 19, became law, the Imperial Act was virtually suspended.

It was a mere form generally used in matters of State, and the usual mode of making known the suspension of any law. But in no way was it necessary to make or complete a law. So far as regards the proclamation, it was not necessary to make the law, but merely to announce the time of its coming into force, as it was provided by the 12th Vic., chap 19.

However, as regards the 24 Vict., there was an Order in Council, but it was solely to say that the Act 24 Vict. was left to its operation, and to intimate that the Act would not be disallowed within the two years pointed out by the Union Act. Now, would such an Order in Council have been passed if it had been for a moment considered, that the mere amendment of the 12 Vic., chap. 19, had or could have had the effect of again reviving and bringing into force the 6 and 7 Vict.

The members of the Council and the law officers of the Crown, whose attention was particularly drawn to the provisions of that law by the then Secretary of State for the Colonies, the late Duke of Newcastle, would not have fallen into such a blunder as to advise her Majesty to leave the 24 Vict. to its operation, if thereby the 6 and 7 Victoria would have again come in force.

The result would have been that two laws on the same subject would have existed, repugnant and antagonistic in their nature, which would have nullified each other, and the Ashburton Treaty itself, the one declaring that the warrant of the Governor-General was necessary, and the other affirming that it was not, and both sanctioned by the same authority, viz., the Queen in Council. It is impossible to suppose that if such had been the effect of passing the 24 Vic., so great an embarrassment would not have been avoided.

The Order in Council, instead of leaving the law of the 24th Victoria to its operation, would have advised her Majesty to have disallowed the Act.

The Imperial authorities considered therefore that the enactments of the 24 Vict, chap. 6, fully carried out the provisions of the 6 and 7 Vict., by substituting the enactments required to suspend the operation of the 6 and 7 Vict. in this country, and so long as these enactments existed the 24 Vict. was the law of the land. The argument that the Act of the 12 Vict. was repealed by the Consolidated Statutes of Canada cannot affect the question, for the 24 Vict. was substituted for the 12 Vict. with all necessary enactments required by the Imperial statute 6 and 7 Vict., to give effect to the law.

The very terms of the Order in Council on the subject of the 24th Victoria, clearly indicated that the Imperial authorities considered that the subject was exclusively within the jurisdiction of the Canadian Parliament; for the words used in the Order in Council, viz:—That the 24th Victoria should be left to its operation, imply according to Dwarris, pages 90-7-8-9, that it, the law, is an affair of an ordinary and local nature.

If a second Order in Council had been necessary according to the argument of the Counsel for the prisoner, although not required by the act itself, such a pretension must clearly rest on the assertion that a mere Order in Council and a proclamation have greater power and force than an act of Parliament.

The 24th Victoria having received the royal assent, it still had not the force of law, until Her Majesty in Council had approved of it, and ratified it. An assent had already been given by the Queen as the third great power in the Parliament of Canada, but that assent must be again affirmed by an Order in Council before the act could become law. If so, there is not a single act in the Statute Book which has the force of law.

The proposition therefore is that of Parliament composed of the three great powers of the State, (the only powers which could make a law,) have assented to the law--still the Privy Council which has no legislative functions whatever, must approve and ratify it before the act can become a law.

This argument in my opinion is untenable; the 12th Victoria required an order in Council precisely because the 6th and 7th Victoria required it, not for the purpose of giving effect to the Act of 12th Victoria, but solely to suspend the operations of the Imperial Act. As soon as an Act was passed in this country to carry out the treaty in Canada, the law had been fulfilled, and the jurisdiction transferred from the Imperial Parliament to the Canadian Parliament.

If not for this object, what was the Canadian legislation to effect?

If then these Acts had not required an order in Council to be given, such order would not have been necessary.

The Act 12th Victoria and the Imperial Act 6 and 7 Victoria, both stated that as soon as Her Majesty, by an order in Council, suspended the 6th and 7th Victoria, then the Canadian law should come into force. This order was given, and the Imperial Act was consequently suspended.

Thus, then, by the passing of the 24th Vic., all the powers of the government were brought into harmonious action.

The Legislature, the Judicial and the Executive all concurred in giving full effect to the Treaty.

The powers conferred by this concurrent action upon the Judges and Magistrates of the country, in general terms, were as a mere matter of local jurisdiction finally regulated by the amending Act. For the 12th Victoria, chap. 19, in giving this jurisdiction to the Judges and Magistrates, generally, might have been inconvenient in practice, as the most important questions of international law might have been left to the determination of any country magistrate, who could not be supposed to bring to such important considerations either the requisite time or the knowledge to deal satisfactorily with the subject. I say this in no spirit of blame, but solely to show how and for what purpose the amending Act was passed, and that in so leaving the investigation of these points to more experienced Judges, Parliament in no way exceeded its powers or violated any of the provisions required for effectually carrying out the Treaty.

The Treaty only received Legislative effect in the United States in 1848, several years after it had been passed.

Whether such legislative action was required to give effect to the Treaty had been then discussed.

The case of Nash, otherwise called Robbins, delivered up in Charlestown for mutiny and murder, and afterwards executed in Jamaica, had raised doubts, and these doubts were therefore effectually put an end to by the passing by Congress of the Act of 1848.

Those desirous of further examining this question are referred to Hind on *Habeas Corpus*, page 581, and following pages, where the subject has been to a certain extent discussed.

The moment then, that the order in Council required by the 6th and 7th Victoria, and 12th Victoria, chap. 19 had been passed, and the proclamation made in this country to that effect, the order in Council had fulfilled the object intended to be attained by it, viz., the suspension of the Imperial Act within the limits of this Province, and was no longer necessary.

It was intended in the first instance merely to declare that as the Imperial Act alone could legislate on the subject for all the dominions of Her Majesty, the Act had been passed; but so soon as the Canadian Parliament had legislated for the purpose of carrying into effect that law, within the jurisdiction of that Parliament, according to its own laws and institutions, that the Imperial Act in that particular would be accordingly suspended. Once suspended it remained suspended, so long as Canadian Legislation existed on the subject.

Whether the Canadian Parliament could originate legislation on the subject, is besides the question.

If it had authority in the first instance, it was delegated to it, and delegated by the only authority which had any control over the matter.

If the Imperial authorities were satisfied with the matter, surely it is not for the people of this Country to complain.

The Imperial Act, therefore, once suspended, it remained suspended, so long as these remained on the Statute Book, any enactment instituted for the Imperial one, carrying into complete effect the Asburton Treaty.

The conclusions, therefore, which I deduce from this branch of the case after the passing of the 24th Vic., are,

1st. That the 24th Vic, was an amending Act to the 12th Vic. chap 19, and simply substituted one mode of procedure for another.

That such power was expressly given by the fifth section of the 6th and 7th Victoria chap. 76, That the power given to regulate necessarily implies the right to amend.

That such amendment having received the Royal assent, it became law, and was absolutely binding on all the inhabitants of the country.

That it was more effectually to carry out the provisions of the law, and the Treaty, as declared in the Imperial Act.

That it had not the effect of reviving the 6th and 7th Victoria, Imperial Statute.

That the only law in force in the Province on the subject, is the 24th Victoria, consequently that my Warrant issued under the provisions of that law, is legal to all intents and purposes.

I need not therefore extend the argument any further. I have confined it to the examination of the general proposition, that the Imperial Statute, 6th and 7th Victoria, was in force, and that I was therefore without Jurisdiction in the matter.

I will not touch on the smaller points raised tending in themselves only to support the general objection. I have confined the argument to a strictly legal view of the objection, without I trust being unnecessarily diffuse.

Allusion has been made in the course of the argument to the fact that different opinions have been entertained on this subject. Whatever may be the opinion of others on this point, it is neither my business nor my duty to inquire. I am not here to criticise the opinions of others, but to state my own. This opinion has been formed, irrespective of the opinions of all others, and I may say I have never entertained a doubt on the subject.

In doing this I have stated the propositions of law, which I consider as necessarily flowing from the argument, and after a careful examination of the matter, I have come to the conclusion that my warrant was properly issued, and the objection taken by the Counsel for the prisoners is therefore overruled.

Mr. KERR desired to bring under His Honor's notice another objection, viz., that the prosecution had not, under the 24th Vic, chap. 6, made out any case against the accused.

Mr. DEVLIN here objected to further preliminary exceptions. The learned Counsel had had enough time to make all such, and should now be prepared to proceed on the merits of the case, as they were bound to do. If the Counsel opposite were allowed to make preliminary objections every day, they would reduce the proceedings of our courts to a mere mockery. He hoped His Honor would put an end to this factious opposition. They should be prepared to say they were ready to examine their witnesses, or confess they had none to examine.

Mr. KERR said that His Honor had over-ruled the objection as to his jurisdiction, declaring the 24th Vic., cap. 6 is in force, and he (Mr. K.) now maintained that under that statute the Court must come to the conclusion that the Counsel on the other side had failed to make out their case. His objection was founded on 24th Victoria, cap. 6, and went to shew that the crime pretended in this case did not come within the provisions of that Act.

The COURT: That was an argument on the merits.

Mr. KERR: Yes.

The COURT submitted whether it would not be better to hear this objection and the argument on the whole of the case together.

Mr. KERR proposed to treat the matter separately.

After some further discussion, His Honor decided, in the interests of both parties, to hear the objection first, before proceeding to the general merits of the case.

Mr. KERR said that the 12th Vic., chap. 19th, gave to judges and magistrates of this country cognizance of crimes committed "within the jurisdiction of the United States, or of any other states"; but in the 24th Vic., cap. 6, the words, "or of any of such States," do not appear. It becomes, then, necessary to enquire whether the act committed by the accused at St. Albans, Vermont, constituted a crime committed within the jurisdiction of the U. S. States of America. There was, with regard to the U. S. States, a federal jurisdiction and a state jurisdiction. The former, or U. S. jurisdiction, was based on certain grants of sovereign rights and privileges, made over by the people of the several States composing the former Union. No other rights and privileges attached to the government of the United States; and all other rights and privileges of sovereignity not expressly made over by the constitution to the Federal government, attached and remained to each of the several States.

His HONOR: Mention your proposition, as you bring it in that view.

Mr. KERR: The U. S. or Federal jurisdiction was based on certain grants of sovereign rights and privileges, as before stated. All other rights and priveleges of sovereignity not so made over, remained and attached to each of the several States. In support of this he would refer to "Story on the Constitution," pr. 412. The Government of the United States could not, then, claim any power not granted to it by the constitution, and the powers actually granted must be such as were given expressly or by implication. The learned gentleman cited other passages in support of his view, and said we had, then, to enquire whether the jurisdiction of the United States extended over crimes committed within the body of one of the several States of the Union. He cited the opinion of Chief-Justice Marshall, delivered in the case of Bevans, to shew that the jurisdiction of the United States ex-

tended over only the District of Columbia, territories, dock-yards, etc., and on such places as had been placed specially under the jurisdiction of the U. S. Government. He continued, under the constitution and laws of the U. S, the Federal Government had no power to legislate for States in regard to crimes committed within their jurisdiction. The present offence charged was not a crime within the jurisdiction of the U.S. Government, but had been committed within the jurisdiction of the State of Vermont. What said the conclusion of His Honor's warrant? Merely this, that the offence was committed against the peace of the State of Vermont. Could the crime have possibly been committed against the peace of any other State, than that which had jurisdiction over it. The consequences were these: Robbery in a State or place not specially under the jurisdiction of the U. S. Government was a crime for which the Government thereof had alone a right to legislate. Vermont had exercised that right in this instance. According to the authorities cited, the jurisdiction of a State was co-extensive with its territory. He proceeded to cite the opinions of eminent American authorities in support of this view of State Sovereignty, and also that of Caleb Cushing, as follows: "Our system, it is to be remembered is one of complete jurisdiction, where however, the underlying foundation is, a primitive Sovereignty of the individual States. Taking this into account and considering the working of the 24th Vic., the Court was not called upon to decide as to a point affecting the General Government, but with regard to a crime which merely concerned an individual Sovereign State. He thought His Honor must come to the conclusion that the robbery, if robbery there was, was committed within the body of the State of Vermont, and not within the jurisdiction of the U. S., and that consequently the statute (24 Vic.) did not apply in this case, and the prisoners must be discharged.

Mr. LAFLAMME, Q. C., followed in an able argument on the same side.

Mr. ABBOT said he felt it his duty to say a word or two on this subject. It seemed to him that the Counsel for the defence on an occasion of this kind laboured under a very great disadvantage; for there was a natural objection to deal with such large questions as were ultimately involved in this case, and in objections of this description. Now, he respectfully submitted that this statute must be construed with the same strictness as if the offence were of any other description—even the minutest crime in the calendar. We were not to strain the statute to please any one, or in the trial of any offence, —robbing a hen-roost, or burning the town of St. Albans. We must deal with the case according to law, irrespective of what one supposed to be the magnitude of the interests involved in the decision. The first point he came to was this: Were there really two jurisdictions in the United States; was there one jurisdiction of the Federal courts, and another of the State courts? And, in respect to this particular charge, were these jurisdictions independent of each other? Had the Federal courts of the United States any jurisdiction over this offence, or if not, had the courts of the state of Vermont? And if the State of Vermont had jurisdiction, was it exclusive, or was it concurrent with that of the U. S. with regard to the robbery committed at St. Albans? It was contended on the other side that it had been proved that this offence, committed in the State of Vermont, was against the laws of that State. The prosecution had even put a Vermont lawyer into the box to prove this fact. But neither in the warrant nor in the information had the attempt been made to prove that this was a crime against the United States or cognizable by them. The lawyer who had been put into the box had proved that the crime of robbing Brett was one entirely and exclusively within the jurisdiction of the State of Vermont, and not by the United States Courts. He would refer the Court to Wheaton's American Criminal Law, vol. 1, page 155 and following, and by this authority it would be seen that the United States had not jurisdiction over the crime of robbery committed in Vermont, or in any State having its own Legislature and jurisdiction. There were, then, two jurisdictions in the United States, and the offence charged here was one within the exclusive jurisdiction of the State of Vermont. The framers of our law appeared to be well aware of this fact, as they had made provisions expressly for those two jurisdictions. The learned gentleman here read that portion of our law bearing on the statement he had just made, and went on to say that our statute was evidently drawn up with a careful view of this distinction as to the two jurisdictions, and in this respect harmonized exactly with the provisions of the constitution of the United States. Some persons, afraid of the Gen. Dix's proclamation, imagined that this question should be withdrawn from the ordinary procedure of law, and that the rule of expediency should be adopted. But he hoped no Court in this country would ever listen to an argument based on expediency. He would refer to a case that had come up in 1842, in England; it was that of the Creole; and Lord Brougham and the other law Lords, said that if under the pretence of the existence of a treaty bands were laid upon an alien in Great Britain, he might lawfully kill that person. The word "jurisdiction" in our statute, should be taken in its technical sense; and Sedgwick, 261 and 263, laid down that when technical words occurred in a statute, they must be taken in a technical sense. The technical meaning of the word "jurisdiction," was perfectly plain and the Court would observe that in our statutes care had been taken not to use in its popular sense, but in its strictly legal sense. He would refer the Court to a few authorities to show that statutes of this kind must be construed strictly. The learned Counsel quoted Judge Taunton, Judge Storey and Lord Abinger; and concluded by expressing a hope that the Court would see that the prisoners should receive all the advantages to which they were entitled by the law of the land.

Mr. JOHNSON said it was stated by the counsel opposite that we were here invoking a jurisdiction we had no right to invoke, and a great deal had been said as to the domestic jurisdiction of the United States, and of the courts of the United States, but not one word as to the sovereignty of the United States, and as to the will of those two Powers who contracted, and whose contractwe were to give effect to if we could. There was a vast difference between one State and several States, and the meaning of the word "jurisdiction" in the sense of sovereignty in which it was used by nations contracting as the United States and Great Britain had contracted by this treaty. It could not be contended that the two nations had power to legislate one thing and the local Legislatures within the sovereignty of each another. The 12 Vic. declared that the meaning of the treaty was, "We had two nations contracting," and saying, "We will deliver up to each other mutually fugitives from justice in either of our dominions who have committed offences within either of our jurisdictions." Assuming the accuracy of the argument just heard, let us see how the treaty would work the other way. Suppose we demanded a fugitive from our country who had fled to the States, and that the Federal Government announced, "Oh, we have contracted with Great Britain alone, and therefore we cannot give up your criminals, because he is in a sovereign State, and not within the jurisdiction of the Federal Government, which was the party to the treaty with Great Britain." We would, doubtless, consider this style of argument both absurd and unjust. The word "jurisdiction" meant sovereignty or nothing when applied to nations, and the parties to the Ashburton treaty could not have meant anything so senseless as that the jurisdiction of the Federal Government, in cases of extradition, was merely a domestic jurisdiction, extending only over the district of Columbia, the wild lands, and such places as dockyards and ports. Did Great Britain then say, "We mean never to ask for the extradition of any fugitives whatever except of those found in the aforesaid localities?" Such a construction would be at variance with common sense. The word "jurisdiction" must mean the exercise, the possession of power, and the nations contracting with regard thereto could not mean by the word the actual domestic jurisdiction exercised by a Court of Quarter Sessions, by the Court of a State, or by the Supreme Court of any State or the United States. How, he would ask, was it possible to commit any offence within the jurisdiction of the United States (not including the District of Columbia or other unimportant places spoken of) unless within one of the United States? The thing was an absurdity in terms. The treaty did not mention the words "one of the said States," but merely "the United States." The words were not that the crime should have been committed against the jurisdiction of the United States, but "in the jurisdiction of the United States." What was alleged in the warrant was, not that the offence was committed against the jurisdiction of the United States, but against the peace of the State of Vermont, one of the United States of America, and within the jurisdiction of the said United States. This was all that was necessary. The only case, according to the argument of the counsel opposite, to which the treaty could have any reference, would be one of treason against the Federal Government, for which offence, of course, extradition could not be demanded. If the prisoners' counsel held the correct view, the treaty would be a nullity. There could be no extradition for any offence committed against the laws of the United States properly so called in the small District of Columbia. If we had been wrong in giving up criminals for twenty-two years under the treaty, it was to be regretted, and it was astonishing that such a point could never have been raised by the eminent lawyers now in their graves, who had dealt with the subject. He believed that the treaty and statutes passed to give it effect must be construed in the most liberal and not the most narrow manner, and that the United States Government had power to extradite as regards every State in the Union.

The Court now took a recess of an hour.

After recess,

Mr. DEVLIN addressed the Court, contending that the offence committed was one that came under the statute. The learned gentleman then proceeded to cite authorities in support of his argument, observing, at the same time, that the case was so very plain to every body that there was no necessity for any lengthened argument.

Mr. BETHUNE followed on the same side. The learned Counsel in a brief argument contended that the Court could not put upon the words "within the jurisdiction of the United States" the strict interpretation given them by the Counsel for the defence, and cited authorities to show that in interpreting statutes the real intention would always prevail over the literal intention or expression. The preamble of the Act must be considered as a part, and explanatory thereof; and the 24th Victoria judged by this principle, and receiving its proper broad and liberal interpretation, would sanction the view of the prosecution, that the United States had power as regards every State of the Union in the matter of extradition. Was it to be supposed that while Great Britain treated respecting the extradition of criminals from all parts of her broad empire, the United States was to be understood as agreeing to extradite with reference to only a few small sections such as the district of Columbia? The words of the treaty bearing upon the subject were—"offences committed within the jurisdiction of either nation." The statute used the same phrase. The only question was—Was Vermont within the jurisdiction of the United States? Every witness swore it was. We were bound to give the broadest meaning to the word "jurisdiction" in this case, and could not say it meant the judicial jurisdiction, but meant "within the territorial jurisdiction of the United States." The learned gentleman cited several authorities, including "Vattel," in support of his views.

Mr. KERR addressed the Court. He was astonished to hear the arguments of his learned friends. The State of Vermont had given over to the Federal Government certain rights, but it had not given the right of jurisdiction. He maintained that where the courts of a country could not take jurisdiction of an offence, that offence was not committed within the jurisdiction of the country itself. The Government had brought a great deal of influence to bear on this case; but of course everybody was aware that a peace-offering must be made to the Federal Executive. A number of people were of opinion that the prisoners, though proved belligerents, should be given up, in order that our fears might be silenced, and the bugbear of future danger averted. Everything had been done to throw difficulties in the way of the defence, still it was to be hoped that this Court would render to the prisoners that justice which was their due. It was to be hoped that His Honour sitting there would do justice to these men regardless of consequences. (Suppressed applause.)

Mr. LAFLAMME addressed the Court at considerable length. He argued that there was nothing at all to justify the rendition of the prisoners on this charge. The United States had a certain jurisdiction belonging to the Federal Government; the State of Vermont had a separate and independent jurisdiction of its own, and this charge was one of those which were cognizable only to one jurisdiction of that State. In fact and in law the claim now put forward by the prosecution was utterly untenable; and the Court, he thought, could come to no other conclusion. Our authorities had gone out of their way to interfere in this case. We had seen members of the Government posting off to Washington to appease the authorities there, just as if there were no law in Canada to meet cases of this description. We have seen members of the Government go to Washington to promise that we should be good boys in future, lest General Dix should come over to Canada and rescue the prisoners from our justice, so that they might be given up to their justice. But no matter how the Government of this country had interfered in this case, he (Mr. Laflamme) was certain that this Court would deal by these young men as the principles of British constitutional law directed. (Murmurs of applause.)

Judge SMITH—I will take the case into consideration, and give decision on Tuesday.

The Court then adjourned.

THE ST. ALBAN'S RAIDERS.

INVESTIGATION BEFORE JUDGE SMITH.

MONDAY, Feb. 20.

This morning being appointed for the resumption of the investigation, the Court and passages were densely crowded, a still larger number of ladies occupying the seats on the right of the bench.

His Honor took his seat at 10 30.

Mr. KERR begged leave to hand to his Honor a printed copy of the propositions of the defence, with the authorities in which they were supported.

Mr. BETHUNE objected to this on the part of the prosecution, and asked for a copy of it, which was declined.

Mr. KERR opened the argument for the defence first submitting in printed form a series of propositions with authorities sustaining them.

PROPOSITIONS.

1st. That Bennett H. Young was on the nineteenth of October last a commissioned officer in the service of the Confederate States in command of a party of enrolled Confederate States troops then in the territory of the United States, a country with which the Confederate States were at war, and quoad which contest Her Majesty had declared her determination to maintain a strict and impartial neutrality between the contending parties.

2nd. That the said Bennett H. Young had been ordered and directed by his superior officer, to whom he had been referred for instructions by the Government of the Confedsrate States, to make the raid upon St. Albans.

3rd. That the tenth article of the Ashburton treaty is strictly limited in its operation to the crimes recognized by the common law of both countries contracting under the names thereto applied in the treaty. That the whole of the facts and circumstances of the case are to be examined into and weighed by the judge in order that he may be satisfied that the act of the accused can, according to the laws of this Province, be justly designated as one of the crimes mentioned in the treaty.

4th. That acts of hostility committed by a recognized belligerent's troops within the jurisdiction of the United States on the other belligerent, and political offences arising out of popular com-

motions, insurrections or civil war, do not come within the provisions of the treaty.

5th. That the United States no longer exist: That since the ratification of the treaty of 1842, five or six States have been admitted into, and nine or ten States have seceded from the Union—that between the two portions of the former r p.blic civil war has been and is now raging—and that thereby the sovereignty, which solely subsisted in the Union of its members, was immediately upon the commencement of the war dissolved.

6th. That the war now raging between the United States and the Confederate States is what is called a perfect war—that both parties are belligerents and entitled to all belligerent rights given by war to sovereign governments.

7th. That during a war between two nations or governments, the municipal criminal codes of the belligerents, are silent and inoperative quoad acts committed by the troops of either of the belligerents in the territories of the other; the law of nations alone furnishing the rules for the government of armies or detached bodies of troops on hostile territory.

8th. That under the law of nations in what is called a perfect war, the rule is that the person of the enemy is liable to seizure, and his property to confiscation seizure or capture wherever found.

9th. That, under the law of nations, members of one belligerent nation may lawfully kill members of the other belligerent nation, or seize or capture their property wherever found except in neutral territory.

10th. That, the commission of an officer in the army of a belligerent power, authorises him and the men under his command to engage in every act of hostility against the other belligerent, permissible under the law of nations.

11th. That, if such commissioned officer violate his instructions limiting him and his command to certain acts of hostility and exceeds the bounds laid down for him, he is guilty of an offence against his own government whose rules for his guidance he has infringed, but he cannot be regarded as a criminal by the other belligerent or by neutral nations, for he is innocent of any offence against international law.

12th. That, the only government having power to enquire into the facts of whether such commissioned officer has exceeded his instructions, or violated the rules laid down for his guidance towards the enemy, is the government which commissioned him.

13th. That a violation of neutral rights, either by capture in neutral territory of enemy's property or by using neutral territory for the passage of troops, or as the starting point of an expedition against the enemy's country, does not deprive the troops so violating neutrality of their belligerent character, the belligerent whose property has been captured has no rights and *quoad* him the captures so effected are legal. Such violation of neutrality cannot affect in any way the non-responsibility of belligerent troops for hostile acts.

14th. That a neutral government cannot take cognizance of or pronounce a judgment on any act of hostility committed by troops under the command of an officer commissioned by one belligerent on the territory of the other belligerent.

15th. That if a nation, having proclaimed its neutrality either by executive action, or through its courts of justice, on the demand of one belligerent, delivers up to that belligerent soldiers and officers of the other belligerent who have committed acts of hostility in the country of the belligerent demanding such extradition, on the ground that such acts were crimes, such pretended neutral nation thereby violates its neutrality and espouses the side of the belligerent to whom extradition is made.

16th. Deduction;—That, civil war thus existing between the United States and the Confederate States on the 19th October last; Her Majesty having proclaimed her neutrality in the contest, and Bennett H. Young then being a commissioned officer in command of a detachment of Confederate troops operating under orders from his Government in the territory of the United States, the acts of Bennett H. Young and his command cannot be measured by the provisions of the municipal criminal code of the enemies of his country, nor can our Courts or officials arrogate a right to themselves to denounce as criminal those acts of hostility which war recognizes.

19th. That, the assemblage of citizens of the United States for the purpose on behalf of the Confederate States of burning and pillaging the town of St. Albans is an overt act of treason against the United States.

Mr. KERR, for the defence, said—To me has been confided by my learned friends the duty of opening the case for the prisoners. It is I can assure your Honor with fear and trembling that I take upon myself the responsibility necessarily attaching itself to my position. Not that I believe that our cause is weak, not that I am afraid that our just claims will be ignored but the great importance of the principles involved, the magnitude of the interests at stake, and the almost boundless field for research and argument which spreads itself before the counsel employed, all tend more thoroughly to bring before each of us his own utter incapacity to render their meed of justice to the rights of our clients. That this is one of the most important cases ever presented for the consideration of any of our courts, will not be denied—that it has already produced a greater effect upon the passions and prejudices of men both in Canada and the former United States than any other cause celebre in this Province, will readily be admitted. It has been the moving cause of a call to arms within the Province. It may justly be looked upon as the origin of those fears which culminated in the denial of asylum to political refugees by our Provincial Parliament. From it the careful observer can trace the origin of the pressure brought to bear upon our Judges to induce them to degrade the palladium of the law into the minister of the temporary passions of the Government and the servile instrument of the interests of the United States. The very papers produced by the prisoners were bought by the price of blood, for one of the messengers despatched to Richmond to obtain information for your Honor but the day before yesterday expiated the crimes of being a loyal soldier, a true friend and a gallant patriot on the gallows at Johnson's Island. Peace to his ashes. Your Honor can read in the treatment of the messenger, the certain fate of those who sent him on his errand. Cursed be the hand which spareth is the motto of the United States. Can it be wondered at then that the knowledge of our responsibility in the grave task we have undertaken should weigh so heavily upon us; that it should like a pall hang over us whithersoever we may go---all that we ask---all that we pray for, is, that it may not so deaden our energies as to render us incapable of laying before you fairly, manfully and faithfully all the points in this most interesting case, with the principles of law which define the positions of the prosecutors, the prisoners and the judge. The question of extradition of criminals by the authorities of the country within the limits of which they had sought refuge, to the authorities of the country within whose territories they had committed a crime, was one which formerly occupied the attention of statesmen and publicists throughout the civilized world. Like every other important principle of what may be called international expediency, the existence of the right to demand was by some authors denied, by others admitted. The question however was shrouded in obscurity, and the greater number of the nations of the world have pronounced against the existence of any such right by entering into treaties by which they agreed under certain conditions to deliver up persons to the authorities of the other parties to the treaty, accused of having committed crimes within their jurisdiction. It is unnecessary here to enter into a detail of the treaties entered into between different States wherein an extradition stipulation appeared; it is sufficient to say that Great Britain has at different periods entered into two on that subject with the United States. The provisions of the first made, in 1794, and known in American works as the Jay Treaty, was in its extradition clause almost precisely similar to the last clause of the Extradition Treaty, in fact no difference of any moment was apparent. It was limited in its operation to 12 years and expired without any great use having been made of its provisions. The only cause celebre arising under it was that of Nash alias Robbins, to which reference will be made hereafter. In 1842 the Ashburton Treaty was entered into between Great Britain and the United States, by the tenth clause of which it was stipulated and agreed that on demand the high contracting parties should deliver up to justice all persons who being charged with the crime of murder, or assault with intent to commit murder, or piracy or arson or robbery, &c., &c., should seek an asylum or be found within the territories of the other, provided that this should only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and committal for trial if the crime or offence had been there committed; and it was further provided that the evidence of criminality should be heard and considered by the judge or magistrate issuing the warrant, and that if on such hearing the evidence should be deemed sufficient to sustain the charge, then the justice to certify to the proper executive authority in order that a warrant of extradition might issue. It has been ruled in this case that the proceedings were rightly constituted under the Provincial Act 24 Vic. cap. 6, it becomes then my duty to enquire what are the powers of the officials mentioned in that Act with reference to the examination of the sufficiency of the evidence to sustain the charge. In order so to do it becomes necessary to examine the powers and duties of our Justices of the Peace out of sessions in their examinations into charges of indictable offences against persons brought before them. By the 30th clause of 102 cap. Con. Stat. of Canada, it is provided that in all such cases the Justice or Justices shall in the presence of the accused person, take the statement on oath or affirmation of those who know the facts and circumstances of the case. By the fifty-seventh article it is provided that if in the opinion of the Justice the evidence is sufficient to put the party upon his trial for an indictable offence, although it may not raise such a strong presumption of guilt as would induce such Justice or Justices to commit him for trial without bail then such Justice shall admit the party to bail; the deduction, therefore, from the evidence the Justice has received from those who know the facts and circumstances of the case in order to justify his committal for trial must be one raising a strong presumption of guilt against the accused. Can it be pretended that the Justice having three alternatives to choose from, all founded on the comparative strength of the evidence against the prisoner, viz., either to discharge him absolutely, to bind over or to commit him for trial, that that discretion does not in fact give him power to examine and weigh the evidence in order to discover to which course the character of the evidence forces him? If from the nature of the evidence adduced, which in itself is incontrovertible, it is apparent that to commit him or even to bind him over would expose the country solely to the costs of a trial, which must result in the acquittal of the prisoner, the duty of the Justice is clearly to discharge. If, on the other hand, no evidence has been rendered charging a *prima facie* case of felony, is it the duty of the Justice to commit? Can it be pretended that a man who has acted as public executioner at the execution of a criminal condemned by a competent court to death would not, were he apprehended for murder, be allowed before the magistrate holding the preliminary examination to produce the record of conviction and the *document proving* his own status as executioner, and would it be pretended that the magistrate had no right to examine into such evidence and that it was his duty to commit for trial for murder because it was proved by the prosecution that a man had been hanged by the prisoner? Numberless other cases may be cited in which the doctrine advocated by the prosecution is shewn in all its true absurdity. This, let it be remembered, applies solely to cases arising under our municipal law, where the injustice is suffered by one of our fellow-subjects, and where his committal for trial, even for an offence of which he is not guilty, can only, at the most, entail upon him the temporary inconvenience of imprisonment in one of our gaols; but when it is the extradition to a foreign power of a man who has committed no crime against our law, but who seeks solely in a British colony an asylum from the enemies of his country, and who trusts himself to the national honor of Great Britain for protection, it becomes us to be exceedingly careful, lest in our anxiety to conciliate powerful neighbours, we are not induced in the eloquent words of Lord Palmerston, to violate the laws of hospitality, the statutes of humanity, and the general feelings of mankind. Let us beware lest we should be hereafter universally and deservedly stigmatised as dishonored by our hasty conduct in this case. The necessity then for a more careful and searching examination of the evidence in an extradition case is apparent; all the facts and circumstances are to be looked at with the greatest care, in order that the magistrate may be fully satisfied that the prisoner really has committed the offence of which he is accused; he must beware lest in a case of manslaughter he commit for murder; he must take care that the offence is not larceny whilst he commits for robbery; but above all he must be satisfied himself that the man is guilty of the crime with which he is charged. In the examination of this case, if we can quote authorities from American books, and cite precedents from American reports, the United States Government surely will not complain of our drawing from their arsenals weapons wherewith to combat their pretensions. The judgments of their Supreme Court are acknowledged in England as of the very highest authority, are cited at the bar as of the very greatest weight, and are listened to by the Bench with the greatest respect and attention. The very brightest ornament of that court, he who in his lifetime was acknowledged by all parties as the greatest judge who ever addressed the bench in the United States, and who was pronounced by Mr. Justice Story, in an address to the bar, to be the expounder of the constitution of that republic, was the late Chief Justice Marshall. His intellect was so essentially judicial that every dictum of his is precious; his intuitive perception of law was so marvellous as to enable him to discover the most recondite principles at a glance. When, then, we have on record his deliberate opinion on any point, we may almost defy the most wily sophist to shake our confidence in the strength of the position taken. One of the most masterly efforts of that distinguished man was made in the argument before Congress when the question of the extradition of a man named Nash, alias Robbins, came up for consideration. It would appear that Nash was one of the crew of the H. M. Hermione, which was taken possession of by mutineers, who, after killing some of the officers, carried the vessel into a Spanish port. Years after a demand for the extradition of Robbins, under the treaty of 1794, was made on the American by the British Government, on a charge of murdering one of the officers of that vessel on the occasion in question. Nash was extradited, notwithstanding he set up in his defence and endeavored to prove that he was an American seaman who had been impressed on board the Hermione, and that it was for the purpose of regaining his liberty that he had joined in the mutiny. Great excitement raged in the United States, the case was brought before Congress, and it was in defence of his friend and patron, George Washington, that the late Chief Justice, then Mr. Marshall, delivered a speech on the subject, which for a time silenced all opposition. Amongst the positions taken by him, was the following:—"That had it been proved that Robbins was an American—had been impressed on board the Hermione, and had been guilty of homicide in endeavouring to regain his liberty, such homicide would not have amounted to murder, and he could not have been extradited"—thereby clearly showing that in his opinion the forcible impressment, if proved, should have been taken into consideration, and that the person who rendered the decision was bound to weigh all the evidence, even of justification, and to give effect to all the circumstances surrounding the act, by which the enormity of the crime might have been diminished or mitigated. The next case in which any point of importance was decided is that of Christana Cochran, who, on the demand of the British Government, was extradited in the year 1843, on a charge of murder. There the counsel for the accused interposed, as an objection, to any further proceeding before the commissioner, a plea of insanity, which in the words of the (4 Atty.-Gen., p. 202) Atty.-Gener-

al's opinion was, after a full and impartial investigation, overruled. This, then, is a corroboration of the opinion expressed by Chief Justice Marshall. The next case from which we can obtain light is that of the Gerrity. The schooner J. L. Gerrity was an American vessel, owned in the Northern States. Previous to her departure from Matamoras for New York, a number of men, amongst whom were the prisoner Tornan and al., engaged passages to the latter port. Two days after the vessel sailed the passengers rose in arms, declared to the captain that "you are now to consider yourself a confederate prisoner,' took possession of the vessel and its contents, and sent the captain and crew adrift in one of the boats. They were apprehended on a charge of piracy on the high seas, and their extradition was demanded under the Ashburton treaty. For them it was contended, 1st—That piracy on the high seas was not an extraditable offence; 2nd—That they were acting on behalf of the Confederate Government, which was then at war with the United States, and a recognised belligerent. It must be remembered that the only proof of their belligerent capacity was the admission made by the captain of the Joseph Gerrity, of the declaration to him by one of the passengers that he was to consider himself a Confederate prisoner. No commissions, no instruction from that belligerent government was produced, nor was it proved that they were natives or subjects of the Confederate States, in fact the presumption was that they were British subjects. And yet the Chief Justice, who, it must be remarked, differed from the majority of the court with respect to the first point, on which they were discharged, observed with reference to the second, that "I concur that persons although not subjects of a belligerent, and although violating the laws of their own country by their interference in its behalf, are not therefore chargeable with piracy. But, at the same time, they cannot protect themselves from the consequences of piratical acts by assuming the character of belligerents. The prisoners averred that they were acting on behalf of the Confederate Government, and Mr. James is right in arguing that this is the same as though they had hoisted the Confederate flag; but we also know that the flag of a country is frequently hoisted by pirates for the better carrying out of their schemes, and *we must look at all the circumstances to see whether or no the object of the prisoners was a piratical one.* I cannot say that that was so clearly negatived as to oust the justice of jurisdiction to commit the prisoners." We have here, the opinion of the Chief Justice of England, saying that the judges on habeas corpus are bound to look at all the circumstances in order to come to a proper judgment on the nature of the act. He, moreover, admits that the declaration of the prisoners that they were acting on behalf of the Confederate Government, negatives, to a certain extent, the presumption that they were pirates; but he cannot say that that declaration, without proof of commission or instructions from the Confederate Government, so clearly negatived the presumption of piracy as to oust the justice of his jurisdiction to commit; but his opinion maintains most strongly the principle that a prima facie case against a party may be so destroyed by evidence of belligerency as to oust the justice of his jurisdiction, thereby giving to the justice the judicial power of appreciating and weighing the testimony. Mr. Justice Blackburn in the same case makes use of the following remarks "there was evidence of piracy *jure gentium* and also evidence that the art was a belligerent one in furtherance of the cause of the Confederates, who are belligerents and so recognized. The act then, so far as the evidence goes, was either piracy *jure gentium*, in which case we are not empowered to give them up, or it was the act of belligerents, and therefore triable neither here nor elsewhere." It must be admitted that there really was very strong evidence of piracy and very weak evidence of belligerency in the case in question, the only fact to show the latter character being furnished by the declaration of the prisoners, which the Chief Justice likened to the hoisting of a flag. In the case of a vessel attacking and capturing a French merchantman, such vessel would not be relieved from the imputation and consequences of being a pirate by showing that at the commencement of the attack she hoisted a Mexican flag, if she did not produce either her commission as a man-of-war to the Mexican navy, or letters of marque authorizing her to cruize as a privateer. Mr. Justice Blackburn very justly remarks also, that if it were the act of belligerents, it was triable neither in England nor elsewhere, thereby showing conclusively that in his opinion, proof of the belligerency before the magistrate took the case out of the treaty. The next case demanding our attention is that of the Roanoke, which was taken possession of on the high Seas, by a party of Confederates under the command of an officer, who had taken passage in her from a neutral port. They were arrested at one of the West India Islands on a charge of piracy. At the preliminary examination before the magistrate after evidence of the act of pretended piracy had been gone into, the officer in command produced his commission and instructions, and thereupon the Attorney General for Her Majesty abandoned the prosecution and they were discharged. In the natural order of things we now come to the case which without doubt is the *cheval de bataille* of my friends on the other side, the one containing according to their ideas the concentrated principles of law applicable to the facts of the St. Albans Raid, and one so perfectly analogous that it absolutely puts an end to all our pretensions. I mean the Burley case. The opinions pronounced by the Upper Canadian Chief Justices and Judges have been submitted to the decision of the civilized world, and have become a portion of the property of the nations of the earth. Those opinions therefore are now open to critical examination, and any one wishing to satisfy himself upon the responsibility incurred by belligerents in visiting neutral countries, would be forced into investigating the correctness of the principles therein laid down as regulating the course to be adopted to all cases, wherein extradition should be demanded. The questions naturally arising in that case were of vast importance, affecting not only the prisoner, but in their consequences touching the question of peace or war between Great Britain and the United States. The law of the Province of Canada was not the only system of jurisprudence involved, but the International law of the globe presented itself for discussion. The rights of belligerents, the duties of neutrals, the sovereign powers of governments and the individual safety of subjects presented themselves each in its turn for consideration and settlement. For the nonce then the judiciary of Upper Canada lost their character of Colonial judges and occupied the distinguished position of expounders of the principles of International Law. Their position in the face of the world was the same as that adorned by the late Lord Stowell in England and Chief Justice Marshal and Judge Story in America. To those eminent jurists is society indebted in a great degree for the maintenance of those principles of International Law, which regulate the intercourse of nations in peace and in war, and to them is due the credit of having dissipated the many erroneous theories advanced by publicists as forming part of the law of nations. To them is due the praise of having in every instance which came within their ken upon the Bench, administered Justice without fear, favor or affection, to all who appeared before them as suitors. It behoves us then to inquire whether the recent judgment on the application for Habeas Corpus in Burley's case is based upon the principles of law applicable thereto, or whether either through ignorance or a base subservience either to popular opinion or to Governmental pressure, the judges of Upper Canada have shown themselves unworthy of the position they occupy. Let us then on this occasion examine with due care the principles which by those judges are declared as governing their decision; and discover whether the conclusion arrived at is one justified by the facts proved, and whether the principles invoked by the Bench were rightly or erroneously applied. The first proposition made in the order is that the question of the act being a belligerent act is one solely for the consideration of a jury in the United States. The second is that an officer in the navy duly commissioned in the service of one belligerent, is not authorized thereby to wage all acts of hostility on the land or sea against the property and persons of subjects of the other belligerent. The third is that where the officer in command of an expedition deviates, in his discretion from the line of conduct laid down for his guidance in his instructions, the subordinate officers and men under his command by obeying orders so to deviate, thereby lose their character of belligerents, and are responsible criminally for any acts they may commit which in time of peace would constitute crimes. The fourth is that a violation of Canadian neutrality aggravates crime committed in the jurisdiction of the United States. The fifth is that a judge in a neutral country has a right to inquire into any excess or deviation committed by the officer of a belligerent power duly commissioned in war from the purport of his commission on the demand of the other belligerent, can thereupon declare that in so deviating he committed an offence against the laws of the other belligerent, and order him to be confined, preparatory to extradition to his enemy. The sixth is that such proceedings by the judge are not in violation of Her Majesty's proclamation of neutrality. It might perhaps be as well here to refer to some of those causes celebres which have rendered the Upper Canadian Bench and Bar so famous throughout the world. Heaven knows that we poor Lower Canadians have no pretension to cope with them in any field of either industry or talent. We are with all due self abasement by it spoken an inferior race fitted by nature for the barren bleak miserable country we inhabit. Content to live and die as our fathers did before us, we exist without any of that noble fire which occasionally leads men to do deeds reflecting honor on their native land. We plod on in the weary round of politics and law most congenial to our temperaments, we cling to the *Coutume de Paris*, we reverence Blackstone, we dislike novelty, and we abhor new fangled ideas of jurisprudence. We have been ridiculed and laughed at for our stolidity. We have been abused for our ignorance. We have been told that the Bench of Upper Canada is composed of men renowned alike for their talent, learning and integrity. We have been assured that celebrated men cluster at the bar of that portion of the Province, thick as grapes in a vinery. We have been advised to listen to the words pregnant with research and learning uttered by the ministers of justice in that favored portion of God's earth. We have been recommended in lieu of studying the speeches of Erskine, Curran, Burke, or Plunkett, to open our ears to the ravishing melody of the utterances of Upper Canadian counsel, and from the models of eloquence and style by them set before us, to form our ideas of the persuasiveness and power of Demosthenes and Cicero We had fondly fancied that had the Upper Canadian Bench but the opportunity, the exceeding talent and learning of its members would have been so displayed before the eyes of the whole world that scientific men throughout Europe and America would have hailed them as worthy recruits to the select band of international jurists whose writings have shed light on the darkest pages of the law of nations. We in this Lower Province, would have humbly rejoiced at the glory thus reflected on our native land by its distinguished citizens, and the cosmopolitan reputation of Canadians would have kindled a blaze of enthusiasm in our frigid bosoms. But alas how has the reality deceived us. On two different occasions the Upper Canadian Bench has been tried, and on both found wanting. The case of Anderson, the negro, apprehended for slaying a man in Georgia, who endeavored to arrest him whilst making his escape from slavery was the first which shook our confidence. There the Court of Queen's Bench first laid down the monstrous doctrine that they could not take into consideration the other facts depriving his act of the criminal complexion, but were bound by the mere fact of his having killed a man, to commit him for extradition. A trial in a slaveholding country being a necessary consequence, and an execution being the only conclusion they naturally could expect from that action. Not content with thus perverting the law as applicable to the negro's act they arrogated to themselves a jurisdiction to which they had no right, and committed the accused upon their own warrant for extradition. Public opinion in England at this frightful injustice, pronounced itself so strongly against the judgment and action of the Upper Canadian Court, that a writ of habeas corpus was issued from the Queens Bench in England, to bring Anderson, and the commitment under which he was then held, to England, with the view of bringing this case before a tribunal competent to appreciate and understand the principles of law applicable to the facts. Struck with dismay at the issue of the English writ, the Upper Canadian judges resolved to burke all such investigations, and from the Court of Common Pleas issued a writ of habeas corpus under which the commitment of the Court of Queen's Bench was quashed as having been made without jurisdiction, and Anderson was thereupon discharged. Such were the facts and circumstances of the first case in which Upper Canadian judges had an opportunity of showing their acquaintance with the principles of International law. It must be admitted that it was a miserable finale to the grand display of learning and argument exhibited by the Court of Queen's Bench when they declared that it was their duty to commit him for extradition under a warrant which, clearly they had no right to issue, to be obliged to call in their brethren of the Common Pleas to free them from the embarrassing position in which they then were, thanks to their own ignorance; but Upper Canadian credulity is quite equal to Upper Canadian vanity, and the public of that portion of the Province were still more deeply persuaded of the intellect and faculties and learning of their judges, by the exceedingly sharp and skilful manner in which they had managed to elude the action of the English Courts in the matter. But to return to Burley's case, the Upper Canadian Bench taking no heed to the outburst of indignation in England, and in fact throughout the civilized world at their ruling in the Anderson case above referred to, again in this case advanced the doctrine that the judge or magistrate in Extradition cases could not consider any evidence which might be given before him tending to destroy the heinousness of the offence charged. They, in fact, decided that if by any testimony it is proved in any Extradition case where the charge is murder, that a man has been killed, that it is no part of the duty of the judge or magistrate to inquire into any other of the circumstances tending to show either that it is manslaughter or justifiable homicide, those are questions according to their doctrine for the consideration of a jury of the State wherein the act was committed. By a parity of reasoning, if a rebellion were to break out in the State of New York, and men were killed by the rebels, who should afterwards seek refuge in Canada and be demanded by the United States authorities, our judge or magistrate should commit for Extradition on the ground of murder, having been committed, leaving to the jury of the United States citizens, the right of deciding whether the crime really was murder or treason, thereby, in fact, declaring that the Extradition treaty has done away with the right of asylum for political refugees in Canada. They have forgotten that this committal for extradition is so far as this country is concerned a final judgment, and surely if we do not wish to be looked upon as the most pusillanimous cowardly race upon the face of the earth, some stand must be made against this departure by judicial authority from the traditional policy of the empire. Vide Gapte Bollman et al, Marshall on (on p. 33 to 41) the People, v. Martin, et al., 7 N. Y. L. Observer (p. 52 to 56.) 4 Opinions Atty.-Gen. p. 202. The other points laid down by the judges will be considered as they present themselves in the order of my argument. Abandoning for the moment the general principles of Extradition, and the cases cited, I proceed to address myself to the facts of this case. On the 19th of October last the town of St. Albans, in the State of Vermont, one of the so-called States of America, was thrown into consternation by the appearance of a body of twenty-one armed men whose leader declared that he was a confederate officer dispatched by his government to take the town.—Parties of men were dispatched to different Banks there in each instance, after declaring that they were confederate troops sent to retaliate for the outrages committed by Sherman and Sheridan, United States officers, in the territories of the Confederate States, they forced the officers of those banks to deliver up to them divers valuable securities of the United States worth about

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half their nominal value and all the Bank notes in the institutions at the time. Whilst in the Bank these scenes were going on, another party had been detached to secure horses and equipments for the raiders. A sufficient number was procured to mount them all. In the interval a number of United States citizens had been taken prisoners and were conveyed to and kept under guard in a public square. During the time a party of the raiders were in possession of the St. Albans Bank, a person of the name of Breck entered to pay a note. He was informed that he was a prisoner to the Confederate troops, and the money which he had brought with him was taken from him by one of the two raiders then in the Bank. A skirmish then ensued between the raiders mounted and the townspeople who had armed themselves. An attempt to fire the town was frustrated, and the Raiders being formed in military array retired from the town pursued by some of the citizens, who fired upon them in their retreat. A pursuit was organized, but the whole party of Confederates succeeded in crossing the line into Canada, where, without warrants or sworn informations having been laid, thirteen of them were arrested by the country magistrates and constables. So soon as the news reached Montreal and Quebec, Judge Coursol was despatched to the frontier to conduct the proceedings, and was ordered by the Attorney General to arrest the offenders without waiting to make out informations or to draw warrants. It is unnecessary for me here to give any further details of the proceedings had before Mr. Justice Coursol, for they are now matter of history. The facts of the raid as given above are in evidence before your Honor. The commission of Bennett H. Young in the Confederate army, and his instructions to form a corps of twenty Confederate soldiers, escaped prisoners of war; his instructions to report for orders to Messrs. Thompson and Clay, and his instructions to report to Mr. Clay alone for orders, are fully and satisfactorily proved in this case. The actual orders to make the raid, signed by Mr. Clay, have been produced and proved; and the muster rolls of the different companies to which the prisoners belong in the Confederate service are also before the Court, authenticated by the proper authorities. From these papers no other deduction can be drawn than that on the 19th of October last Bennett H. Young was an officer in the service of the Confederate States, in command of a party of Confederate troops, detailed for special service by that Confederate Government to St. Albans, in the State of Vermont, with which the Confederate States were then at war, the State of Vermont then being one of the United States—which war by Her Majesty had previously been acknowledged as a perfect war and by whom all her subjects had been warned to maintain and keep a strict neutrality between the parties contending. It is necessary here to refer to a point in this case of vast importance with reference to the very existence of the treaty under the provisions of which the extradition of the prisoners is demanded. Since the date of the treaty five or six States have been admitted into the Republic, at that time composed of a number of sovereign States recognized by the world as a government under the name of the United States. Since that date nine or ten of the States forming a portion of that Republic at that time have seceded therefrom and erected themselves into a separate republic under the name of the Confederate States. Can it be pretended that Great Britain has the same rights against the United States which can be granted to her now as at the date of the passing of the treaty. If a man commits a crime in Canada and takes refuge in Richmond, can the Government of the United States extradite him on the demand of the British Government. If, on the contrary, a man commits a crime in Texas, which was only admitted into the Union in 1845 and which was in 1842 an independent State, can he be extradited on demand of the United States Government if he seeks a refuge and be apprehended in Canada. Neither of the two cases was anticipated at the date of the treaty, and it cannot be pretended that the clauses of a convention between two nations is a whit more elastic than the terms of a contract between individuals. It is also to be remarked that the Constitution of the United States is singular in its formation; the rules applicable to a monarchy do not apply to a republic. Treaties between monarchies or empires are made by the monarchs or emperors; but the United States always made their treaties in a federal capacity of a number of sovereign States constituting the United States. This, then, was nothing more or less than a republic, the sovereignty of which was immediately dissolved by the breaking out of civil war between the several sovereign States of which it was composed; for in a republic the sovereignty subsists solely in the union of the members of the republic. To the student the difficulties met with in his search for the true principles of law of nations are almost insurmountable. Apart entirely from the impossibility of clearly defining all the principles of that law, if law it really can be called, which does not provide or admit of a judge in the contentions of the parties who it is pretended are bound by its rules—whose principles no machinery exists to enforce, and whose spirit and letter can be infringed by any nation strong enough to set its enemy at defiance. The numerous commentators upon international law have to a very great extent by their incautious labors tended to burthen the student with the task of seeking amongst their private opinions of what should be, what really is the law of nations. They have without due consideration adopted the usage of two or three of the nations of Europe within the last few years as legal amendments or modifications of that law on the subject of war, taking it for granted that those nations have a right to dictate to the rest of the world the proper course of conduct to be pursued by belligerents, forgetting that all nations are equal and that no nation is bound to submit to the dictation of another. They have also taken conventions contained in treaties as declaratory of existing law, whilst really treaties must be looked upon as means for obtaining the recognition of principles exceptional to the general rule. But few of the writers of this century, if any, have shed any light upon that law, and in order to obtain a faithful insight into its principles, boldly, perhaps coarsely portrayed, we must refer to the publicists of the last two centuries. Of course in so speaking I make no reference whatever to the cases decided in the English Admiralty and in the United States Supreme Court, which are all of the highest authority and are moreover founded on and sustained by the writings of the authors who flourished in the sexenteenth and eighteenth centuries. I have how arrived in this case at that particular point where it becomes necessary to consider the rights of belligerents. Wars of old were divided by the commentators into perfect and imperfect; the perfect war is also called public or solemn, and is where one whole nation is at war with another whole nation; an imperfect war is is one limited to places, persons and things. A civil war, when it has attained sufficient magnitude to induce foreign nations to declare their neutrality, is a perfect war. In such perfect war both parties are belligerents, and entitled to all belligerent rights given by war to sovereign governments. It is perfectly clear that so soon as war breaks out between sovereign governments the municipal criminal codes of the belligerents are silent and inoperative quoad acts committed by the troops of either of the belligerents in the territories of the other. War is a recourse to violence, to repress which municipal criminal codes are instituted. But war is legal. Under the law of nations that law is superior to any municipal code. A perfect war gives the rights to the members of one belligerent nation to kill, spoil and plunder the members of the other belligerent nation wherever found, except in neutral territory. Such being the case the municipal codes having for their object the punishment of parties killing, plundering or committing other violence, are quoad members of the other belligerent nation paralyzed by the superior authority of the law of nations during war. Inter arma silent leges. All offences committed by members of one belligerent nation upon the members of the other on that others soil, all these are within the jurisdiction of military tribunals solely, and are guaged by the laws of war. That this doctrine is recognized in the United States cannot be denied. The President's proclamation of the 24th September, by which the power of the judiciary was abrogated in cases affecting individual liberty and the establishment as matter of fact of martial law throughout the limits of the former United States, as well the loyal as the rebel, shows conclusively the correctness of the position by me taken. If further proof be wanting, take the case of Bell, the leader of the Lake Erie expedition, for participation in which Burley was extradited as a robber, and gather from the proceedings and sentence of the court-martial held on him and its approval by Gen. Dix whether the Upper Canadian judges were justified in believing that he would have a fair trial before a jury. It has been held by some authors of late years that only the regularly commissioned officers and enrolled troops of one belligerent are authorized to enter into hostilities against the other belligerent. Without admitting this proposition as correct, still as this case presents the prisoners in those capacities, I am, for the sake of argument, willing to adopt it as the rule. Nations are sovereign. If the Government of one belligerent chooses to despatch a body of its troops into the territory of the other belligerent with instructions to devastate and lay waste that territory, and those troops do so devastate, plunder and lay waste that territory and commit any other hostile act therein not mentioned in their instructions, the other belligerent has no right to say to them, if captured, you are but marauders, for you have exceeded your instructions. The mere production of the commission of the officer commanding such force is proof of authority to him by the Government of his country to wage all acts of hostility against the subjects of the other belligerent permittible under the law of nations. He then is in the position of a recognized agent of his Government, and his acts are not individual, but national, for which his Government alone is responsible. Should he exceed his instructions, he is responsible to his own nation solely and exclusively for such excess. If he deviate therefrom, so long as he does not commit any act contrary to the general rules of war, he cannot be called to account for it by the other belligerent or by any nation on the face of the earth. An act of hostility then committed by the officer of a belligerent commissioned in war on the soil of the other belligerent is an act of the nation by which he is commissioned, for which no individual responsibility is incurred. That this is the case is proved so clearly and decidedly by the joint admissions of the British and American Government in the McLeod case, that the opposite pretension is hardly worth arguing against. During the rebellion in Canada of 1837, the American steamer Caroline was made use of by the rebels and American sympathisers to carry supplies to the rival forces on Navy Island. The vessel usually lay during the night at that Island, and an expedition was organised under the command of Captain Drew, R. N., to cut her out from her moorings at Navy Island, it was discovered that the Caroline had been removed to the American side of the river and was then lying at a place called Schlosser, in the State of New York; the expedition however proceeded, attacked the boat, carried her by boarding, and in the skirmish a man of the name of Durfee was killed on the soil of the State of New York. The Caroline was then towed out into the rapids, set on fire and sent over the Niagara Falls. A person of the name of McLeod visiting in 1840 Manchester, in the State of New York, was arrested for murder on the charge of being one of the party concerned in the cutting out of the Caroline and killing of Durfee. In the diplomatic correspondence which ensued it was clearly admitted both by the American and British Governments, that troops acting under orders, and even killing the citizens of a nation at peace with their own on that nation's soil were not guilty of murder, although the commander had actually exceeded his instructions, which did not authorise his exercising any act of hostility on the neighboring nation's territory. Is not this a much stronger case than that of the Saint Albans Raiders to prove the virtue resident in a commission of an officer of the British Navy. The acts committed by Young and his command were done in an enemy's country; those by Drew and his command in the country of a friend; yet in the latter case the governments of both countries declare that the acts are not crimes, whilst in the former it is pretended that they are. A great deal no doubt will be said as to the fact that the Raiders were not in the uniform of the Confederate army; but stratagem and deception, so long as no perfidy is used, are quite permissible; the ambush, the disguise of uniform, the false flag, are allowable. Those who trust themselves to such devices may in the two latter cases be treated as spies if captured in the attempt to deceive or ere their departure from the enemy's country; but once beyond the boundaries the enemy is not justified by the laws of war if afterwards taken prisoners (3 Phillimore, p. 141) in treating them otherwise than as prisoners of war. No other power then having the right to enquire into the facts of whether such commissioned officer has exceeded his instructions, the government which commissioned him is the only one entitled to find fault with or punish him for any excess or dereliction of duty. The duty of neutrals now, for a brief space of time, must occupy my attention, but this branch of the law of nations, so far as this case is concerned, is one which presents no difficulty. The authors are quite unanimous, it may be said, as to the neutral having no right whatsoever either to interfere in any way in the war or to express an opinion upon any of the acts of the belligerents. It is to be remembered that the action of our courts of justice in this matter must follow the action of the Government of Great Britain. That Government has declared its neutrality in the war between the United States and the Confederate States—thereby informing all our courts' judges and magistrates that the municipal criminal codes of those two governments are silent and inoperative, so far as municipal crimes committed by the citizens of the Confederate States on United States soil are concerned, and that the law of nations alone was in force between the two governments and their respective troops and subjects. Thus our courts and judges in cases where charges are brought against any persons by the United States Government, of having committed crimes within the limits of the so-called loyal States, the first fact or circumstance to be inquired into is whether the person so charged is a Confederate officer or soldier; if he be such officer or soldier the criminal code and common law of the State within which the act charged was committed are not binding upon him, the extradition treaty does not apply; he must be discharged. Can it be pretended that you, sir, have any right to dictate to the Confederate States the rules of war which they are bound to observe; that you, a municipal judge, can step forth and say to the rising tide of the fierce passions and fiery hate engendered by this frightful war, "So far shalt thou come but no further." Or do you think that you would be discharging your duty to your Queen and country by acting the part of Provost Marshal to the United States in capturing prisoners of war to swell the numbers now confined at Camp Douglass and Johnson's Island. If in this case you take upon yourself the responsibility of committing these men for extradition, you will violate the Queen's proclamation of neutrality, and will place yourself on a par with the bench of Upper Canada. The pretended violation of our neutrality laws has really nothing to do with this case. Had they marched through with drums beating and colors flying, it would have been a grave offence against our government; but it cannot aggravate, in the slightest degree, the acts of hostility afterwards performed in Vermont.—The learned counsel on the other side have, in accordance with their instructions, no doubt persisted in calling the prisoners robbers and murderers. They appear to have imbibed the prejudices of their client, the United States Government, and to be unwilling to admit our clients have any claim to be belligerents. The people of the State of Vermont are, it is said, frightfully excited at the idea of one of their towns having been captured and held for three hours by a band of twenty-one pretended Confederate soldiers. The booty taken from the banks, no doubt, has also tended to exacerbate their feelings, and they still continue to brand the St. Albans raid as unsoldierly, dastardly, in violation of the rules of war, and perfectly fiendish. They all seem to take it for granted that the Government of the United States wages war after the mildest fashion,

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Lambton	Sarnia	Charles Robinson ..	F. Davis, Sarnia	P. T. Poussett	James Flintoff, Sarnia	Henry Glass, Sarnia	J. R. Gemmill	P. T. Poussett, Sarnia	J. R. Gemmill, Sarnia	Alex. Vidal.
Lanark and Renfrew	Perth	J. G. Malloch	Daniel McMartin, Perth	W. R. F. Berford	James Thompson, Perth	James Bell, Perth / O. Jones, Almonte / Jas. Morris, Springtown	Charles Rice (2)...	Wm. O. Buell, Perth	Charles Rice, Perth	Wm. Fraser.
Leeds and Grenville	Brockville	George Malloch	E. J. Senkler, jr.	James Jessup	Adiel Sherwood, Brockville	David Jones, Brockville / Wm. J. Scott, Prescott..	W. H. Campbell..	J. D. Buell, Brockville	James Jessup, Brockville	J. L. Schofield.
Lincoln	Niagara	J. M. Lawder	R. McDonald, St. Catharines	R. McDonald	J. A. Woodruff, Niagara	John Powell, Niagara	Johnson Clench..	C. H. Powell, St. Cathar. / John Powell, Niagara...	Chas. B. Secord, Niagara..	D. McDougall.
Middlesex	London	Hon. J. E. Small	Chas. Hutchinson, London..	John B. Askin	William Glass, London	Jas. Ferguson, London.. / C. L. Gill, London...	John McBeth	James Shanly, London	John Macbeth, London...	Adam Murray.
Norfolk	Simcoe	Wm. Salmon	Wm. M. Wilson, Simcoe	W. M. Wilson	Edmund Deedes, Simcoe	F. L. Walsh, Simcoe	A. B. Rapelje	David Tisdale, Simcoe	Wm. M. Wilson, Simcoe...	Henry Groff.
Northumberland and Durham	Cobourg	George M. Boswell	John D. Armour, Cobourg	J. D. Armour	J. B. Fortune, Cobourg	G. S. Boulton, Cobourg / J. M. Grover, Colborne.. / R. Armour, Bowmanv'e / G. C. Ward, Port Hope	R. D. Chatterton	W. H. Weller, Cobourg	M.F. Whitehead, Port Hope	A.A. Burnham.
Ontario	Whitby	Z. Burnham	S. H. Cochrane	H. J. Macdonell	N. G. Reynolds, Whitby	John Ham Perry, Whitby...	J. V. Ham	George H. Dartnell, Whitby	J. V. Ham, Whitby	W. Paxton, jr.
Oxford	Woodstock	D. S. McQueen	F. R. Ball, Woodstock		Andrew Ross, Woodstock	James Ingersoll, Woodstock	James Kintrea...	Henry B. Beard, Woodstock	James Kintrea, Woodstock	Jas. Kintrea.
Perth	Stratford	Read Burritt	D. H. Lizars, Stratford	J. J. E. Linton	R. Moderwell, Stratford	Wm. Smith, Stratford	Alex. McGregor...	R. T. Huggard, Stratford	Alex. McGregor, Stratford	Alex. McGregor
Peterborough	Peterborough..	R. M. Boucher	C. A. Weller, Peterborough..	C. A. Weller	James Hall, Peterborough..	C. Rubidge, Peterborough...	Thomas Fortye...		Thos. Fortye, Peterboro'...	W. Sheridan.
Prescott and Russell	L'Orignal	James Daniell	David Pattee, L'Orignal	David Pattee	C. P. Treadwell, L'Orignal	S.M. Cushman, L'Orignal / James Keays, Russell...	J. W. Marston			J. W. Marston.
Prince Edward	Picton	D. L. Fairfield	Phillip Low, Picton	P. Low	H. J. Thorp, Picton	John P. Roblin, Picton	John Twigg		S. Merrill, Picton	R. J. Chapman.
Simcoe	Barrie	James R. Gowan	James H. Cotter, Barrie	W. B. McVity	B. W. Smith, Collingwood...	George Lount, Barrie	Jonathan Lane...	John Strathy, Barrie	Jonathan Lane, Barrie	H. R. A. Boys.
Stormont, Dundas and Glengary	Cornwall	George S. Jarvis	J. F. Pringle, Cornwall	J. F. Pringle	D. E. McIntyre, Cornwall...	Geo. C. Wood, Cornwall / A. McDonell, Morrisb'rg / D. McDonell, Alexandria	R. McDonell	John McDonell, Cornwall	R. McDonell	J. R. McDonald.
Victoria	Lindsay	James Smith	A. Lacourse	A. Lacourse	N. McDougall	H. Dunsford	W. Grace		W. Grace	S. C. Wood.
Waterloo	Berlin	Wm. Miller, Galt	Thomas Miller, Berlin	Thomas Miller	George Davidson, Berlin	D. S. Shoemaker, Berlin / Isaac Clemens	Jas. Colquhoun		A. J. Peterson, Berlin	Chas. Stanton.
Welland	Welland	H. W. Price, Clifton	L. D. Raymond, Welland	L. D. Raymond	Robert Hobson, Welland	D. D'Everardo, Fonthill	Isaac P. Wilson		D. D'Everardo, Fonthill	A. Thompson.
Wellington	Guelph	A. McDonald	J. J. Kingsmill, Guelph	Thomas Saunders	G. J. Grange, Guelph	James Webster, Guelph	James Hough	George Palmer, Guelph	Thomas Keating, Guelph.	Wm. Hewitt.
Wentworth	Hamilton	A. Logie	S. B. Freeman, Hamilton	S.B. Freeman, Ham.	E. C. Thomas, Hamilton	J. H. Greer, Hamilton	S. H. Ghent	Wm. Leggo, Hamilton	George Rolph, Dundas	J. Kirkpatrick.
York and Peel	Toronto	S. B. Harrison / J. Boyd, J. J.	John McNab, Toronto	John McNab	F. W. Jarvis, Toronto	J. Ridout, Toronto / S. Pearson, Newmarket / S. Brega, Brampton / S. Sherwood, Toronto	W. McKenzie (c)	A. N. Buell, Toronto	W. J. Fitzgerald, Toronto	J. S. Howard.

on the idea of doing the least possible harm to the enemy. No pillage, no plunder, say they, is permitted; women sleep tranquilly in the rebel States within the sound of the bugles of our regiments; children are cared for by our soldiers with paternal love; property of every description may be before our troops for days without an article disappearing; our men are models of bravery, honesty and morality; our generals are gentlemen and christians. And yet what does the record of daily events show us. That this verily is a civil war waged by the North against the South, with all the barbarity of the thirty years war, must strike every observer. It is the old feud of the Cavalier and Roundhead rising like a Phenix from its ashes and bathing the soil of this continent in gore. It is a strife wherein the father meets his son at the point of the bayonet, and where the brother imbrues his hands in his brother's blood. It is a carnival of blood and can it be wondered at that man drunk with the odor of carnage should forget that he was framed after his Creator's image and do deeds what bring him to the level of the wild beast. Let us boast of man's moral improvement as much as we may—let us flatter ourselves that we are now Christians—let us blame the barbarous in war of our ancestors—let but the mailed hand of civil war touch the gossamer toga of civilization, and it will fall from the shoulders of the man of the nineteenth century, revealing him in all the nakedness and barbarism of the dark ages of the world. It is a sad and melancholy prospect for any man of the Anglo-Saxon race to behold that fair Republic which, though but an infant in years, was a giant in stature, and which but a few short months ago was the home of freedom and the asylum for the persecuted races of Europe, now the theatre in which the most absolute despotism is exercised, where liberty is no longer known save in tradition, and where those who seek an asylum from the persecution of the task masters of Europe, are driven, like cattle to the shambles by the speculators in human blood of the new world. It is impossible I say for any man with British blood in his veins not to admire, the heroic valour and determination which has caused the Confederates so often to triumph over what were thought to be insuperable difficulties. The natural love of fair play implanted in our bosoms in childhood, when striking a boy when down was mentioned as unfair and degrading and the striking a younger smaller, weaker or younger than ourselves was reputed as the rankest cowardice, bears its fruits in manhood. We regard the North as the big bully of the school, and the South as the boy who has at last turned upon his tyrant, and though we cannot help him he has all our good wishes for his success. Such I believe to be the sentiment of every Englishman in whom the disgusting love of trade has not destroyed the traditions of his mother country and his own inborn love of fair play and hatred of tyranny.

See Page 8d.

TERRITORIAL DIVISIONS OF LOWER CANADA.

Under Chap. 75 of Consolidated Statutes for Lower Canada.

DISTRICT.	COUNTIES, &C., COMPRISED.	Population in 1861.	DISTRICT.	COUNTIES, &C., COMPRISED.	Population in 1861.	DISTRICT.	COUNTIES, &C., COMPRISED.	Population in 1861.	DISTRICT.	COUNTIES, &C., COMPRISED.	Population in 1861.
QUEBEC	Portneuf	21,291	THREE RIVERS.	Maskinongé	14,790	TERREBONNE	Argenteuil	12,897	BEAUCE	Beauce	20,416
	Quebec	27,893		St. Maurice	11,100		Two Mountains	18,408		Dorchester	16,195
	Montmorency	11,136		Champlain	20,008		Terrebonne	19,460	ARTHABASKA	Megantic	17,889
	Levis	22,091		Nicolet	21,563	JOLIETTE	L'Assomption	17,355		Arthabaska	13,473
	Lotbinière	20,018		Three Rivers City	6,058		Montcalm	14,724		Drummond	12,356
	City of Quebec	51,109	ST. FRANCIS	Richmond	8,884		Joliette	21,198	BEDFORD	Shefford	17,779
MONTREAL	Hochelaga	16,474		Wolfe	6,548	RICHELIEU	Richelieu	19,070		Missisquoi	18,608
	Jacques Cartier	11,218		Compton	10,210		Yamaska	16,045		Brome	12,732
	Laval	10,507		Stanstead	12,258		Berthier	19,608	ST. HYACINTH	St. Hyacinth	18,887
	Vaudreuil	12,282	KAMOURASKA	Kamouraska	21,058	SAGUENAY	Charlevoix	15,223		Bagot	18,841
	Soulanges	12,221		Temiscouata	18,561		Saguenay	5,950		Rouville	18,227
	Laprairie	14,475	OTTAWA	Ottawa	27,757	CHICOUTIMI	Chicoutimi	10,215	IBERVILLE	St. Johns	14,858
	Chambly	13,132		Pontiac	13,257	RIMOUSKI	Rimouski	20,854		Napierville	14,513
	Verchères	15,485	GASPE	Gaspé	14,141	MONTMAGNY	L'Islet	12,300		Iberville	16,891
	City of Montreal	90,498		Bonaventure	13,092		Montmagny	13,386	BEAUHARNOIS	Huntingdon	17,491
							Bellechasse	16,052		Beauharnois	15,742
										Chateauguay	17,837

* For places in each county see "*Law Almanac* of 1861." Total Population of Lower Canada, 1,110,647

GENERAL SESSIONS OF THE PEACE.

DISTRICT.	WHERE HELD.	WHEN HELD.	BY WHAT AUTHORITY HELD.		OFFICERS OF THE COURT.
			STATUTE.	DATE OF PROCLAMATION.	
QUEBEC	Quebec	8th January, and 4th April, July, and Oct	13 and 14 Vict. cap. 35, sec. 2		Clerk, Pierre A. Doucet.
MONTREAL	Montreal	4th to 14th Feb., May, August, and November.	20 Vict. cap. 44, sec. 139	May 28, 1858.	" Delisle & Bréhaut.*

* In all the other Districts except Three Rivers, (in which L. U. A. Genest is Clerk of the Peace) the office of Clerk of the Peace is held by the Clerk of the Crown. Under the authority of Sect. 2 of 97 Chap. of Cons. Stat., L. C., the holding of the General Sessions of the Peace has been discontinued by Proclamation in all other Districts in which they were formerly held.

COURT OF VICE-ADMIRALTY.

QUEBEC.

JUDGE—Hon. Henry Black. | REGISTRAR—Charles Drolet.

MARSHAL—J. B. Parkin.

SMALL CAUSE COMMISSIONERS' COURTS

(Jurisdiction to $25.)

Are held under Chap. 94 of the Consolidated Statutes for Lower Canada, in almost every Parish and Township of Lower Canada, on the FIRST Monday of every month. (The No of Summonses issued in 1860 was 25,754.)

REGISTRY OFFICES AND REGISTRARS OF LOWER CANADA.

DISTRICT.	NAME OF REGISTRATION COUNTY OR DIVISION.	EXTENT OF REGISTRATION COUNTY OR DIVISION.	WHERE HELD.	UNDER WHAT AUTHORITY HELD.		Total No. of Documents enregistered in 1860.	NAME OF REGISTRAR.
				STATUTE.	DATE OF PROCLAMATION.		
QUEBEC	Quebec	City and County of Quebec	Quebec	18 V. c. 99, s. 11, par. 1		1761	C. N. Montizambert.
	Portneuf	County (1) of Portneuf	Cap Santé	7 Vic. c. 22, sec. 2	Feb. 8, 1844	481	Roger Lelièvre.
	Montmorency	County of Montmorency (except Island of Orleans, &c.)	Chateau Richer	7 Vic. c. 22, sec. 2	Feb. 8, 1844	248	Gabriel Dick.
	Orleans, (Island of)	Islands of Orleans, Reaux. and Madame.	St. Laurent	8 V. c. 28 & 9 V. c. 44	June 25, 1845	130	Pierre Gosselin.
	Dorchester, 2nd Reg. Div.	County of Levis	Point Levi	9 Vic. c. 45, sec. 2	July 10, 1846	609	François M. Guay.
	Lotbinière	County of Lotbinière	Ste. Croix	7 Vic. c. 22, sec. 2	Feb. 8, 1844	413	Rémi S. Noel.
MONTREAL	Montreal	City of Montreal and Counties of Hochelaga and Jacques Cartier	Montreal	18 V. c. 99, s. 11, par. 1		2271	Geo. H. Ryland.
	Chambly	County of Chambly	Longueuil	18 Vic. c. 99, sec. 2	Oct. 19, 1857	268	Thomas Austin.
	Huntingdon, 1st Reg. Div.	County of Laprairie	Laprairie	13 & 14 Vic. c. 108		390	Tancrède Sauvageau.
	Laval	County of Laval	Ste. Rose	18 Vic. c. 99, sec. 2	Aug. 7, 1857	342	François X. Léonard.
	Soulanges	County of Soulanges	Coteau Landing	18 Vic. c. 99, sec. 2	April 16, 1856	471	Geo. H. Dumesnil.
	Vaudreuil	County of Vaudreuil	St. Michel	7 Vic. c. 22, sec. 2	Feb. 8, 1844	447	Fran.de SalesBastien
	Verchères	County of Verchères	Verchères	18 Vic. c. 99, sec. 2	Dec. 22, 1860	355	Félix Geoffrion.
THREE RIVERS	Champlain	County of Champlain	Ste. Geneviève	7 Vic. c. 22, sec. 2	Feb. 8, 1844	443	Elie Rinfret.
	Maskinongé	County of Maskinongé	Rivière du Loup	18 Vic. c. 99, sec. 2	Sept. 29, 1856	445	Jos. Edouard Pichette
	Nicolet	County of Nicolet	Bécancour	7 Vic. c. 22, sec. 2	Feb. 8, 1844	544	Joseph Jutras.
	St. Maurice	Co. of St. Maurice & City of Three Rivers.	Three Rivers	18 V. c. 99, s. 11, par. 3		420	Louis G. Duval.
ST. FRANCIS	Richmond	County of Richmond	Richmond	18 Vic. c. 99, sec. 2	March 20, 1856	351	George Hope Napier
	Sherbrooke	Town of Sherbrooke & Co. of Compton	Sherbrooke	18 V. c. 99, s. 11, par. 4		522	William Ritchie.
	Wolfe	County of Wolfe	South Ham	Con.Sta.L.C.c.37,s.86	Dec. 21, 1861		Jacques Picard.
	Stanstead	County of Stanstead	Stanstead Plain	7 Vic. c. 22, sec. 2	Feb. 8, 1844	418	Chas. A. Richardson.
GASPE	Bonaventure	County of Bonaventure	New Carlisle	7 Vic. c. 22, sec. 2	Feb. 8, 1844	175	Joseph G. LeBel.
	Gaspé	County of Gaspé (*part*)	Percé	7 Vic. c. 22, sec. 2	Feb. 8, 1844	112	Louis Geo. Harper.
	Ste. Anne des Monts	Municipality of Ste. Anne des Monts	Ste. Anne desMonts	18 Vic. c. 99, sec. 12	Dec. 3, 1859	18	John Perrée.
	Magdalen Islands	Magdalen Isles	Amherst	7 Vic. c. 22, sec. 2	Dec. 3, 1859	*	Chas. Cruse Fox.
KAMOURASKA	Kamouraska	County of Kamouraska	St. Louis	12 Vic. c. 128	Feb. 8, 1844	504	Henry Garon.
	Temiscouata	County of Temiscouata	St. Jean Baptiste			423	John Heath.
OTTAWA	Ottawa	Counties of Ottawa and Pontiac	Aylmer	18 Vic. c. 99, sec. 2	Feb. 8, 1844	413	James F. Taylor.
TERREBONNE	Two Mountains	County of Two Mountains	Ste. Scholastique	18 Vic. c. 99, sec. 2	April 24, 1857	473	Dosithée Dupras.
	Argenteuil	County of Argenteuil	Lachute	18 Vic. c. 99, sec. 2	Feb. 19, 1858	229	Daniel De Hertel.
	Terrebonne	County of Terrebonne	St. Jerôme	18 Vic. c. 99, sec. 2	Feb. 29, 1856	516	Joseph A. Hervieux.
JOLIETTE	Joliette	County of Joliette	Industry	7 Vic. c. 22, sec. 2	May 30, 1856	562	Jean Ovide Le Blanc.
	Leinster	County of L'Assomption	L'Assomption	18 Vic. c. 99, sec. 2	Feb. 8, 1844	457	Marcel Poirier.
	Montcalm	County of Montcalm	Ste. Julienne	18 Vic. c. 99, sec. 2	Dec. 15, 1856	416	Jos. Ed. Beaupré.
RICHELIEU	Richelieu	County of Richelieu	Town of Sorel	7 Vic. c. 22, sec. 2	Feb. 12, 1858	750	Pierre R. Chevallier.
	Berthier	County of Berthier	Berthier	7 Vic. c. 22, sec. 2	Feb. 8, 1844	560	Jean Octave Chalut.
	Yamaska	County of Yamaska	St. François	10 & 11 Vic. c. 50		553	Jean Olivier Arcand.
SAGUENAY	1st Division of Charlevoix and Saguenay	Co. of Saguenay, & St. Etienne, Ste. Agnès, St. Irénée, St. Fidèle, Callières & DeSalles.	St. Etienne	22 V.c.35, ss. 1,2,3		151	Charles Du Berger.
	2nd Division of ditto	Remainder of Charlevoix	Baie St. Paul			220	Telesphore Fortin.
CHICOUTIMI	Chicoutimi	County of Chicoutimi	Chicoutimi			110	Ovide Bossé.
RIMOUSKI	Rimouski, No. 2	County of Rimouski	Rimouski	12 Vic. c. 128		256	André E. Gauvreau.
MONTMAGNY	L'Islet	County of L'Islet	St. Jean Port Joli	22 Vic. c. 101, s. 26	Nov. 19, 1858	258	Thadée Michaud.
	Montmagny	County of Montmagny	Montmagny	18 Vic. c. 99, sec. 2	Nov. 19, 1858	258	Jos. David Lépine.
	Bellechasse	County of Bellechasse	St. Michel	10 & 11 Vic. c. 51		391	Pantaléon Forgues.
BEAUCE	Beauce	County of Beauce	St. François	18 Vic. c. 99, sec. 2	Nov. 29, 1856	504	Jean P. Proulx.
	Dorchester	County of Dorchester	Ste. Hénédine	18 Vic. c. 99, sec. 2	Sept. 9, 1856	365	Alexis Godbout.
ARTHABASKA	Megantic	County of Megantic	Inverness	Con.Sta.L.C.c.37,s.86		422	John R. Lambly.
	Arthabaska	County of Arthabaska	St. Christophe	18 Vic. c. 99, sec. 2	May 22, 1857	379	Ed. Modeste Poisson.
	Drummond	County of Drummond	Drummondville	7 Vic. c. 22, sec. 2	Feb. 8, 1844	459	Edmund Cox.
BEDFORD	Shefford	County of Shefford	Waterloo	18 Vic. c. 99, sec. 2	Oct. 14, 1856	650	Joseph B. Edgarton.
	Brome	County of Brome	Knowlton	18 Vic. c. 99, sec. 2	March 20, 1856	517	Hiram S. Foster.
	Missisquoi	County of Missisquoi	Bedford	18 Vic. c. 99, sec. 2	March 31, 1857	603	Richard Dickinson.
ST. HYACINTH	St. Hyacinth	County of St. Hyacinth	St. Hyacinthe	7 Vic. c. 22, sec. 2	Feb. 8, 1844	1159	Horace St. Germain.
	Bagot	County of Bagot	St. Liboire	Con.Sta.L.C.c.37,s.86			Jos. C. Bachand.
	Rouville	County of Rouville	Marieville	18 Vic. c. 99, sec. 2	Sept. 11, 1857	567	Louis Ed. P. Laberge.
IBERVILLE	St. Johns	County of St. Johns	St. Johns	18 Vic. c. 99, sec. 2	April 1, 1856	392	Louis Marchand.
	Napierville	County of Napierville	Napierville	18 Vic. c. 99, sec. 2	Jan. 22, 1857	669	Ephrem Bouchard.
	Rouville (3)	County of Iberville	St. Athanase	7 Vic. c. 22, sec. 2	Feb. 8, 1844	745	Frs. Ferd. Z. Hamel.
BEAUHARNOIS	Beauharnois	County of Beauharnois	Beauharnois	18 Vic. c. 99, sec. 2	July 4, 1856	607	V. A. L. DeMartigny.
	Chateauguay	County of Chateauguay	Ste. Martine	18 Vic. c. 99, sec. 2	April 28, 1856	653	Geo. Aimé Beaudry.
	Huntingdon	County of Huntingdon	Huntingdon	18 Vic. c. 99, sec. 2	Feb. 20, 1857	402	Isaac Jackson.

(1) By County is meant the Electoral County as described in Parliamentary Representation Act, Chap. 2 of Consolidated Statutes of Canada.
(2) All the Proclamations here mentioned have been published in the "Canada Gazette."
(3) The parts of the Old County of Rouville remaining after the Proclamation of the New Registration County of the same name, the County of Iberville not being yet proclaimed a County for Registration purposes.

SEIGNIORIAL COMMISSIONERS.

MONTREAL,	Henry Haig Judah, Q.C. Norbert Dumas, Q.C. Jean Bte. Varin.
QUEBEC.	Siméon Lelièvre. Cyrille Delagrave.
NEW CARLISLE	Joseph G. LeBel.

COMMISSIONERS FOR THE CIVIL ERECTION OF PARISHES, &c.

MONTREAL	Jos. Ubalde Beaudry. Alfred Pinsonneault. Joseph Belle. Théod Doucet. Chas. Alex. Terroux.
QUEBEC	Charles Panet. Louis Massue. George B. Faribault. A.B.Sirois Duplessis. Charles Cinq Mars.
THREE RIVERS	George Badeaux. Valère Guillet. Den.Genest LaBarre. Severe Dumoulin. Désiré Ed. Frigon.
ST. HYACINTHE	Pierre Ed. Leclère. Leonard Boivin. Adolphe Malhiot. Pierre Lamothe.
BYTOWN.	Ls.Mainville Coutlée. Thomas McCord. James Doyle. André Larue. John Murphy.

COMMISSIONERS IN L. CANADA.

For taking Affidavits to be used in U. C.

MONTREAL.	Charles Jos. Coursol. Théod Doucet. James Court. J. J. C. Abbott. John H. Isaacson. Alexander Morris. W. B. Lambe. F. W. Torrance. Dunbar Browne. Murdoch Morison.
QUEBEC	Fred. C. Vannovous. Charles Holt. Wm. Bignell. Frank H. Badgley. Ph. B. Casgrain. Noel H. Bowen. J. B. R. Dufresne. Pierre A. Doucet.

COMMISSIONERS in UPPER CANADA

For taking Affidavits to be used in L. C.

BELLEVILLE	Geo. E. Henderson. Robert P. Jellett.
BROCKVILLE	Jacob D. Buell. Henry S. Hubbell. James Jessup. George Crawford.
COBOURG	Wm. Geo. Pentland. James Cockburn.
CORNWALL	Jacob L. Pringle. George C. Wood.
HAMILTON	Colin D. Reid. Robert Nicol Law.
KINGSTON	Jas. Alex. Henderson. George Wm. Draper.
LANARK	Alexander G. Hall. William Robertson.
LONDON	Thomas W. Lawford. William Horton. James Shanly. William C. L. Gill.
OTTAWA	Richard W. Scott. J. B. Lewis.
PEMBROKE	Alexander Moffat. Andrew Irving.
PERTH	James Bell. John Deacon, jr.
PETERBOROUGH	Charles Weller. Staf. N. Kirkpatrick.
PORT HOPE	Frank H. Burton. James Walsh.
TORONTO	George Futvoye. Ed. L. Montizambert Robert A. Harrison. Larratt W. Smith. Robert Spratt. George Boomer. Hector Cameron.

COMMISSIONERS for CODIFYING the LAWS OF LOWER CANADA IN CIVIL MATTERS.

Hon. Réné E. Caron. | Hon. Chas. D. Day.
Hon. A. N. Morin.

Secretaries. { French...J. U. Beaudry. / English .T. K. Ramsay.

CANADIAN COMMISSIONERS relative to the INTERNATIONAL EXHIBITION of 1862.

Sir William Logan,
Hon'ble Louis Victor Sicotte,
Edward William Thomson,
John Beatty, Junior,
J. C. Taché, M. D.
Brown Chamberlin,
Jesse Beaufort Hurlburt.

COMMISSIONER IN GREAT RRITAIN AND IRELAND.

For taking affidavits to be used in Courts in Lower Canada, &c., *(Under Chap, 82 of the Consol. Stat. for Lower Canada,* s. 12.)

WILLIAM BAKER, Solicitor, Waterford.

INSPECTORS of PUBLIC ASYLUMS, &c.

Wolfred Nelson, *Chairman.*
Joseph Chas. Taché. | James Moir Ferres.
Ed. A. Meredith. | Terence O'Neil.

BEAUPORT LUNATIC ASYLUM.

Commissioners.—Louis Massue, Errol B. Lindsay, Hammond Gowen, Joseph Painchaud, Robert Hamilton, A. B. Sirois Duplessis, and Daniel McGie.

Physicians.—Drs. Fremont & Douglas.

COMMISSIONER OF INDIAN LANDS

Edouard Narcisse DeLorimier.

HARBOUR COMMISSIONERS.

MONTREAL.

Hon. John Young.
H. H. Whitney.
Alex. M. Delisle.
The Mayor of the City.
The President of the Board of Trade.
Secretary...Alexander Clerk.

QUEBEC.

Hon. George Pemberton, *Chairman.*
George H. Simard.
~~John Sharples.~~
The Mayor of the City.
The President of the Board of Trade.
Sec.-Treas...H. N. Jones.

TRINITY HOUSE.

QUEBEC.

Master	Jas. Gillespie.
Deputy Master	Richard S. Alleyn.
Wardens	Horatio N. Jones. H. Burstall. François Gourdeau. ~~Hammond Gowen.~~ Vital Tétu, Jesse D. Armstrong. François Buteau.
Clerk	Errol B. Lindsay.
Treasurer	A. Lemoine.

MONTREAL.

Master	Andrew Shaw.
Deputy Master	William Bristow.
Wardens	William Edmonstone Henry Starnes. Jean Louis Beaudry. Victor Hudon. Thomas Morland. Pierre Cotté.
Registrar	E. D. David.

SHIPPING MASTER, Ralph B. Johnson.

TURNPIKE ROAD TRUSTEES.

MONTREAL :—Hugh Taylor, W. J. Knox, J. Crawford, Joseph Laporte, J. Quennneville, Benj. H. Lemoine, Pierre Beaubien, Edward Quinn, Michel F. Valois.

QUEBEC (North shore) :—Joseph E. De Blois, William H. Lemoine, ~~Hammond Gowen,~~ John Sharples.

QUEBEC (South shore).—Benoni Guay. J. Bte. Carrier, J. Bte. George Begin, Charles Robertson, Pierre Giroux.

LEGAL FUNCTIONARIES.

QUEEN'S COUNSEL.

Hon. Fred. A. Quesnel	1831
Hon. Henry Black	1836
John Boston	1838
Henry Driscoll	1838
Come S. Cherrier	1842
John R. Hamilton	1844
Jos. Ed. Turcotte (Ex Sol. General)	1847
Hon. L. T. Drummond (Ex Atty. Gen)	1848
Francis Godschall Johnson	1853
Hon. John Rose (Ex Sol. Gen.)	"
Hon. P. J. O. Chauveau* (Ex Sol. Gen)	"
Dunbar Ross* (Ex Sol. Gen.)	"
Frederick Griffin	1854
Henry Haig Judah	"
George O'Kill Stuart	"
Gustavus W. Wicksteed	"
Hon. Sir Narcisse F. Belleau	"
William L. P. Felton	"
Norbert Dumas	"
Hon. L. V. Sicotte	"
" Samuel C. Monk	"
" ~~E. K. Loudoux~~	"
" Timothy Lee Terrill	"
" Thomas J. J. Loranger	"
Charles Panet	1856
Hon. Charles Alleyn	1857
Chas. Jos. Laberge* (Ex Sol. General)	1858
Jean Thomas Taschereau	1860

* These gentlemen hold Patents of Precedence by which they rank after the Attorney and Solicitor General for the time being, and after such other Queen's Counsel as have held the office of Attorney or Solicitor General for Lower Canada.

QUEEN'S NOTARY.

Quebec ..... ~~Archibald Campbell~~

CORONERS.

Montreal	Joseph Jones.
Quebec	Chas. Eug. Panet.
Three Rivers	Valère Guillet.
St Francis	Albert G. Woodward
Ottawa	André Larue.
Kamouraska	Pierre L. Gauvreau & Ludger Tetu.
County Gaspé	William Tilly.
County Bonaventure.	Joseph Guil. LeBel & Archibald Kerr.
Terrebonne	Joseph A. Mignault.
Joliette	Laurent Désaunier.
Richelieu	Laurent U. Turcotte.
Saguenay	Ed. Zeph. Boudreau. Felix Tétu.
Chicoutimi	George McKenzie.
Montmagny	Joseph Marmette.
Beauce	J. T. P. Proulx.
Arthabaska	Urgel M. Poisson.
Bedford	Stephen S. Foster & Joshua Chamberlin.
St. Hyacinth	H. R. Blanchard.
Iberville	Didace Tassé.
Beauharnois,	John Anderson.

RECORDERS.

Quebec	Jacques Crémazie.
Montreal	J. Ponsonby Sexton.

INSPECTORS & SUPERINTENDENTS OF POLICE.

Quebec	John Maguire.
Montreal	Charles Jos. Coursol.

Bolton, T	2526	Brome.
Bonaventure, St., P	726	Drummond.
Boniface, St., P	1010	St. Maurice.
Boucherville, V	882	Chambly.
Boucherville, P	1813	Chambly.
Bouchette, T	400	Ottawa.
Bourdages, T	*	Montmagny.
Bourget, T	59	Chicoutimi.
Bouthillier, T	59	Ottawa.
Bowman, T	232	Ottawa.
Brandon, T	3350	Berthier.
Brigide, St., P	1839	Iberville.
Bristol, T	2021	Pontiac.
Brome, T	3136	Brome.
Brompton, T	1168	Richmond.
Broughton, T	1689	Megantic.
Bruno, St., P	1719	Chambly.
Buckingham, T	2417	Ottawa.
Buckingham, V	1186	Ottawa.
Buckland, T	800 / 406	Bellechasse & Dorchester.
Bulstrode, T	510	Arthabaska.
Bungay, T	*	Kamouraska.
Bury, T	989	Compton.
Cabot, T	*	Rimouski.
Callière, T	273	Charlevoix.
Calumet Island, T.	1050	Pontiac.
Cameron, T	237	Ottawa.
Camille, St., T	486	Wolfe.
Campbell, T	*	Ottawa.
Canut, St., P	825	Two Mounta'ns
Cap-Chat, T	450	Gaspé.
Cap de la Madeleine, P	1027	Champlain.
Cap Rosier, T	1060	Gaspé.
Cap Santé, P	3315	Portneuf.
Cap St. Ignace, P	2939	Montmagny.
Carleton, T	958	Bonaventure.
Caron, T	168	Chicoutimi.
Carrick, T	*	Montcalm.
Casgrain, T	*	L'Islet.
Casimir, St., P	1667	Portneuf.
Cathcart, T	1260	Joliette.
Catherine, St., P	1670	Portneuf.
Caughnawaga, V	1664	Laprairie.
Cawood, T	*	Pontiac.
Caxton, T	1631	St. Maurice.
Cecile, St., P	2220	Beauharnois.
Cecile, St. de Bic. P	2297	Rimouski.
Cedars, V	259	Soulanges.
Cesaire, St., P	4728	Rouville.
Cesaire, St., V	——	Rouville.
Chabot, T	*	Kamouraska.
Chambly, Basin, V.	1787	Chambly.
Chambly, Canton, V.	1379	Chambly.
Champlain, P	2177	Champlain.
Chapais, T	*	Kamouraska.
Charles Borromée, P	3982	Joliette.
Charles Borromée, P	2176	Bellechasse.
Charles, St., P	1341	St. Hyacinthe.
Charlesbourg, P	2447	Quebec.
Charlevoix, T	137	Chicoutimi.
Chateau Richer, P.	1537	Montmorency.
Chatham, T	3754	Argenteuil.
Chertsey, T	919	Montcalm.
Chesham, T	*	Compton.
Chester, East, T	1524	Arthabaska.
Chester, West, T	1876	Arthabaska.
Chichester, T	539	Pontiac.
Chicoutimi, T	3177	Chicoutimi.
Chilton, T	*	Montcalm.
Christophe, St., P.	——	Arthabaska.
Claire, St., P	2446	Dorchester.
Marie, St., P	3721	Rouville.
Marieville, V	761	Rouville.
Marlow, T	29	Beauce.
Marston, T	100	Compton.
Marthe, St., P	2659	Vaudreuil.
Martin, St., P	4093	Laval.
Martine, St., P	3079	Chateauguay.
Masham, T	1761	Ottawa.
Maskinongé, P	2325	Maskinongé.
Matane, T	549	Rimouski.
Matapedia, T	310	Bonaventure.
Mathias, St., P	1829	Rouville.
Maurice, St., P	3300	Champlain.
Maurice, St., T	——	St. Maurice.
McGill, T	——	Ottawa.
Mekinac, T	*	Portneuf.
Melanie, St., P	2798	Joliette.
Melbourne, T	1621	Richmond.
Melbourne, V	243	Richmond.
Merritt, T	*	Ottawa.
Mesy, T	28	Chicoutimi.
Metabetchouan, T.	154	Chicoutimi.
Metgermette, T	* {	Beauce & Dorchester.
Metis, T	505	Rimouski.
Michel, St., P	2369	Bellechasse.
Michel, St., (Archarge) P	2548	Napierville.
Michel, St., P	2440	Yamaska.
Michel, St., P	5239	Vaudreuil.
Milton, T	2790	Shefford.
Modeste, St., P	620	Temiscouata.
Monique, St., P	2950	Nicolet.
Mont Carmel, P	492	Champlain.
Mont Carmel, P	598	Kamouraska.
Mont Louis, P	200	Gaspé.
Montauban, T	*	Portneuf.
Montcalm, T	1 6	Montmagny.
Montmagny, V	165 0	Argenteuil
Montmini, T	56	Montmagny.
Montreal, C	90497	
Montreal, P	6388	Hochelaga.
Morin, T	45 5 4	Argenteuil & Terrebonne.
Narcisse, St., P	979	Champlain.
Neigette, T	*	Rimouski.
Nelson, T	1078	Megantic.
Nelsonville, V	——	Missisquoi.
Newport, T	403	Compton.
Newport, T	415	Gaspé.
New Richmond, T.	1510	Bonaventure.
Newton, T	1029	Vaudreuil.
Nicolas, St., P	2219	Levis.
Nicolet, P	2856	Nicolet.
Norbert, St., P	1500	Berthier.
Norbert, St., P	——	Arthabaska.
Northfield, T	206	Ottawa.
Notre Dame de Quebec, P	1181	Quebec.
Notre Dame des Anges, P	780	Missisquoi,
Notre Dame de la Victoire, P	6694	Levis.
Notre Dame du Portage, P	660	Temiscouata.
Nouvelle, T	1561	Bonaventure.
Octave, St., P	1595	Rimouski.
Onesime, St., P	784	Kamouraska.
Onslow, T	1645	Pontiac.
Orford, T	——	
Ouitchawan, T	*	Chicoutimi.
Ours, St., V	528	Richelieu.
Germain, St., P	3550	Rimouski.
Gervais, St., P	2717	Bellechasse.
Gertrude, St., P	1421	Nicolet.
Giles, St., P	1203	Lotbinière.
Gladstone, T	*	Pontiac.
Godmanchester, T.	2169	Huntingdon
Gore, T	793	Argenteuil.
Gosford, T	*	Portneuf.
Graham, T	*	Pontiac.
Granby, T	2571	Shefford.
Granby, V	700	Shefford.
Grandisson, T	*	Argenteuil.
Grand River, MUN.	879	Gaspé.
Grantham, T	800	Drummond.
Gregoire, St., P	3255	Nicolet.
Gregoire, St., P	2581	Iberville.
Grenville, T	2178	Argenteuil.
Grondines, P	1562	Portneuf.
Guillaume, St., P	2216	Drummond.
Halifax, North, T.	2470	Megantic.
Halifax, South, T	2353	Megantic.
Ham, T	610	Wolfe.
Ham, South, T	223	Wolfe.
Hamilton, T	1307	Bonaventure.
Hampden, T	103	Compton.
Harrington, T	310	Argenteuil.
Hartwell, T	290	Ottawa.
Harvey, T	207	Chicoutimi.
Hastings, T	*	Pontiac.
Hatley, T	2274	Stanstead.
Havelock	*	Huntingdon.
Helène, St., P	906	Bagot.
Helène, St., P	1270	Kamouraska.
Hemmingford, T	4005	Huntingdon.
Hénédine, St., P	1103	Dorchester.
Henri, St., P	2656	Levis.
Henri, St., P	2843	L'Assomption.
Hereford, T	366	Compton.
Hermas, St., P	1583	Two Mounta'ns
Hilaire, St., P	1589	Rouville.
Hilarion, St., P	540	Charlevoix.
Hinchinbrooke, T.	2725	Huntingdon.
Hincks, T	262	Ottawa.
Hocquart, T	*	Temiscouata.
Hope, T	992	Bonaventure.
Horton, T	191	Arthabaska.
Howard, T	——	Argenteuil.
Hubert, St., P	1157	Chambly.
Huddersfield, T	*	Pontiac.
Hugues, St., P	2568	Bagot.
Hull, T	3711	Ottawa.
Hunterstown, T	711	Maskinongé.
Huntingdon, V	721	Huntingdon.
Hyacinthe, St., C	3695	St. Hyacinthe.
Hyacinthe, St., P	3636	St. Hyacinthe.
Hypolite, St., P	——	Wolfe.
Iberville, T	——	Saguenay.
Iberville, TOWN	1590	Iberville.
Ignace, St., P	2116	Soulanges.
Ignace, St., P	2939	Montmagny.
Industrie, V	——	Joliette.
Inverness, T	2481	Megantic.
Ireland, T	990	Megantic.
Irénée, St., P	998	Charlevoix.
Isidore, St., P	2563	Dorchester.
Isidore, St., P	1992	Laprairie.
Isle Bizard,	——	Jacques Cartier
Isle Bonaventure, I	——	Gaspé.
Isle Madame, I	——	Montmorency.
Isle aux Coudres, P	700	Charlevoix.
Isle, Ste. Marguérite	16	Montmgny.
Isle aux Grues, P	483	Montmagny
Taché, T	44	Chicoutimi.
Tadoussac, T, etc.	458	Saguenay.
Telesphore, St., P	1413	Soulanges.
Templeton, T	2646	Ottawa.
Terrebonne, P	1219	Terrebonne.
Terrebonne, T'N	1935	Terrebonne.
Tewkesbury, T	*	Quebec.
Thérèse, St., P	1864	Terrebonne.
Thérèse, St., V	1125	Terrebonne.
Thetford, T	282	Megantic.
Thomas, St., P	2003	Joliette.
Thomas, St., P	3020	Montmagny.
Thomas, St., P	2745	Yamaska.
Thomas, St., P	811	Missisquoi.
Thorne, T	450	Pontiac.
Three Rivers, C	6058	
Three Rivers, P	607	St. Maurice.
Timothée, St., P	2959	Beauharnois.
Tingwick, T	2227	Arthabaska.
Tite, St., P, etc	2179	Champlain.
Tremblay, T	590	Chicoutimi.
Tring, T	2077	Beauce.
Trois Pistoles, P	3451	Temiscouata.
Two Mountains (lake of) MUNI	562	Two Mounta'ns
Upton, T	931	Bagot.
Urbain, St., P	761	Charlevoix.
Urbain, Premier St., P	2081	Chateauguay
Ursule, St., P	2191	Maskinongé.
Valcartier, P	1667	Quebec.
Valentin, St., P	2915	St. Johns.
Valère, St. P	——	Arthabaska.
Valerien, St., P	——	Shefford.
Valier, St., P	1409	Bellechasse.
Varennes, T	——	Verchères.
Vaudreuil, P	3239	Vaudreuil.
Vaudreuil, V	544	Vaudreuil.
Verchères, P	3210	Verchères.
Victoire, St., P	1528	Richelieu.
Victor, St., P	——	Beauce.
Viger, T	1097	Temiscouata.
Villeneuve, T	——	Ottawa.
Vincent de Paul, St., P	2538	Laval.
Visitation, P	2177	Champlain.
Wakefield, T	927	Ottawa.
Waltham, T	400	Pontiac.
Ware, T	25	Dorchester.
Warwick, T	1380	Arthabaska.
Watford, T	*	Dorchester.
Weedon, T	809	Wolfe.
Wells, T	142	Ottawa.
Wendover, T	337	Drummond.
Wentworth, T	543	Argenteuil.
Westbury, T	297	Compton.
Wexford, T	707	Montcalm.
Wickham, T	856	Drummond.
Witton, T	309	Compton.
Windsor, T	1167	Richmond.
Winslow, T	1617	Compton.
Whitworth, T	*	Temiscouata.
Woburn, T	*	Beauce.
Wolfe, T	*	Argenteuil.
Wolfestown, T	1472	Wolfe.
Woodbridge, T	500	Kamouraska.
Wotton, T	1533	Wolfe.
Wright, T	508	Ottawa.
Yamachiche, P	3213	St. Maurice.
York, T	205	Gaspé.
Zephirin, St., P	1641	Yamaska.
Zotique, St., P	1611	Soulanges.

LEGISLATIVE COUNCIL ELECTORAL DIVISIONS.

NAME OF DIVISION.	EXTENT OF DIVISION.
GULF	Counties of Gaspé, Bonaventure, and Rimouski.
GRANDVILLE	Counties of Temiscouata and Kamouraska, Parishes of St. Roch des Aulnets and St. Jean Port Joli, and prolongation thereof in a straight line to the Province Line in the County of L'Islet.
DE LA DURANTAYE*	Remainder of the Co. of L'Islet, Cos. of Montmagny and Bellechasse, & Parishes of St. Joseph, St. Henri, and Notre Dame de la Victoire, in the Co. of Levis.
LAUZON	Remainder of the County of Levis, and the Counties of Dorchester and Beauce.
KENNEBEC*	Counties of Lotbinière, Megantic, and Arthabaska.
DE LA VALLIERE	Counties of Nicolet and Yamaska, Tps. of Wendover, Grantham, & part of Upton in Co. of Drummond.
WELLINGTON	Remainder of County of Drummond, the County of Richmond, Town of Sherbrooke, Counties of Wolfe, Compton, and Stanstead.
SAUREL	Counties of Richelieu and Bagot, Parishes of St. Denis, La Présentation, St. Barnabé, and St. Jude, in the County of St. Hyacinth.
BEDFORD	Counties of Missisquoi, Brome, and Shefford.
ROUGEMONT	Remainder of County of St. Hyacinth, and Counties of Rouville and Iberville.
MONTARVILLE	Counties of Verchères, Chambly, and Laprairie.
DE LORIMIER*	Cos. of St. John & Napierville; St. Jean Chrysostôme and Russeltown in the County of Chateauguay; Hemmingford in the County of Huntingdon.
THE LAURENTIDES	Counties of Chicoutimi, Charlevoix, Saguenay, and Montmorency; Seigniory of Beauport, Parish of Charlesbourg, Tps. of Stoneham and Tewkesbury, in the County of Quebec.
LA SALLE	Remainder of County of Quebec, the Co. of Portneuf, and part of the *banlieue* of Quebec which lies within the Parish of Notre Dame de Quebec.
STADACONA	Remainder of the City and *banlieue* of Quebec.
SHAWINEGAN*	Counties of Champlain and St. Maurice, the City of Three Rivers, Parishes of Rivière du Loup, St. Léon, St. Paulin, and Township of Hunterstown and augmentation, in the County of Maskinongé.
DE LANAUDIERE*	Remainder of the County of Maskinongé, the Counties of Berthier and Joliette, except the Parish of St. Paul, the Township of Kildare and augmentation, and the Township of Cathcart.
REPENTIGNY	Parish of St. Paul, the Township of Kildare and augmentation, and the Township of Cathcart, in the County of Joliette, the Counties of L'Assomption and Montcalm.
MILLE ISLES	Counties of Terrebonne and Two Mountains.
INKERMAN	Counties of Argenteuil, Ottawa and Pontiac.
ALMA	Parishes of Long Point, Pointe aux Trembles, River Des Prairies, Sault aux Recollets, in the County of Hochelaga, and part of the Parish of Montreal to the East of the prolongation of St. Denis street; the County of Laval, part of the City of Montreal to the East of Bonsecours and St. Denis street, and their prolongation.
VICTORIA*	Remainder of the City of Montreal, exclusive of the Parish.
RIGAUD	Remainder of the Parish of Montreal and the Counties of Jacques Cartier, Vaudreuil, and Soulanges.
DE SALABERRY	Remainder of County of Chateauguay, the remainder of the County of Huntingdon, and the County of Beauharnois.
WESTERN	Counties of Essex and Kent.
ST. CLAIR	County of Lambton and West Riding of Middlesex.
MALAHIDE*	East and West Ridings of Elgin, East Riding of Middlesex, and the City of London.
TECUMSETH	Counties of Huron and Perth.
SAUGEEN	Counties of Bruce and Grey, and North Riding of Simcoe.
BROCK	North and South Ridings of Wellington, and North Riding of Waterloo.
GORE	S. R. of Waterloo and N. R. of Oxford.
THAMES*	S. R. of Oxford and County of Norfolk.
ERIE	E. & W. R. of Brant and County of Haldimand.
NIAGARA	Counties of Lincoln and Welland, and Town of Niagara.
BURLINGTON	N. & S. R. of Wentworth, and City of Hamilton.
HOME*	Counties of Halton and Peel.
MIDLAND*	N. R. of York and S. R. of Simcoe.
YORK	City of Toronto and Township of York.
KING'S	E. & W. Ridings of York (except Township of York,) and S. R. of Ontario.
QUEEN'S	North Riding of Ontario, County of Victoria, and West Riding of Durham.
NEWCASTLE	E. R. Durham, & E. & W. Ridings of Northumberland.
TRENT	County of Peterborough, North Riding of Hastings, and County of Lennox.
QUINTE*	S. R. of Hastings, and County of Prince Edward.
CATARAQUE	Counties of Addington and Frontenac, and City of Kingston.
BATHURST	S. R. of Leeds, and N. and S. R. of Lanark.
RIDEAU	Counties of Renfrew & Carleton, and City of Ottawa.
ST. LAWRENCE	Town of Brockville, Township of Elizabethtown, South Riding of Grenville, N. R. of Leeds and Grenville, and County of Dundas.
EASTERN*	Counties of Stormont, Prescott, Russell, Glengarry, and Town and Township of Cornwall.

* The Election for these divisions will take place in 1862.

INDEX TO CERTAIN ACTS AFFECTING THE PUBLIC GENERALLY.

ARTICLES EXEMPT FROM SEIZURE IN SATISFACTION OF DEBTS.

VIDE *chap.* 85 *of Consol. Statutes, L. C., as amended by* 24 *Vic., cap.* 27.

LAW COURTS OF LOWER CANADA.

QUEEN'S BENCH.

	DISTRICT.	WHERE HELD.	WHEN HELD.	UNDER WHAT AUTHORITY HELD. STATUTE.	UNDER WHAT AUTHORITY HELD. DATE OF PROCLAMATION.	OFFICERS OF COURT.
APPEAL SIDE		Quebec *	12th March, June, Sept., & Dec.	20 Vict. cap. 44, s. 15		Clerk of Appeals, Joseph Ubalde Beaudry
		Montreal *	1st do. do. do. do.			Deputy do. L. W. Marchand & Chas. Drolet.
						Clerk of Crown.
CROWN SIDE	QUEBEC	Quebec	January 24 and June 24	20 Vict. cap. 44, s. 31		Pierre A. Doucet.
	MONTREAL	Montreal	March 24 and September 24	20 Vict. cap. 44, s. 31		Alexander M. Delisle.
	THREE RIVERS	Three Rivers	February 2 and September 11	12 Vict. cap. 37. s. 34		Edward Barnard.
	ST. FRANCIS	Sherbrooke	February 12 and September 20	18 Vict. cap. 166, s. 1		Short and Morris.
	KAMOURASKA	Kamouraska	April 5 and October 21	20 Vict. cap. 44, s. 32	September 17, 1858	Chalou and Déry.
	OTTAWA	Aylmer	January 21 and July 1	20 Vict. cap. 44, s. 32	May 28, 1859	Henry Driscoll.
	GASPE	Percé	March 13 and August 13	20 Vict. cap. 44, s. 32	August 26, 1859	Louis George Harper.
		New Carlisle	February 13 and July 13	20 Vict. cap. 44, s. 32	August 26, 1859	John Wilkie.
	TERREBONNE	St. Scholastique	February 13 and October 13	Consolidated Statutes for Lower Canada, Chap. 76, S. S. 8 and 9.	October 4, 1861	Jules R. Berthelot.
	JOLIETTE	Industry	March 13 and November 13			Louis Thos. Groulx.
	RICHELIEU	Sorel	February 13 and October 13			Antoine N. Gouin.
	CHICOUTIMI	Chicoutimi	February 13 and October 13			Charles Garneau.
	MONTMAGNY	Montmagny	February 13 and October 13			Albert Bender.
	ARTHABASKA	St. Christophe	March 13 and November 13			Rufus Wadleigh.
	BEDFORD	Nelsonville	February 13 and October 13			Frederick T. Hall.
	IBERVILLE	St. Johns	March 13 and November 13			Frs. H. Marchand.
	BEAUHARNOIS	Beauharnois	February 13 and October 13			Louis Beaudry.

* By the 22d section of Chap. 77, of the Consolidated Statutes for Lower Canada, cases in Appeal or Error from the Districts of OTTAWA, MONTREAL, TERREBONNE, JOLIETTE, RICHELIEU, ST. FRANCIS, BEDFORD, ST. HYACINTH, IBERVILLE, and BEAUHARNOIS, shall be heard and determined at the CITY OF MONTREAL *only*, and the writs in such cases shall be returnable there; and cases in Appeal or error from the Districts of THREE RIVERS, QUEBEC, SAGUENAY, GASPE, CHICOUTIMI, RIMOUSKI, KAMOURASKA, MONTMAGNY, BEAUCE, and ARTHABASKA, shall be heard and determined at the CITY OF QUEBEC *only*, and the writs in such cases shall be returnable there.

JUDICIARY—UPPER CANADA.

COURT OF ERROR AND APPEAL.

JUDGES.

Hon. Archibald McLean, President.
Hon. Wm. H. Draper, C.B., Chief Justice of Upper Canada.
Hon. P. M. M. S. Vankoughnet, D.C.L., Chancellor of Upper Canada.
Hon. Wm. B. Richards, Chief Justice of the Common Pleas.
Hon. J. C. P. Esten, Vice-Chancellor.
Hon. John G. Spragge, Vice-Chancellor.
Hon. John H. Hagarty, D.C.L., Judge of the Court of Queen's Bench.
Hon. Joseph C. Morrison, do. do.
Hon. Adam Wilson, Judge of the Court of Common Pleas.
Hon. John Wilson, do. do.
Clerk and Reporter:—Alexander Grant.

This Court was constituted for the hearing of appeals in civil cases from the Courts of Queen's Bench, Chancery and Common Pleas, and appeals in criminal cases from the Courts of Queen's Bench and Common Pleas. From the judgment of the Court, an appeal lies to Her Majesty in Privy Council, in cases over £1000, or where annual rent, fee, or future rights, of any amount, are affected. The Court sits three times a year.

COURT OF QUEEN'S BENCH.

Chief Justice:—Hon. Wm. H. Draper, C.B.
Puisne Judges:—Hon. J. H. Hagarty, D.C.L., and Hon. Jos. C. Morrison.
Clerk of the Crown and Pleas:—Charles Coxwell Small.
Reporter:—Christopher Robinson, Q.C.
Clerk in Chambers and Practice Court:—William B. Heward.
Clerk of the Process:—Robert Stanton.
Crier and Usher:—Andrew Fleming.

The jurisdiction of this Court extends to all manner of actions, causes and suits, criminal and civil, real, personal and mixed, within Upper Canada; and it may proceed by such process and course as are provided by law, and as shall tend with justice and despatch to determine the same; and may hear and determine all issues of law, and also, with the inquest of twelve good and lawful men (except in cases otherwise provided for,) try all issues of fact, and give judgment and award execution thereon, and also in matters which relate to the Queen's revenue (including the condemnation of contraband or smuggled goods,) as may be done by Her Majesty's Superior Courts of Law in England.

COURT OF CHANCERY.

Chancellor:—Hon. P. M. M. S. Vankoughnet, D.C.L.
Vice-Chancellors:—Hon. James C. P. Esten; Hon. John G. Spragge.
Master:—Andrew N. Buell.
Taxing Officer:—George Hemings.
Registrar and Reporter:—Alexander Grant.
Special Examiners:—John Hector, Q.C., and William Vynne Bacon.
Usher:—John Oliver.

This Court has the like jurisdiction as the Court of Chancery in England in cases of fraud, accident, trusts, executors, administrators, co-partnerships, account, mortgages, awards, dower, infants, idiots, lunatics, and their estates, waste, specific performance, discovery, and to prevent multiplicity of suits, staying proceedings at law prosecuted against equity and good conscience, and may decree the issue, repeal or avoidance of letters patent, and generally the like powers as the Court of Chancery in England possesses to administer justice in all cases in which there is no adequate remedy at law.

COURT OF COMMON PLEAS.

Chief Justice:—Hon. William B. Richards.
Puisne Judges:—Hon. Adam Wilson; Hon. John Wilson.
Clerk of the Crown and Pleas:—Lawrence Heyden.
Reporter:—Edward C. Jones.
Clerk of the Process:—Robert Stanton.
Crier and Usher:—Daniel Connell.

This Court was established by the Act 12 vic. cap. 63. It consists of three Judges, who sit in Term, in the same manner as the Judges in the Queen's Bench, and has the same powers and jurisdiction as a Court of Record, as the Court of Queen's Bench. Writs of summons and capias issue alternately from each Court.

PRACTICE COURT AND CHAMBERS.

One of the Common Law Judges holds a Court during each Term, called the "Practice Court," for hearing matters relating to the adding or justifying bail, discharging insolvent debtors, administering oaths, hearing and determining matters on motion, and making rules and orders in causes, and business depending in either of the Law Courts. Chambers are held each day in Law and Chancery by one of the Judges of the Courts, for such business relating to suits therein as may be transacted by a single Judge out of Court. *Clerk:*—Common Law, William B. Heward—Chancery, John Black.

HEIR AND DEVISEE COMMISSION.

Commissioners:—The Judges of the Courts of Queen's Bench, Chancery, and Common Pleas, and such other persons as may be appointed by commission under the Great Seal.

Their duties are, to determine claims to lands in Upper Canada for which no patent has issued from the Crown in favour of the proper claimants, whether as heirs, devisees or assignees. *Clerk:*—William B. Heward.

COUNTY COURTS.

Presided over by a resident Judge in each County. Their jurisdiction extends to all personal actions where the debt or damages claimed do not exceed £50; and to all suits relating to debt, covenant and contract, where the amount is liquidated or ascertained by the act of the parties or signature of the defendant, to £100; but not to cases involving the title to lands (with the exception of actions of ejectment in specified cases), validity of wills, or actions for libel, slander, crim. con. or seduction. An appeal lies to either of the superior Courts of law. These Courts also possess equity powers to the amount of £50, subject to an appeal to the Court of Chancery.

SURROGATE COURTS.

These Courts are now regulated by Con. Stat. U. C. cap. 16, and grant administration, subject to an appeal to the Court of Chancery. *Clerk:*—Chas. Fitzgibbon, Toronto.

COURTS OF QUARTER SESSIONS.

Chairman:—The County Judge in each County, who, with one or more Justices of the Peace, holds a Court of Quarter Sessions in his County four times a year, for trials by jury in cases of larceny, misdemeanor and other offences, and for the decision of appeals from summary convictions.

RECORDER'S COURTS.

In the Cities of Toronto, Hamilton, London, Kingston and Ottawa, the Recorder's Court takes the place of the County Sessions, the Justices for Counties having no jurisdiction in the Cities, the care of which is confided to the Recorder, Mayor, Aldermen and Police Magistrates of each.

Recorders:—George Duggan, Toronto; Archibald J. McDonell, Kingston; John E. Start, Hamilton; William Horton, London; J. B. Lewis, Ottawa.

INSOLVENT DEBTORS' COURTS.

The County Judge in each County presides.

DIVISION COURTS.

For the summary disposal of cases by a Judge; but a jury of five persons may be demanded in certain cases. Their jurisdiction extends to actions of debt or contract amounting to £25, injuries or torts to personal chattels amounting to £10, but not to actions for gambling debts, liquor drunk in a tavern, or notes of hand given therefor, ejectment, title to land, &c., or any toll, custom or franchise will or settlement, malicious prosecution, libel, slander, crim. con., seduction or breach of promise, or actions against a J. P. for anything done by him in the execution of his office, if he objects to it. Courts are held once in two months in each Division, or oftener, at the discretion of the Judge. The Divisions are established by the Courts of Quarter Sessions.

CLERKS OF ASSIZE.

Clerks of Assize:—The Deputy Clerks of the Crown are *ex officio* Clerks of Assize and Marshals in their respective Counties. In the Home Counties the Chief Clerks of the two Courts officiate alternately. W. Campbell is Acting Clerk of Assize.

DEPUTY CLERKS OF THE CROWN.

The Clerks of the County Courts will be *ex officio* Deputy Clerks of the Crown and Pleas of their several Counties, as the present incumbents vacate by death or otherwise.

DEPUTY MASTERS AND REGISTRARS IN CHANCERY.

These officers are appointed by the Court for each County, as occasion requires.

CLERK OF THE PROCESS.

For sealing and issuing (alternately) all writs of summons in the Queen's Bench and Common Pleas—Robert Stanton. The Deputy Clerks of the Crown in the several Counties also, in like manner, issue the writs for their respective Counties.

CIRCUITS OF THE COURTS.

LAW CIRCUITS.—The Circuits are held twice a year in each County, between Hilary and Easter Terms, and between Trinity and Michaelmas Terms, except in the City of Toronto and united Counties of York and Peel, where there are three in each year.

There are six Circuits, as follows, viz:
THE EASTERN.—Perth, Cornwall, Ottawa, L'Orignal, Brockville, Kingston.
HOME.—Niagara, Hamilton, Barrie, Owen Sound, Milton, Welland.
WESTERN.—St. Thomas, Sandwich, Sarnia, Chatham, London, Goderich.
MIDLAND.—Whitby, Peterboro', Cobourg, Belleville, Picton, Lindsay.
OXFORD.—Simcoe, Brantford, Guelph, Berlin, Stratford, Woodstock, Cayuga.
TORONTO AND YORK AND PEEL.—Toronto.

CHANCERY CIRCUITS, *for the Examination of Witnesses and Hearing Causes, are held in the Spring and Fall of each year, as follows:*

TORONTO.—Toronto.
HOME.—Whitby, Barrie, Hamilton, Niagara, Brantford, Guelph.
WESTERN.—Simcoe, London, Chatham, Sandwich, Sarnia, Goderich, Woodstock.
EASTERN.—Ottawa, Cornwall, Brockville, Kingston, Belleville, Cobourg.

COUNTY COURT AND QUARTER SESSIONS SITTINGS.—For the trial of issues of fact, and the assessment of damages, on the second Tuesday in March, June, September and December in each year.

Table of Descent of Real Estate,

ACCORDING TO THE LAW OF UPPER CANADA
(Con. Stat. U. C. cap. 82).

N. B.—This table applies only to persons dying on or after 1st January, 1862. As to all persons who died before that day, the law of descent is the same as in England.

The Real Estate, in Upper Canada, of all persons dying on or after 1st January, 1862, descends as follows:

1st.—To lineal descendants, and those claiming by or under them *per stirpes.*
2nd.—To the Father.
3rd.—To the Mother.
4th.—To Collateral relatives.

Subject, however, to the following Rules:

First.—If the intestate leave several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to such intestate, the inheritance will descend to such persons in equal parts, however remote from the intestate the common degree of consanguinity may be.

Second.—If any of the children of the intestate be living, and some be dead, the inheritance will descend to the children living, and to the descendants of those who are dead, so that each child who shall be living shall inherit such share as would have descended to him if all the children of the intestate who shall have died, leaving issue, had been living, and so that the descendants of such as are dead shall inherit the share which their deceased parent would have received if living.

Third.—The same rule applies where descendants of the intestate are of unequal degrees of consanguinity.

Fourth.—If the intestate die without lineal descendants, and leaving a father, the inheritance will go to the father, unless the inheritance came to the intestate on the part of the mother, and such mother be living. If the mother be dead, the inheritance descending on her part will go to the father for life, and reversion to the brothers and sisters of the intestate and the descendants of such as may be dead. If there be no brother or sister, or descendants of brother or sister, the inheritance will go to the father.

Fifth.—If intestate die without any lineal descendants and leaving no father, or leaving a father not entitled under the last rule, and leaving a mother and brothers and sisters or descendants of a brother or sister, the inheritance will go to the mother for life, and revert to the brothers and sisters and their descendants. If the intestate leave no brother or sister, or descendant of a brother or sister, the inheritance will go to the mother.

Sixth.—If no father or mother capable of inheriting under the preceding rules then the inheritance will fall to the collateral relatives in equal degree in equal parts.

Seventh.—If intestate leave only brother or sister, or descendant of brother or sister, the inheritance will go to those living and to the descendants of those who are dead equally.

Eighth.—If the intestate leaves no heir entitled under the foregoing rules, then if the inheritance came on the part of the father, will go to brothers and sisters of the father, and the descendants of such as may be dead.

Ninth.—If no brother or sister of father, and no descendant of a brother or sister of father, the inheritance will go to the brother or sister or descendant of brother or sister of mother.

Tenth.—Where inheritance came on part of the mother, then the same shall descend to the brothers and sisters and descendants of brothers and sisters of the mother.

Eleventh.—Where the inheritance came neither on part of mother nor father, the brothers and sisters, and their descendants, of father and mother shall inherit equally.

Twelfth.—The half-blood shall inherit equally with whole-blood, unless the inheritance came by descent or devise or gift of some one of intestate's ancestors, in which case those not of blood to the ancestor shall be excluded.

Thirteenth.—Failing heirs as aforesaid, the inheritance will go to the next-of-kin, according to the rules of the English Statute of Distribution.

Fourteenth.—The posthumous child will inherit equally with those born in the lifetime of intestate.

Fifteenth.—Illegitimate children cannot inherit.

Sixteenth.—If any child has been advanced by settlement or portion, and the same shall have been so expressed in writing by the intestate, or acknowledged by the child, the value of such advancement or portion shall be reckoned as part of the intestate's real and personal estate. If the advancement or portion be equal or superior to the amount of the share which such child would take, such child shall be excluded from any further inheritance. If unequal, the difference will go to such child.

Table of Distribution of Personal Estate of Intestates,

ACCORDING TO THE LAWS OF ENGLAND AND UPPER CANADA.

If Intestate die leaving—	*His personal Representatives take thus, viz:*
Wife and child or children	One-third to wife, rest to child or children; if children dead, then to their representatives (that is, their lineal descendants), except such child or children (not heirs-at-law) who had estate by settlement of intestate, in his lifetime equal to the other shares.
Wife only	Half to wife; rest to next-of-kin in equal degrees to intestate, or their legal representatives.
No wife or child	All to next-of-kin, and to their legal representatives.
Child, children, or their representatives	All to him, her or them.
Children by two wives	Equally to all.
If no child, children, or representatives	All to next-of-kin in equal degree to intestate.
Child or grandchild	Half to child, half to grandchild.
Husband	Whole to him.
Father and brother or sister	Whole to father.
Mother and brother or sister	Whole to them equally.
Wife, mother, brother, sisters and nieces.	Half to wife, residue to mother, brothers, sisters and nieces.
Wife, mother, nephews and nieces	Two-fourths to wife, one-fourth to mother, and one-fourth to nephews and nieces.

Wife, brothers or sisters, and mother	Half to wife, half to brothers or sisters and mother.
Mother only	The whole (it being then out of the stat.)
Wife and mother	Half to wife, half to mother.
Brother or sister of whole blood, and brother or sister of half blood	Equally to both.
Posthumous brother, or sister and mother	Equally to both.
Posthumous brother, or sister and brother, or sister born in lifetime of father	Equally to both.
Father's father and mother's mother	Equally to both.
Uncle's or aunt's children, and brother's or sister's grandchildren	Equally to all.
Grandmother, uncle or aunt	All to grandmother.
Two aunts, nephew and niece	Equally to all.
Uncle and deceased uncle's child	All to uncle.
Uncle by a mother's side, and deceased uncle or aunt's child	All to uncle.
Nephew by brother, and nephew by half sister	Equally, *per capita*.
Nephew by deceased brother, and nephews and nieces by deceased sister	Each in equal shares, *per capita*, and not *per stirpes*.
Brother and grandfather	Whole to brother.
Brother's grandson, and brother or sister's daughter	To daughter.
Brother and two aunts	To brother.
Brother and wife	Half to brother, half to wife.
Mother and brother	Equally.
Wife, mother and children of a deceased brother or sister	Half to wife, one-fourth to mother, one-fourth *per stirpes* to deceased brother or sister's children.
Wife, brother or sister, and children of a deceased brother or sister	Half to wife, one-fourth to brother or sister *per capita*, one-fourth to deceased brother or sister's child *per stirpes*.
Brother or sister, and children of a deceased brother or sister	Half to brother or sister *per capita*, half to children of deceased brother or sister, *per stirpes*.
Grandfather and brother	All to brother.

By the 17th sec. of Consolidated Statutes U. C., ch. 73, it is enacted that the separate personal property of a married woman dying intestate, shall be distributed in the same proportions between her husband and children, as the personal property of a husband dying intestate is to be distributed between his wife and children. And if there be no child or children living at the death of the wife so dying intestate, then such property shall pass or be distributed as if that Act had not been passed.

Table of Distribution of Personal Estate of Intestates,

ACCORDING TO THE LAWS OF LOWER CANADA.

If Intestate die leaving—	*His personal Representatives take thus, viz:*
Wife and child or children	All to child or children.
Wife only, or husband only	His or her nearest ascendant; and if there be no ascendant living, then to the next-of-kin of the intestate.
Children by two wives	Equally to all.
Child and grandchild	Equally to both.
Grandchildren only	Each batch of children collectively represent their parent deceased, and take the share *per stirpes*.
Brothers and sisters	Equally to all.
Brother or sister of whole blood, and brother or sister of half blood	Equally to both.
Posthumous brother or sister only	All.
Brother or sister and nephews or nieces	Nephews or nieces collectively have the share of their parent deceased, and all equally divided *per stirpes*.
Nephews and nieces only	Equally to all.
Grandmother and uncle or aunt	All to grandmother.
Aunt and nephew	Equally divided.
Uncle and deceased uncle's child	Equally divided.
Nephew by brother, and nephew by half sister	Equally divided.
Brother and grandfather	All to grandfather.
Brother's grandson, and brother or sister's daughter	Equally divided.
Brother and aunt	All to brother.

BANKS.

Hours—10 to 3 during Navigation, 10 to 2 during winter, (from 1st December to 1st May.) 10 to 1 on Saturdays.

QUEBEC BANK: D.D. Young, President; Wm. Dunn, Cashier. Discount days, Tuesdays and Fridays.

BANK OF BRITISH NORTH AMERICA: C.F. Smith, Manager. Discount days, Tuesdays and Fridays.

BANK OF MONTREAL: T. R. Christian, Manager. Dis-

LICENSES.

REQUIRED TO BE TAKEN BETWEEN 1ST AND 15TH MAY EVERY YEAR.

To open a Circus, to which the public shall be admitted, £25—besides a tax of five pounds to be paid previously to any performance.

To Keep any Billiard Table for hire or gain, for 1 table	£15	0	0
And each table above	5	0	0
To possess or keep in this city any game for the use of the public	5	0	0
Each Insurance Company, or Agent or Insurer	5	0	0
Each Life Insurance Company	12	10	0
To sell Gunpowder	5	0	0
To sell Bread, such person who resides in this city	1	5	0
Do. do. do. residing without	5	0	0
To exercise or follow the occupation of a Carter, if residing in this city	1	5	0
Do. if residing without the limits	1	15	0
To exercise or follow the trade or calling of a Butcher when such person does reside in the city and occupy a stall in any public market, the sum of	1	0	0
Do. when such person does not reside in this city, but occupies a stall	5	0	0
Do. when not residing or occupying a stall in the City	7	10	0
To follow, exercise, or do any trade, traffic or business: to sell, or offer for sale by sample, such person not having a residence, office, counting house, or place of business, within the limits of the city	5	0	0
Each sail ferry boat	1	5	0
Each ferry Steamboat	£50; or, $2 each trip.		

QUEBEC CITY TAXES.

Taxes on proprietors of real property, one shilling in the pound on the assessed value.

Tax on every person occupying as proprietor any house, &c., 1s. 6d. in the pound.

Tax on proprietors occupying part of a house, 6d. in the pound.

Tax on tenants of a house, &c., or part thereof 6d in the pound.

Tax on Chimnies, for one or two chimnies, 5s. each, all over that number, 10s each.

Annual duty in addition to the above rates, on persons keeping a house of public intertainment, (Tavern and Hotel Keepers,) or retailing spirituous liquors, in less quantities than one Bottle, as follows:—

£4	10	0	assessed yearly value not exceed'g		£40	0	0
6	0	0	do.	do.	60	0	0
7	10	0	do.	do.	80	0	0
9	0	0	do.	do.	100	0	0
11	5	0	do.	do.	125	0	0
12	15	0	do.	do.	150	0	0
15	0	0	do.	do.	175	0	0
16	17	0	do.	do.	200	0	0
18	15	0	do.	do.	250	0	0
20	12	6	do.	do.	300	0	0
22	10	0	do.	do.	400	0	0
26	5	0	do.	do. shall exc'd	400	0	0

The following duties are imposed upon persons who keep any eating house, &c., in which they give to eat or drink for money, viz.:—

£1	5	0	when annual value does	no exceed	£12	10	0
2	10	0	do.	do.	25	0	0
3	2	6	do.	do.	75	0	0
3	15	0	do.	do.	100	0	0
5	0	0	do.	do. shall exceed	100	0	0

Hawkers and Pedlars	3	0	0
Public Exhibitions	5	0	0
Proprietors of Theatres	25	0	0
Managers or occupiers of Theatres	5	0	0

Retail Shop Keepers, Tanners, 7½ per cent. on the annual value of premises occupied.

Wholesale Merchant, when in partnership, £10 on each partner, and when alone, £12 10s, and each such persons, or firm of persons over and above the said tax, a tax or duty of ten per cent. on the assessed annual value of the premises so occupied, when such annual value shall not exceed one hundred pounds, and five per cent. on every amount over one hundred pounds.

Bank, Branch-bank, Bank-agency, &c.,	£200	0	0
Savings' Banks,	100	0	0
Agents of Banks,	50	0	0
Fire Insurance Company, or Agency,	125	0	0
Marine and Inland Insurance Companies,	12	10	0
Brokers, or money changers,	10	0	0
Pawn-brokers,	25	0	0
Agents of Merchants residing in any other City or place in this Province or elsewhere	25	0	0
Transient Merchants,	5	0	0

Brewers or agents, 15 per cent. on the annual assessed value of such brewery.

Distillers, 20 per cent. on the annual assessed value of such distillery.

Foundries, 7½ per cent. on the annual assessed value of premises.

Manufactories, with engine moved by steam or water, 7½ per cent. on the assessed yearly value.

Wood and lumber yards, 7½ per cent. on the assessed yearly value.

Gas Companies, annual tax of	£500	0	0
Telegraph Companies, do.	100	0	0
Forwarders or agents, do.	2	0	0
Proprietors or occupiers of plaster or cement manufacturer, an annual tax of	12	10	0

Proprietors of any soap and candle manufactory 7½ per cent. on the assessed annual value of the property used as such manufactory.

Wholesale Merchants, having an office, &c., within the city, and not residing within the city, an annual rate of £5 over and above all other taxes to which they may be liable in virtue of any bye-laws of the Corporation.

Auctioneers, by wholesale, annual tax of	£15	0	0
Auctioneers by retail, do.	7	10	0

Proprietors of horses, a tax of twenty shillings for each.

Vehicles for hire. The following taxes are imposed upon carters, for:

Each and every waggon drawn by 2 horses,	£2	10	0
Do. do. omnibus,	2	10	0
Do. do. four wheel'd cariage 2 horses,	2	10	0
Do. do. do 1 horse,	1	10	0
Do. do. waggon drawn by 1 horse only,	1	10	0
Do. do. hearse,	1	0	0
Do. do. cab,	1	0	0
Do. do. covered caleche	0	15	0
Do. do. uncovered do	0	10	0
Do. do. cart or truck	0	5	0
Persons keeping work'g vehicles on 2 wheels.	0	5	0
Do. do. do. 4 wheels.	0	10	0
Proprietors of each dog,	0	7	6
Capitation tax, to be paid by every male twenty-one years and above, not subject to any other tax or duty	0	5	0

Water rate, 2s. per pound on the assessed rental.

Law Intelligence.

IN THE SUPERIOR COURT.—QUEBEC.

The Bank of Upper Canada,

Plaintiffs.

vs.

James F. Bradshaw,

Defendant,

and

Myrrha Turner Lewis, tutrix, &c., widow of the late James F. Bradshaw, and others,

Petitioners *en reprise d'instance.*

This was an action on the case based on alledged frauds and malfeazance in the defendant as a Bank Manager, and was instituted on the 12th February, 1859 by the plaintiffs to recover from the defendant, late Cashier or Manager of the Quebec branch of the Bank, the sum of $40,000, for monies of the Bank which the plaintiffs alledged he had, while such Cashier or Manager, embezzled and converted to his own use, and had permitted to be drawn out of the Bank in speculations in which he was personally interested.

The writs in the case were writs of *saisie-arret* and *arret-simple*, issued upon the affidavit of the Manager of the Branch at Quebec, who made oath that the defendant was secreting his estate with intent to defraud the Bank and that he was indebted to it in the sum of $30,000. These writs remain in force and the Bank now retains under seizure in the cause property of the defendant far exceeding the above amount:

The items or particular transactions upon which the plaintiffs based the action are the following:

1st. Monies advanced to, or drawn out of the Bank by the "Quebec and Lake Superior Mining Company," between Oct. 1853 and Dec. 1856 ..... $2,276.73

2nd. Monies drawn out by Cecil Mortimer, Secretary-Treasurer of the Canada Grand Trunk Telegraph Company, from January 1854 to Dec. 1857 ..... 1,506.00

3rd. Balance due on notes discounted for Mr. McKay, painter, in the year 1858 ..... 1,615.00

4th. Monies drawn by John Wilson in connection with steamboat speculations, in which the defendant was interested, from 1853 to 1858. The details of which will be found in the judgment hereinafter reported 25,574.47

5th. 17 shares stock Bank of Upper Canade, transferred to defendant by Mary Harrison, in 1856, and received by him for the Bank, but converted to his own use, with dividends 850.00

6th. Value of 20 shares Upper Canada Bank stock obtained through W. Henry & Co., in the name of Mrs. Bradshaw, in 1853, and never paid for, with interest 1,360.00

7th. On notes of Joseph Larose, for considerations personal to defendant 11,928.00

8th. On speculations with one C. E. Anderson, who was allowed by the defendant to draw out of the bank for the interest of the defendant 886.00

The four last heads of demand were not insisted upon at the argument and may be considered as not in question in the case, which is limited to the first four sums amounting to $30,972.10.

The pretension of the plaintiffs was, with respect to the first item, that the defendant was a shareholder in the Quebec and Lake Superior Mining Company, and was indebted for unpaid instalments called in; that in order to avoid paying his instalments, he advanced the Company the monies of the Bank, by means of discounts and otherwise, and that the amount so allowed to be drawn was lost by the Bank.

The same pretension was urged by the Bank with respect to the second item, the defendant being a Shareholder and a Director of the Canada Grand Trunk Telegraph Company, and indebted to it in a certain amount for unpaid instalments due on his shares.

With regard to the third item, the plaintiffs alleged that the defendant granted Mr. McKay discounts, in consequence of being at the time indebted to him, or about to become indebted to him, for painting and papering his house in St. Louis street, and that owing to Mr. McKay subsequently becoming insolvent the balance claimed was lost to the Bank.

With respect to the fourth item, or advances to John Wilson, the plaintiffs alleged that the defendant discounted notes, accepted drafts, and allowed John Wilson to overdraw his account, in all to the amount above stated; that he was a partner with John Wilson in the purchase of certain steamboats called the *Princess Royal* and the *Admiral*, and that to relieve himself from all liability as to the losses sustained, as joint owner with Wilson, by these steamboats,—the amount was so advanced to Wilson; that the sum was still due and unpaid and lost to the Bank.

The defendant denied every one of these charges, and alleged that all the above advances were made in the ordinary course of the business of the Bank, and not at all with a view to his own interest. That the plaintiffs were regularly made acquainted with the whole of these advances as they were made, by weekly statements, or reports, which he, the defendant, regularly sent up to the Directors at the head office of the Bank in Toronto, in which the whole of these advances were specified, and examined and approved of, from time to time, by them. That the Directors, several times throughout the whole seven and a half years which he acted as Manager, and down to the moment of his leaving the service of the Bank, by letters and otherwise, expressed their entire approval of his management of the affairs of the Branch, and their confidence in his prudence, foresight and financial ability, and further expressed their agreeable surprise at the immense amount of business and large profits he had secured to the Bank—which had then been but a short time established in Quebec; and all this after they had seen, and examined and approved of the advances above mentioned; and that therefore the plaintiffs had no right of action against him.

The parties proceeded to proof, and a vast amount of evidence was adduced during the five years and upwards since the suit was commenced.—Pending this litigation Mr. Bradshaw died, and his children to three of whom his widow was appointed tutrix, petitioned the Court to take up the suit as defendants. The Bank having denied their right to do so by pleading to the petition, their plea which denied the right of the petitioners, and that they were Mrs. Bradshaw's children, was dismissed with costs by the Court, and Mrs. Bradshaw as tutrix, and her children issue of her marriage with the late Mr. Bradshaw, now stand before the Court as the defendants. The case was argued by Counsel at great length on the 5th of April last (1864), and occupied the Court on that and the seven following juridical days.—The evidence is so voluminous that it would only embarrass by attempting to give it in full. As much of it as is necessary to the full understanding of the case is to be found in the following comprehensive view of the matter taken by His Honor Mr. Justice Taschereau, by whom judgment was rendered on the 5th September, 1864. This judgment contains a lucid summary of the evidence and of all the principal points, and affords a clear and distinct view of the merits of this important suit.

TASCHEREAU, J.—This action has been instituted by the plaintiffs against the late Cashier of the Quebec branch of their institution, to recover from him the sum of $40,000 by way of damages, for that he, the defendant, while discharging the duties of Cashier, misapplied the funds of the bank, and appropriated them to other purposes than those authorized by his employers; that with the view of delaying or avoiding payment of his own debts, he unjustly deferred the collection of debts due the Bank, which were eventually lost to the Bank; that he permitted certain individuals to draw considerable sums of money out of the Bank for the purpose of being employed in speculations in which he had a private and secret interest, and which he did not deem it advisable to disclose or make known to the plaintiffs.

The defense set up is:—

1st. A general denial.

2nd. An *exception*, (plea), in which the defendant alleged that he had been the Cashier of the plaintiffs from the 28th May, 1851, up to the 6th December, 1858, and that during the whole of this time he had conducted the affairs of the Bank under the immediate control of the plaintiffs themselves; that all documents and account-books relating to the affairs of his agency were, during the whole time, in the possession of the plaintiffs, and under their orders and direction; that the account-books were kept by a book-keeper, and other clerks or employees hired and paid by the plaintiffs themselves. That during the whole of this period, the books thus kept, shewing all the transactions of which the plaintiffs complained, were seen, inspected and examined by an inspector employed by the plaintiffs to do this work from time to time; and that lists or statements shewing clearly and distinctly all bills discounted, and protested, and past-due-bills, and all overdrawn accounts, were regularly transmitted every week, every fortnight, and every month, to the head office of the Bank, in order that the Directors should be kept regularly informed of all the details of the affairs of the Branch in Quebec; that during the whole of the said period these statements were regularly transmitted by the defendant to the plaintiffs, and by them aknowledged and approved; and that on the 6th November, 1858, all the books of the Branch were inspected by one James Brown, the inspector deputed for the purpose by the plaintiffs, and were by him found perfectly correct and properly balanced; and that at this date the defendant handed over to the said James Brown all the vouchers, books and papers, as well as all the assets of the Bank.

The defendant further pleaded that the advances made by him were made in the ordinary and legitimate course of the business of the Bank, to persons enjoying good credit and able to fulfil their engagements; and that with regard to the overdrawn accounts, the Bank was regularly in the habit of permitting certain persons to overdraw their accounts, and that these accounts were overdrawn by persons who were solvent, and whose business and custom it was the interest of the Bank to retain, and not to estrange by refusing them accommodation, and that these accounts were, moreover, allowed to be overdrawn with the knowledge and approbation of the plaintiffs.

The defendant further pleaded that on the 6th Nov., 1858, he handed over to the said James Brown, for the plaintiffs, the sum of $234,182.49, being the balance then in his hands, as per receipt of that date.

The third plea of the defendant is:—1st. That he rendered his accounts on the 6th Nov., 1858, and that these accounts were accepted and not disputed by the plaintiffs.

2nd. That he served the plaintiffs with fidelity and industry; that though limited in capital, he obtained an immense circulation for the notes of the Bank, from which it derived an annual profit of $30,000; that he induced numbers of persons to deposit their monies in the Bank, to the amount of $200,000, by which the Bank profited by discounting bills, and buying and selling exchange; that during his term of office (seven years and a half) the Bank made immense profits, amounting to the sum of £53,965 19s; that the Bank, in its correspondence with him, has acknowledged his ability and merit as a Cashier; that during his management the busidess of the Bank prospered, and its stock sold at par, and that ever since he left it, its stock has been continually declining, and could not then find purchasers even at 35 per cent discount.

The defendant indignantly repudiates the idea of his association with John Wilson, with which the plaintiffs charged him in their declaration, and asserts that the advances he made to Wilson and other endorsers of his paper were warranted by Wilson's then good credit, and that as to the sum of $1,722.47, which he had permitted Wilson to overdraw, it was to induce him to give the Bank better security for the payment of the bills which he owed the Bank, and after consultation with the Solicitor of the Bank;

That the advances made to McKay were made in the ordinary course of the business of the Bank, and that they have since been paid to and recovered by the Bank;

That the sums advanced to John Wilson; to the Quebec and Lake Superior Mining Company; to Cecil Mortimer, or the Telegraph Company, and to C. E. Anderson, were not so advanced in the interest of the defendant, but in accordance with the practice of the plaintiffs and other Banks up to the 23rd October, 1857, which permitted customers to overdraw their accounts, and that the Bank ratified these advances by various letters, and particularly by those of the 23rd October, 1857, and 22nd April, 1858;

That up to the 15th April, 1858, the Directors of the Bank had, as appears by the letters of this date, addressed by Mr. Ridout, their Cashier at Toronto, to the defendant, expressed their entire confidence in him, and their agreeable surprise at the prosperous condition of the affairs of his Branch;

That as to the 17 shares bank-stock mentioned in the plaintiffs' declaration, as having been converted to the defendant's use, he, the defendant, never held them otherwise than as the Cashier of the Bank; that the Bank had possession of them and could dispose of them as it thought proper, and as to the charge that he had received the dividends, he, the defen-

dant, is not aware whether the plaintiffs credited him with the dividends, inasmuch as they had always refused to furnish him with a copy of his deposit account, and that if they had credited him with the dividends, the plaintiffs ought to compensate this credit by $208 33, that the plaintiffs owed him for one month's salary, due on the 2nd December, 1858, at the rate of £625 per annum.

And lastly, the defendant, by a general allegation in his plea, alleges that the plaintiffs, by receiving from him on the 6th November, 1858, all the account-books, bills, monies and vouchers of the Bank, and by accepting his resignation on the 2nd December, 1858, without reserving their right of recourse, ratified and approved all his acts, and thereby renounced all right of recourse against him respecting the demands set forth in the declaration.

Issue was joined upon these facts, and evidence was adduced.

It may be here remarked that the plaintiffs withdrew their claims against the defendant, with respect to the debts of C. E. Anderson and Joseph Larose, and also the seventeen shares bank stock transferred by Mary Harrison, and the twenty other shares obtained by Messrs. Henry & Co., for Mrs. Bradshaw, so that their demand in this suit is confined to the following amounts ;—

1st. The sum of $2,276.73 cents, due by the Quebec and Lake Superior Mining Company.

2nd. The sum of $1,615,00 due by Mr. McKay.

3rd. The sum of $1,506.33 cents, due by Cecil Mortimer, or the Telegraph Company.

4th. The sum of $25,574.47 cents, due by John Wilson and his endorsers—this last sum is composed of nine different items, as follows :—

I. A draft of John Wilson on W. Lindsay of the 30th Aug., 1854, falling due the 17th Sept., 1854, for.....	$5,002.60.
II. A draft by the same on the same 30th Aug., 1854, falling due the 2nd Oct., 1854, for.....	$5,002.60.
III. McDonald & Logan's note 23rd July, 1855, falling due 26th Aug., 1855, endorsed by J. Wilson, for.....	$5,002.00.
Less $323 38 cents, received on account.	
IV. McDonald & Logan's note, 1st Aug., 1855, due 4th Sept., 1855, in favor of J. Wilson.....	$4,002.00.
V. McDonald & Logan's check, 9th June, 1855, for.....	$1,000 00.
VI. R. H. Russell's note, 19th Sept., 1855, endorsed by John Wilson...	$802,50.
VII. Chalmer's draft, 4th May, 1855, due the 7th Aug., 1855, endorsed by J. Wilson.....	$1,302 60.
VIII. McGie's note, 4th Oct., 1857.	$1,737.77.
IX. John Wilson's private account (overdrawn).....	$1,772,00.
Making in all	$25,574.47.

Before entering into the details of the voluminous *enquete* or evidence adduced by the plaintiffs, and the defendant and his heirs, and before discussing the various points which arise in this case, I have to say, and I do so the more disinterestedly as he, to whom I allude, has been dead more than a year, that the evidence adduced in the cause establishes that the late Mr. Bradshaw, almost up to the day he left the service of the Bank, displayed more than ordinary ability and powers of administration in the discharge of his duties. That the Directors, on several occasions, up to August, 1858, that is to say, less than three months previous to his resignation, furnished him with the most satisfactory testimonials of his ability and their confidence in his administrative capacity. They were indeed about to give him an increase of salary, when the unfortunate circumstance occurred which terminated his services as Cashier of the Bank. Up to the year 1851 the Bank of Upper Canada, whose head office was in Toronto, had no Branch established in Quebec, but in May of that year the Branch in Quebec was established. The defendant was chosen as Manager or Cashier of this Branch, and, to commence operations, he was supplied with the sum of $40.000. Without incurring any losses worthy of mention, the Bank, during the seven and a half years of the defendant's management, realized a profit of £54,000 ; and in the month of August, 1858, Mr. Ridout (Cashier of the head office in Toronto) wrote to the defendant, informing him that the profits of the Quebec Branch exceeded, by £2000, those of any other Branch of the Bank. It is true that in the correspondence of the head office with Mr. Bradshaw, it appears that Mr. Bradshaw, sometimes, during the two last years of his service in the Bank, delayed sending at exactly the appointed time, his weekly or fortnightly statements or returns shewing the condition of the finances of his Branch; but he successfully repels any apparent charge of negligence which this fact would involve, by the circumstance that he was allowed only a few clerks, who, as well as Mr. Bradshaw himself, had to perform double their ordinary duties in the Bank ; and in order to keep up with the growth and press of business, and attend to the necessary correspondence of the Bank, the clerks had to work regularly up till six o'clock, and frequently till ten o'clock at night, and that Mr. Bradshaw shared this extra work with the other officers of the Bank. It was necessary, then, for Mr. Bradshaw not only to undertake great personal labor, but also to display more than ordinary energy, to establish a branch of the Bank with such limited means as those placed at his disposal. It was necessary for him, to a certain extent, to *create* customers for the new branch. It was necessary for him to keep pace with four or five other Banks which had long been established in this city. All this, in my opinion, explains and accounts for the facility and liberality with which the plaintiffs accommodated their customers, either by discounting their notes, or permitting them to overdraw their accounts, which they did, in a great number of cases, and for considerable sums. It appears that the practice of permitting customers to overdraw their accounts, and to obtain large discounts, was followed by all the other Banks from 1851 to 1858, and which practice, to use the energetic language of Mr. Robert Shaw, was one which customers had a right to expect, and by which the Banks made their profit. The accommodation thus afforded by the defendant cannot therefore be imputed to him as an act of imprudence or want of foresight on his part, because the Directors of the Bank at Toronto regularly received weekly statements from the defendant shewing the discounts, overdrawn accounts, and past-due bills, all which they sanctioned and approved, and it was only on one or two occasions that they wrote to the defendant, not to find fault with him for the discounts or overdrawn accounts, but requesting him to act prudently, and that as to one particular individual, not to allow him to increase the amount of his overdrawn account; it was thus therefore perfectly understood between the Directors and the defendant, that, in the interest of the Bank, and to give it a name, and make it take root in Quebec, it was necessary that he should have a large discretionary power, and that he should follow the practice of the other Banks in this respect. It is further established that this spirit of liberality which marked the operations of the Upper Canada Bank was not confined to its transactions in Quebec, but that at the head office in Toronto the Directors allowed the Grand Trunk Railway Company to overdraw for £250,000—the Great Western Company for the sum of £330,000, and Mr. Zimmerman the sum of £150,000, and several other persons for very large amounts. By a letter from the Directors to Mr. Bradshaw, dated the 23rd October, 1857, it appears that the latter had previously transmitted to the head office a list of due bills and overdrawn accounts, to the amount of £28,000 or thereabouts, and that the Directors enjoined him not to permit any person to overdraw his account for the future, and inquired whether he had succeeded in reducing those accounts which had been already overdrawn. A letter from the Directors of the 15th August, 1858, shews how the liberality of the Bank had gone on increasing, seeing that $150,000 had been overdrawn by one customer, and the Directors did not blame Mr. Bradshaw for allowing this, but advised him not to advance him any more, because they say,—"we cannot afford it;" and this letter concludes in these words,—"There is a "good feeling at the Board regarding your "office which it may be satisfactory to you to "know, after all the trouble that you have had "for several months past;" and as I have already stated, all this takes place less than three months previously to Mr. Bradshaw's being replaced by Mr. Brown in the management of the affairs of the Bank in Quebec.

After the above observations respecting the character and the nature of the transactions of the Bank at Toronto as well as at Quebec, I will advert to THE FIRST GROUND of complaint which the plaintiffs make against the defendant:—It is, that on the 24th December, 1855, the defendant received a draft for £500, drawn upon S. Newton, Secretary of the Quebec and Lake Superior Mining Company, by one James L. Wilson, at Hamilton, Canada West, on the 20th September, of that year, and which had been discounted by the Branch of the Upper Canada Bank at Hamilton, and forwarded to the defendant for collection, and which was protested here for non-payment, and that the defendant had not acted, as regards this transaction, in the ordinary way, that is, that he ought to have transmitted the draft thus protested to Hamilton in order that the usual action in such cases might be taken upon it there, instead of which, that he had entered it in the account of the Quebec and Lake Superior Mining Company, with the Bank, as an overdrawn account. The Bank pretends that Mr. Bradshaw should not have treated nor charged this draft as an overdrawn account, and that the fact that Mr. Bradshaw, as a Stockholder and a Director of this Company, was indebted to the Company in the sum of £600 for instalments overdue, indicated a negligence of his duties as Cashier; and the Bank further pretends that the Company in question has become extinct, and that all recourse against it for the recovery of the amount of the draft has been lost to the Bank, and that the loss thus occasioned to the Bank is attributable to the interest which Mr. Bradshaw had in concealing from the Bank the nature of the transaction, and his connection with the Company, and to his delaying the necessary measures to compel the recovery of the amount. It is proved in evidence that it was the interest of the Bank to retain the custom of this Company, as it had made large deposits by which the Bank had profited ; that this Company holds its charter by an Act of the Provincial Parliament, and is still in existence, and composed of some of the wealthiest names in the city of Quebec; that about 25 per cent. of the shares were paid up; that there were 44,000 shares in all upon which, by the charter, £2 per share could be called in; that the defendant was a large, if not the largest, shareholder in the Company, and was indebted in the sum of £600 as above stated for unpaid instalments which had been called in. Now, although it is by no means clearly proved that this is a rich Company, it certainly is not proved that it is insolvent; it is proved that the Company was charged with interest on the draft in question although entered as an overdrawn account, and that it was also charged with the costs of protest, and all this on the 26th June, 1856, and also that a memorandum of the draft was entered in figures in the Company's account, by means of which the nature of the transaction could easily be understood by the Bank Inspector; that Mr. Brown ought, if he had done his duty, to have seen and known the transaction, and that the Directors at Toronto also must have known the amount of the indebtedness of the Company ; and Mr. Douglas, a witness for, and a clerk in the Bank, states in his evidence that the draft had necessarily to be retained in Quebec, as proof of its having been discounted. The plaintiffs pretend that the defendant ought to have apprized them of the fact that he was a shareholder and a debtor of the Company, in order that they might have exercised greater vigilence with respect to their interests. It must be admitted that it would have been better if the defendant had not placed himself in this position; but it is proved that the President of the Bank at Toronto was a shareholder in this Company, and knew that Mr. Bradshaw was a shareholder to a very large amount, and besides this fact could not be otherwise than well known in the commercial community, to whom the solvency of every merchant or company is as well known as though it were publicly posted on 'change. I cannot see that Mr. Bradshaw, from the mere fact of being a shareholder and a debtor of the Company in question, can be held responsible, at least for the present, for the balance due the Bank by this Company, first, because in point of principle the transaction appears to me to have been made in good faith, and in the ordinary course of the affairs of the Bank, which regularly made such advances; and secondly, because the Bank has its recourse against the parties to the draft, and more particularly against the Company, whose insolvencyy the plaintiffs have not alleged, and much less proved. There is nothing to shew that the plaintiffs ever complained of the advance thus made to the Company by the defendant ; but, on the contrary, by their letter of the 23rd October, 1857, the Directors ask him if he has succeeded in reducing the amount due by the Company ; and his answer is, that the debt is good, and that it will be paid during the summer of 1858. Why then did the Bank accept this explanation ? Should it not immediately have ordered the amount to be recovered? No, the Bank does nothing; the transaction promised well; the President of the Bank was a shareholder of the Company himself, and ought to have known its position at the time. But the plaintiffs say : "The defendant promised to pay the amount,"—but proof of a promise made in such a manner to pay the debt of a third person is illegal, and besides, the action of the plaintiffs is not one of debt, but an action of damages or *in factum*

Besides, what interpretation can be given to Mr. Bradshaw's words, "that the debt would be paid," other than as a debtor of the Company the affair would be settled; but there is a wide difference between this, and the declaration that Mr. Bradshaw had neglected the interests of the Bank. That part of the plaintiffs' declaration which alludes to this claim, states that the defendant advanced the funds of the Bank without discernment, and at the eminent risk or danger of losing the amount. Now, where was the danger? The Bank, after having given the defendant, as I conceive, *carte blanche*, and after having ratified and approved, with full knowledge of the circumstances, all that he did, without ever making the slightest complaint, cannot, all at once, turn round, and demand payment of the amount from the defendant, without, at least, proving that it has really lost the sum claimed from him. Even after Mr. Bradshaw left the Bank, the plaintiffs took no legal measures to compel the Company to pay the debt, but on the contrary, without any previous warning, or notice whatever, they instituted legal proceedings against him, of the severest character which the law authorizes, and seized, before judgment, all his property and means of subsistance. It is proved, also, that on the 25th Nov., 1858, the defendant having gone to Toronto at the request of the plaintiffs, in order to give them such explanations as they required concerning his management of the affairs of the Bank, addressed a letter to the Directors asking to be furnished with a copy of the accusations against him, which they refused to do, and kept him in entire ignorance of their grounds of complaint against him, and this within three months of the institution of the rigorous proceedings of which I have already made mention.

THE SECOND CASE, or ground of complaint preferred by the plaintiffs against the defendant, consists, as already stated, in the fact that the defendant discounted notes for Mr. McKay, a painter, well and favorably known in Quebec, and upon which notes the sum of $1600 remained due at the time of the institution of this action. The declaration alleges that the defendant gave these discounts at a time when he was either indebted or about to become largely indebted to Mr. McKay, for work which the latter had done or was about to do for him, and that they were accordingly given in the interest of the defendant, and not in the ordinary course of the affairs of the Bank, whereby the said sum of $1600 became lost to the plaintiffs. The evidence establishes that Mr. McKay (whom everybody knows to be a painter, who, up to within a short time ago, had a very large custom,) was an excellent customer of the Bank of Upper Canada, in Quebec; that, in the interval which elapsed between 1851 and 1859 inclusively, he had obtained discounts to the amount of $33,227.87, upon which there is only left due the sum of $475.24. It is proved that the notes upon which the balance of $1600 is claimed by the Bank, are—

1st. McKay's note, endorsed by Plunkett, for $715 85, due 24th Dec, 1858.

2nd. Plunkett's note, endorsed by McKay, for $418.50, due 26th Jan., 1859.

3rd. Plunkett's note, endorsed by McKay, for $400 20, due 13th Feb., 1859.

These notes therefore only became due several months after Mr. Bradshaw had tendered his resignation as Cashier, and on the 8th November, 1859, $989 were paid on account of these notes, and on the 3rd Nov., 1860, the Bank, as regards Mr. McKay, accepted a composition of five shillings in the pound. It is further clearly proved that Mr. McKay's credit was good up to the 24th May, 1860, when his establishment was burnt down, by which fire he lost £3000. The composition with his creditors which followed was voluntarily made, as may be presumed from the law then in force. It is proved that of the $33,327.87 discounts given by the Bank to Mr. McKay, that $3,026 28 were given after the defendant had left the Bank. It is also proved that one of the last-mentioned notes, which became due after the defendant left the Bank, was renewed. It is but just to say that Mr. McKay states in his evidence that, one day, having asked Mr. Bradshaw for money, believing that he had a claim against him for $900 or $1000, for painter's work done to Mr. Baby's house, and having told him that he was greatly in want of money, that Mr. Bradshaw, while denying that he owed him anything, promised to discount a note for him for $500 or $600; but the remainder of his evidence shews that the $900 claimed by him from the defendant was for work done to Mr. Baby's house, and for which Mr. Bradshaw did not think himself responsible, although he had engaged Mr. McKay to do the work. In face of these facts, can it be asserted for one moment that the defendant exceeded his powers or duty by according to Mr. McKay in 1858 a continuation of the discounts which the Bank had so liberally granted to him from 1851? Can it be said that the defendant acted imprudently, more particularly seeing that between the date when the notes had become due, and the 24th May, 1860, fifteen months had elapsed during which time the new Cashier could have enforced payment, inasmuch as McKay was perfectly solvent. But, strangely enough, not only does the Bank not compel McKay to pay, but it grants him a renewal of one of those very notes, and winds up by giving him in November, 1860, a full discharge, and accepts a composition of five shillings in the pound, without giving any notice whatever to the defendant, while at the same time they hold a *saisie arret* over the defendant's head. But there is one circumstance which of itself is sufficient to cause the rejection of this part of the plaintiffs' demand, and this is, that the plaintiffs have not produced the three notes in question, as proof of their claim against the defendant, and have not explained the omission. These notes could have been produced by the Bank, or by McKay, if, after the composition, they had been handed to him; but in either case their destruction or loss has not been alleged, much less proved. The proof which the plaintiffs have made of these notes is therefore illegal, and this alone would suffice to reject this portion of the plaintiffs' demand; but upon the merits, and supposing the proof to be legal, the Bank cannot succeed in this claim, for the reasons above stated.

THE THIRD CASE or complaint against the defendant is—the advance of $1506 35 to Cecil Mortimer, Secretary of the Grand Trunk Telegraph Company. It is in evidence that this Company was incorporated by an Act of the Provincial Legislature, and had shareholders in every part of the Province, including Quebec, and that the most respectable names were found upon the list. The defendant had shares in this Company to the amount of £100, the capital of which was based on the estimation of £25 per mile between Quebec, Toronto, and Detroit. Three out of four of the instalments were called in, but were not paid up by the shareholders in Quebec. The defendant had paid £25 upon the £100, and there consequently remained due by him £75, with the balance of the unpaid instalments. It is also proved that the shareholders are all solvent. The defendant, in the fall of 1853, or the spring of 1854, advanced to this Company, whose funds thus collected were deposited in the Upper Canada Bank, the above mentioned sum of $1505, there being at the time no funds of the Company in the Bank; and hence the charge against the defendant of having very imprudently, and without justification, acted against the interests of the Bank. In reply to this charge, the same arguments avail by which the former charges have been answered, namely, the desire and object of the Bank to extend its business in Quebec, and to increase the circulation of its notes, by consenting to receive as deposits the instalments payable by the shareholders, in the hope of deriving large profits from the future deposits of the Company, which at one time promised to be very profitable, as well as from the discounts and exchange which the transactions of a young but rapidly growing Company were almost certain to offer. Are natural and justifiable motives such as these sufficient in the estimation of an able Cashier, who well understood the interests of his employers, and who, moreover, knew the spirit of liberality which characterized the operations of the Bank, to justify him in advancing this small sum to this Company in order to secure its custom, and at the same time enhance the profits of the Bank? I am decidedly of opinion that he was justified, and I cannot for an instant think that the small interest the defendant had in the Company to the amount, as above stated, of £100 or £75 could have induced him to betray the interest of his employers. Besides, the Bank was kept regularly informed of the state of this Company's accounts with the Branch here, and the correspondence which passed between the defendant and the plantiffs clearly shews that in advancing the above sum the defendant merely followed the instructions of the Directors, and executed their desire to advance the interests of the Bank. By a letter from Mr. Ridout of the 23rd October, 1854, it will be seen that the Bank at Toronto had made arrangements to recover the amount due by the Company, and in consequence the Company's paper was forwarded to Toronto, after which the Directors make no further mention of the the circumstance; but on the 29th July, 1856, the defendant wrote to the Directors, asking them for information as to whom he was to address himself for payment of the amount due by this Company, and Mr. Ridout replied that he was going to interest himself in the matter, and would inform him of the result of his inquiries. A letter addressed by Mr. Bradshaw, in answer to one from the Directors respecting the solvency of this Company, would lead to the belief that the Company was extinct, but Mr. Bradshaw had evidently been led into error, because Mr. Anderson, the only important witness produced by the plaintiffs on this point, states that the Company is not extinct. Besides, the law will not suppose it to be so unless from the occurrence of certain irregularities, and according to this witness the names of the Shareholders were a guarantee of its solvency, at least for the amount claimed by the plaintiffs. For these reasons I consider the complaint of the Bank against Mr. Bradshaw, with respect to this advance, which promised to be a profitable one, and by which, in my opinion, the Bank has not proved the loss of a single cent, to be entirely without foundation.

I now come to THE FOURTH and principal charge against the defendant, and the only one which for any length of time occupied my attention, and I may here state that I have given it a great deal of consideration. It is with respect to the advances to John Wilson, to the amount of $25,000, or thereabouts, by means of discounts on notes on which his name appeared, either as maker or endorser, and on drafts, checks, and overdrawn account. The key to this part of the case turns upon the credibility or incredibility of John Wilson, and still more so, upon the question as to whether the extraordinary revelations which this man makes in his evidence are corroborated by other witnesses in the case, or by any other evidence whatever, because, as was frankly admitted by the learned counsel for the plaintiff, this John Wilson was *particeps fraudis*, and is also interested in the result of the suit, as will be seen further on, and as such, his testimony requires corroboration in order to justify a Court of Justice in attaching any belief to it. I have gone further, and have asked myself whether, discovering in the testimony of this man not only a personal interest, not only a course of conduct fraudulent on his part, but palpable contradictions, not only with his own statements, but also with the evidence of disinterested witnesses, on the most important points, I could set aside his testimony as utterly unworthy of belief, even though he should be corroborated by some witnesses on particular points, because it is easy for a designing and dishonest man to take advantage of the smallest circumstance to concoct a story implicating an enemy, and appeal for corroboration to some circumstance apparently supporting his fabrication, and thus endeavour to render the whole of his fabulous creation deserving of belief. By recent legislation, the interest of a witness is not a ground of disqualification as it was formerly, but merely goes to affect his credibility, which imposes upon the Judge, as in the present case, a task both difficult and disagreeable. With these preliminary remarks I will advert to the facts of this charge. The two first items consist of the fact that the defendant accepted two drafts for $5,000 each, drawn by John Wilson on W. Lindsay, of Montreal, bearing date the 30th August, 1854, and respectively falling due on the 17th September and 2nd October of the same year, both of which were protested at maturity for non-payment. This Mr. Lindsay was Wilson's agent at Montreal, through whose hands the better part of the earnings of Wilson's steamboats passed. No proceedings were taken to recover the amount of these two drafts till the month of November, 1855, when the defendant gave instructions to Mr. Dunbar Ross, the Bank Solicitor, to institute legal proceedings, which were commenced but never proceeded with. It was only on the 6th February following that the defendant took a mortgage for the $10,000 upon the steamboat *Princess Royal*, then owned by James Ferrier Wilson, a son of John Wilson, and also upon the steamboat *Montreal* for $8,000, and this was done through the intervention of John Wilson. This transaction was further approved by Mr. Dunbar Ross, as the only means of securing the Bank. All, up to this moment, looked right; all appears to have been done in the ordinary course of affairs; but according to the evidence of John Wilson, it would appear that the defendant had advanced him the amount of these two drafts in virtue of an agreement between him and the defendant, to the effect that if he (Wilson) would purchase the steamer *Princess Royal*, and give him (Bradshaw,) half interest in the speculation he would furnish him with the facilities necessary to purchase her; that in pursuance of this agreement he (Wilson,) purchased the *Princess Royal* for £5,500, and according to agreement did so in his own name in order not to compromise Mr. Bradshaw; that he paid £1,100 cash, and the remainder of the purchase price

by four notes signed by him and endorsed by H. J. Noad & Company. Wilson adds that the *Princess Royal* was afterwards, sometime in the month of August, 1854, sunk by collision, and that he expended £1,400 in raising her, and that by means of a second understanding with the defendant he released the latter from all responsibility upon the condition assented to by Mr. Bradshaw, that he would furnish him (Wilson) with further facilities upon McDonald & Logan's notes, and that it was also agreed that if eventually his loss by the *Princess Royal* should be very heavy he, the defendant, would release him from the payment of the two drafts above mentioned, and, he says, that these two drafts were drawn to facilitate the payment of the *Princess Royal*, and another steamer called the *Admiral*. He says that he refused to pay these two drafts because they were drawn in the interest of the defendant; and that he also refused to confess judgment in the suit which, as above stated, was instituted in November, 1855, and that the action was not proceeded with, nor entered in Court. If Wilson speaks the truth the defendant, without doubt, departed from his duty to his employers, who ought to have had unlimited confidence in him. He could not discount drafts in pursuance of so positive an agreement (if it can be believed) in which he had a large interest, without rendering himself liable for all the risk and consequences incident to the cashing of the two drafts in question. Common sense alone would teach that a man, and more particularly the Cashier of a Bank, cannot be at one and the same time both lender and borrower; that in such case his personal interest would necessarily blind him to the interests of his employers, and he should be held liable for the consequences of such a transaction as though he were himself the maker of the notes; but to what extent is Wilson to be believed, and how far is he corroborated in the important points of his testimony? The most important point is not to ascertain whether the defendant had or had not a share or half interest in the *Princess Royal*, but whether he in reality made the shameful agreement with Wilson above spoken of, in order to relieve himself from the responsibilities attaching to the ownership of this steamboat. That the defendant had a share or interest in the *Princess Royal* I have no doubt, at least towards third parties, the proof adduced satisfies me on this point. That he acted wrongly as Cashier of a Bank over whose funds he should have kept strict supervision, in thus engaging in any commercial speculation such as that of being jointly interested in the ownership of a steamboat, there can be little or no doubt. In so doing he risked the certain to pursue the uncertain profits of trade; he exposed himself to be discharged by his employers, and in addition thereto he risked his own means and exposed those of others. But, though Cashier of a Bank, he had a perfect right to own a steamboat for the purpose of trade, so long as he did not allow his own business to interfere with the interests of his employers, or cause him to neglect his duty towards them, and in this respect his employers would legally have no ground of complaint against him, and all they could do would be to exercise their discretion and ascertain how far it was politic for them to keep in their employ, as guardian of their funds, one who was engaged in mercantile pursuits. Wilson, therefore, doubtless tells the truth, and in this particular I believe him, when he says that Bradshaw had an interest in the *Princess Royal*. He is corroborated in this by the paper-writing bearing date the 27th September, 1857, signed by Wilson, being a discharge given by him to Bradshaw from all responsibility as regards the *Princess Royal*. Mr. Bradshaw himself took the trouble to verify this discharge by giving a copy of it in his own handwriting to Wilson. In addition to this Wilson's books shew that about the close of the year 1855, he debited Bradshaw with half the purchase money, and certain other charges upon this vessel. But is Wilson corroborated when he says that Bradshaw discounted McDonald & Logan's notes in order to obtain the discharge or release above mentioned, and with the understanding that Bradshaw would pay the two drafts on Lindsay in the event of Wilson's loss on the *Princess Royal* being very heavy. It is true that there was a delay allowed by Bradshaw, which at first sight appears singular in not suing the maker and endorsers of these drafts till 1855, and afterwards allowing proceedings to be stayed without obtaining judgment, but it is not established by Mr. Dunbar Ross at whose instance or request the proceedings were discontinued. Mr. Ross, as the Solicitor of the Bank, once charged with the conduct of the suit, had the power either to proceed with or discontinue it; nevertheless I presume he did not discontinue proceedings without consultation with Mr. Bradshaw. This is the only circumstance which corroborates the evidence of Wilson in so far as regards the two drafts, unless an interpretation unfavorable to the defendant be put upon the fact that after the suspension of the above-mentioned suit in November, 1855, no further proceedings were taken to recover the amount until the 6th February, 1857, when the defendant accepted the mortgage above referred to on the *Montreal* and *Princess Royal*; unless also it should be considered as corroborative of the evidence of Wilson, the fact that the two notes of McDonald & Logan, endorsed by Wilson, the one for £1,250, bearing date the 23rd July, 1855, payable in one month after date, and the other for £1,000, dated the 2nd August, payable in 30 days after date, which, though duly protested for non-payment, were not sued upon till December, 1855, when McDonald & Logan and Wilson confessed judgment, and the execution which issued shortly afterwards was stopped without its being shewn by whose order, and that afterwards execution in the form of *pareatis* was sued out in the winter of 1856 against Wilson upon steamboats which were said to belong to him in Montreal, but the sale of which was prevented as will be hereafter seen by oppositions *afin d'annuller*. In order to destroy the effect of this proof, and its apparent corroboration of the evidence of Wilson, the defendant relies with great stress upon the fact that Wilson has a large and a direct interest in the event of this suit, and that his interest is to make it appear that the two drafts are payable by the defendant. The defendant further alleges that Wilson is contradicted by Messrs. Noad & Jeffrey, with respect to the reimbursement of the £5,500—thus, Wilson says that the defendant was to have furnished him with facilities to pay the £5,500—the price of the *Princess Royal*, and that he (Wilson) paid this sum to Messrs. Noad & Jeffrey by means of ten drafts; now it is proved that these ten drafts were given by him to Messrs. Noad & Jeffrey for a transaction totally different, that is to say, to obtain the means to purchase a steamboat called the *Montmorency*, and moreover that these ten drafts have never been paid. I must admit that this is a most flat contradiction of Wilson's evidence. *Secondly*. It is he (Wilson) who informed the Bank of all the transactions. If these transactions took place as related by him (Wilson), he ought to have had the heart to conceal them, since he is *particeps fraudis*, and it can therefore only be his personal interest which could thus have induced him to expose his own turpitude. *Thirdly*. In order to shew the feeling which actuated Wilson towards him, the defendant alleges that Wilson stated in his evidence, firstly, that he, the defendant, through fear of appearing interested in the transaction of the purchase of the *Princess Royal*, advised him (Wilson) to draw a draft on the Quebec Bank, and not upon the Bank of Upper Canada, and that some days afterwards he corrected himself, and admitted that it was upon the Upper Canada Bank he drew the draft. *Fourthly*. Wilson says he paid the Hon. Mr. Rose, of Montreal, the price of the *Princess Royal*, and that he held his receipt, while, on the contrary, it is proved that he neither paid Mr. Rose nor holds his receipt, but, on the contrary, it was Messrs. Noad & Jeffrey who paid for her, and that Wilson has not to this day reimbursed them. *Fifthly*. Wilson says the drafts on Lindsay were to enable him to pay for the *Princess Royal*, while Jeffrey proves that he never paid for her at all, nor reimbursed him (Jeffrey) the purchase price. *Sixthly*. Wilson denies that he kept a cash-book in which to enter the expenses, while his son, John Wilson, junior, proves the contrary. *Seventhly*. Wilson says that the defendant knew that Lindsay, on whom the drafts were drawn, was a man of straw, and without means, while Wilson's own books shew that on the 19th August, 1854, (the time when the drafts were drawn) Wilson had debited this same Lindsay with the sum of £7,099 0s 1d, and on the same day placed to his credit the sum of £6,869 6s 9d, and that up to the 12th December, 1854, Wilson had debited Lindsay with £9,502 2s 11d. *Eighthly*. Wilson says he always refused to pay these two drafts, believing that Bradshaw was bound to pay them for him, while on the 16th Feby., 1857, Wilson gave the Bank a mortgage on his two steamboats, the *Montreal* and the *Princess Royal*, to secure the payment of these two drafts and the other notes, and personally bound himself to pay all these sums! How can these facts be reconciled? *Ninthly*. Wilson's letters to Mr Bradshaw of the 26th and 27th February, 1857, clearly shew that Wilson did not consider Mr. Bradshaw bound to pay these drafts, since he wanted to sell the *Princess Royal*, and asked Mr. Bradshaw's permission to do so, having previously given him a mortgage upon this vessel to secure the payment of the two drafts. *Tenthly*. By the evidence of Mr. Edward Jones, to which I will refer hereafter, most convincing and complete proof is afforded of the intention and design of John Wilson to defraud his creditors, by a fraudulent transfer of his steamboats to third parties, and more particularly to his sons. *Eleventhly*. By the testimony of this same John Wilson, given in a cause in the Superior Court, under the number 301 of the year 1856, in which Mr. Lindsay was plaintiff, and the above-mentioned J. Wilson jr., was defendant, the best proof is afforded of his standard of morality. *Twelfthly*. Wilson at first denied in his evidence that he had obtained discounts from the Bank during the time he was being examined as a witness, and subsequently admitted that he had.

It is to be considered now whether any explanation can be offered of the fact that Mr. Bradshaw only took ficticious proceedings at a late period to recover the amount of these drafts, and stopped the proceedings before the entry into Court in 1855, and took a mortgage on the two steamboats, *Princess Royal* and the *Montreal*, only on the 6th February, 1857. I think, without admitting as true the evidence of Wilson, that this delay can to a certain extent be explained. Wilson had been one of the most profitable customers of the Bank. He was for a number of years from 1851 the largest steamboat owner in Canada; up to a certain period he owned as many as seven or eight. He transferred his account to the Quebec branch of the Upper Canada Bank as soon as it was established here. Between the 16th December, 1851, and the 7th February, 1857, he had notes discounted at this Branch, to the amount of £92,404 10s 2d., from which the Bank had derived large profits. He was considered a very energetic and enterprising man, and one who could draw a good deal of business to the Bank; and there is a circumstance sufficiently singular which may be here passingly stated, and that is, that since his misunderstanding with the defendant, that is to say, from the day on which the Bank instituted this action, the 26th March, 1859, up to the 4th April, 1863, and while he was giving his evidence, the Bank discounted for Wilson (a man whom they pretend to be insolvent) paper to the amount of $144,942.81! The defendant probably did not wish to proceed too vigorously against so good a customer, who, though temporarily embarrassed, might, in a short space of time, recover his former good position; he might, in acting thus, have considered that he was exercising that spirit of liberality which, as has already been shown, characterized the Bank of Upper Canada; and the letters of Mr. Ridout to Mr. Bradshaw, and particularly those of the 25th September, 1857, and the 22nd April, 1858, show what a wide latitude with respect to the granting of discounts, and other transactions of the Bank, the Directors allowed Mr. Bradshaw. In 1854 Wilson was still the owner of steamboats, and was considered solvent until June, 1856. In the winter of 1856 execution issued against his furniture, upon the judgment obtained against him and McDonald & Logan for the two notes above mentioned, but was stayed by the lawyer of the Bank. It does not appear what the furniture consisted of, but supposing it to be of the ordinary kind, the defendant, in my opinion, ought to have had the discretionary power to prevent the sale of Mr. Wilson's furniture, and thereby save himself a great deal of unpleasantness without any profitable result to the Bank. He retarded the sale a few days, and took out a second seizure to sell Wilson's furniture, to which Mr. Daniel McGie fyled an opposition; thereupon the defendant caused a *pareatis* to issue to Montreal to seize the three steamboats, *Princess Royal*, *Montreal*, and the *Alliance*, splendid boats, which were supposed to belong to Wilson; and upon this Wilson resorted to the perpetration of a series of the most flagrant frauds. He went to a lawyer, other than Mr Dunbar Ross, who up to this period had been his legal adviser, and in the name of third parties, who were not present, gave this lawyer instructions to draw up two oppositions to prevent the sale of these steamboats—one in the name of James Ferrier Wilson, claiming the property of the *Princess Royal*, and the other in the name of John Wilson, junior, claiming the property of the *Montreal* and the *Alliance*. It was John Wilson himself, and alone, who gave these instructions to the lawyer—his two sons, the opposants, never had an interview with the lawyer on the subject; and this lawyer proves that Wilson merely transferred these steamboats to his sons, in consequence of his difficulties; that he was always considered the owner, and received all the profits and earnings of them, and that the oppositions were merely made with the view of preventing their being sold, and yet Wilson must, before he made use of those oppositions,

have sworn that they were made in good faith, and for the sole purpose of obtaining justice. But, it may be asked, why not have contested these fraudulent oppositions? Yes, this certainly would have been the duty of the defendant to secure himself; but it might have required one and perhaps three actions, and perhaps have given rise to revocatory actions, to be followed by the costs of an appeal, with all the cheering prospects of the glorious uncertainty of the law, and the certainty of the increase of the debt by the accumulation of interest and the addition of law costs. What in this emergency did the defendant do? He consulted Mr. Ross, the Bank Solicitor, and took a mortgage on the *Princess Royal* and the *Montreal*, as owned by the opposants, his sons, who claimed them as their property, in order to secure the payment of the two drafts, and McDonald & Logan's two notes. Mr. Ross states in his evidence that this was the best means of securing the interest of the Bank. It is true that by a private agreement (*contre lettre*) the opposants did not personally bind themselves to pay the amount of the mortgage, but merely as owners of the steamboats. This was strictly conformable to law, and I think this private agreement does not in any way reflect upon the defendant, who could not exact more from the opposants, but reserved his recourse personally against John Wilson, their father.

Before pronouncing any decision on the subject of the two drafts on Lindsay, I will refer to the two notes of McDonald & Logan above spoken of. Wilson, as already stated, said in his evidence that these two notes were discounted in virtue of the pretended agreement with Mr. Bradshaw on the subject of the discharge from all responsibility with respect to the loss on the *Princess Royal*, while it is proved that from the year 1851, up to the 31st March, 1855, McDonald & Logan had obtained discounts at the Upper Canada Bank here, to the amount of £21,575, and that up to this period this firm had honorably redeemed their notes, which, like the two in question, were endorsed by Wilson; and these very two notes, moreover, were merely renewal notes of two others, which fell due respectively the 23rd and the 31st July, 1855. It is also proved that up to this period McDonald & Logan enjoyed excellent credit, and that it was only in the fall of 1855 that they failed. It has been already stated that the defendant sued them for the amount of these two notes, and a check for £250, which the defendant allowed them to deposit in the Bank and drawn on the Quebec Bank, with the understanding that it was only to be presented the following day, which, when presented for payment some days later, was dishonored and protested, as appears by the initials of the Notary, E. B. Lindsay, who made the protest. The question as to the credibility of John Wilson again arises here. If this man speaks the truth, the defendant was a shameless speculator, trafficking with the funds of his employers. But fraud cannot legally be presumed; nor can it be proved by such a witness as the one to whom I now allude, who is not only liable to the charge of being directly interested in the event of this suit, but who has geen guilty of glaring contradictions in his own statements, as well as in the statements of witnesses perfectly disinterested; who has committed palpable frauds, admitted by himself, who has made declarations upon oath in cases where he and his sons were concerned, which manifest a frightful disregard and contempt for the obligations of an oath. How can I, upon the evidence of this man, declare that the memory of the defendant is irretrievably tarnished? How can I base a judgment upon this interested, equivocal, and contradictory statement, which would have for effect the ruining of the character and fortune of a man who, like the late Mr. Bradshaw, enjoyed the entire confidence of his employers up to the very moment it suited the purpose of John Wilson to make the pretended revelations above-mentioned? It is worthy of remark, a circumstance which must not be lost sight of, that while Wilson was giving his evidence in this case he wrote to the defendant, telling him that if he would compromise with him, that he, (Wilson,) could *gently coerce the Bank* into a settlement. Does not this fact disclose another desire and attempt to perpetrate an additional fraud? And in conjunction with this is the fact that at this very time (Mr. Bradshaw having left the service of the Bank) he, (Wilson,) was receiving from the Bank, discounts and other facilities to the almost fabulous amount which I have already stated. No, I cannot upon evidence reproachable in so many respects condemn the defendant and his heirs to pay the plaintiffs a sum of $19,000 or $20,000, the amount of the two Lindsay drafts, and the two notes of McDonald & Logan.

Next comes the case of Wilson's overdrawn account for $1,772. Wilson states that in 1857 he wanted £500, to refit his steamboats then at Three Rivers; that the defendant agreed to let him have this amount upon condition that he would apply it to the payment of certain debts, and that he should give him, (Mr. Bradshaw), a more perfect discharge or acquittance than he had already given him, with respect to his responsibility for the loss on the *Princess Royal*; but he conceals one very important circumstance, that is, the fact that he made his sons give a mortgage on the steamboats *Princess Royal* and *Montreal*, and further omits to mention that it was Mr. Ross who conducted this transaction. He says that this discharge was drawn up by Mr. Ross, and countersigned by Mr. Douglas & Mr. Campbell, two clerks of the Bank. He adds that Mr. Bradshaw paid this sum of £500 to third persons, less some £60 which Bradshaw kept and refused to give him, and which constitutes the difference between the £500 advanced and the overdrawn account sued for. It is clearly proved that this sum was advanced in order to get Wilson's sons to give the mortgage upon the two steamers above-mentioned, while at the same time it was appropriated to the payment of privileged debts upon those two steamboats, and thus giving the first preference to the mortgage of the Bank. From the very commencement this transaction was submitted for the opinion of Mr. Dunbar Ross, and approved of by him, and the exhibit ten, fyled by the defendant in the cause, shews that the whole transaction was fully explained to Mr. Ross; and it is proved that owing to the burning of the steamboat *Montreal*, in June 1857, the mortgage became lost and of no avail to the Bank, and Bradshaw consequently did not pay the said sum of £60, or thereabouts, to Wilson, but put them to his credit, and it was in consequence of Mr. Bradshaw's refusal to pay this sum that Wilson became so indignant and incensed against him. During my inquiry into and examination of the facts of the case, the question frequently presented itself to me as to the reason why Wilson, when giving Bradshaw the discharge from responsibility on the loss of the *Princess Royal*, did not exact from him a written memorandum of his alleged undertaking, which he says Bradshaw agreed to perform as a consideration for the discharge. It appears to me that a shrewd man like Wilson would not, under the circumstances, have omitted such a measure of precaution, more particularly towards a man whom he says he mistrusted. With what expectation of belief, therefore, can he say that Bradshaw would commit nothing to paper, seeing that the most positive proof of the contrary consists in the fact which he himself alleges, that Mr. Bradshaw gave him (Wilson) a copy of the discharge in his (Bradshaw's) own handwriting? In the case, as between Wilson and Bradshaw, this verbal proof of Bradshaw's alleged undertaking would not be admitted; nor can it be admitted in this case, seeing that Wilson is equally interested, for a condemnation against Bradshaw would be so much put into the pocket of Wilson. Thus, then, the item of the overdrawn account is easily explained. The same reasons which influenced me in dismissing the former items, or grounds of complaint, compel me to act similarly with respect to this one of the overdrawn account, because I hold that in this transaction the defendant merely exercised a wise discretion, after consultation with the Solicitor of the Bank, by whom it was also approved.

The three remaining items which form the sum claimed, with respect to the amount advanced to Wilson, are, Doctor R. H. Russell's note for $802.50; Chalmer's note for $1302.60; and Daniel McGie's for $1737.77. With respect to those, it may be here stated that in the whole of Wilson's evidence there is not a single word of any one of these transactions; consequently it cannot be said that the advances made to him on the paper of these three individuals were made to favor him, or in execution of the pretended undertaking of Bradshaw to furnish him with facilities, particulary, seeing that Wilson says that these facilities merely applied to McDonald & Logan's notes. It may be further stated that two of these notes, namely, Russell's and McGee's, have not been fyled in the case, and no mention has been made of them, nor of Chalmers' either, in the declaration, or in the plaintiffs' bill of particulars, but the plaintiffs included them as forming the sum of $26,624.54 against John Wilson's account, as having been advanced to him in the speculation of the steamboats in which the defendant was concerned. The fact of the plaintiffs not having fyled the two notes of Russell and McGie is a sufficient reason in my opinion for dismissing this part of the claim of the Bank, as the production of these notes is the best proof they could have offered, and I cannot consider as equivalent to their production, the memorandum of them contained in the list or report sent by Mr. Bradshaw to the Directors in Toronto, unless the loss of the notes be proved. These notes may have been paid, or they may have gone into the hands of third parties, and a variety of reasons might be given to shew the necessity of their being produced in the cause. Besides, on the merits, these notes have no connection with the pretended undertaking of Bradshaw towards Wilson, who makes no mention of them in his evidence. In addition to this, these individuals had, for a long time previously to the date of their respective notes, been in the habit of receiving large discounts from the Bank, thus showing their solvency, and the confidence the Bank had in them. In one word, these notes are no way connected with the transactions respecting the steamboats in which the defendant was interested, and I again see in the case of these three notes but the exercise of that discretion which the plaintiffs gave to the defendant as their Cashier and Manager. It is not clearly shewn either that these three persons were insolvent or incapable of meeting their engagements at the time of the institution of the action.

A motion was made on the part of the defendant to have declared as confessed or admitted the interrogatories upon *faits et articles* submitted to the plaintiffs, namely, Nos. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, in consequence of the refusal of the plaintiffs to answer them. I must grant this motion in so far as respects Nos. 9, 11, 20, 21, 23, 24, 25, 30, to 44, inclusively, in consequence of the default of the plaintiffs to answer, being of opinion that the directors were bound to answer; but I reject the motion upon Nos. 1, 2, 4, 5, 6, 7, 8, 10, 15, 19, 26, because the exhibits to which they refer are not annexed to them. As to the remaining interrogatories, Nos. 12, 27, 28, 29, I consider that they have been sufficiently answered by the plaintiffs.

For these reasons I am of opinion that the action of the Bank, upon each and every one of the charges, is without foundation, and must be dismissed, and my judgment is to this effect:—

JUDGMENT.

The Court, having heard the plaintiffs and the *reprenants l'instance*, as defendants, upon the merits of the action and the defence; examined the pleadings and the evidence of the two parties; the motion of the *reprenants l'instance*, asking that certain interrogatories upon *faits et articles*, submitted by the *reprenants l'instance*, should be taken as admitted, and upon the whole maturely deliberated—

Considering that the plaintiffs have, as well by the written proof, as by the declarations of their Counsel, at the time of the final hearing on the merits, limited the grounds of their complaint against the defendant, the late James Foster Bradshaw, heretofore Cashier and Manager of the Branch of the Bank of Upper Canada, established at Quebec, to the following claims, namely:

1st. The sum of $2,276.72, due by the Quebec and Lake Superior Company.

2nd. The sum of $1,615, due by William McKay.

3rd. The sum of $1,506.33, due by Cecil Mortimer, or the Canada Grand Trunk Telegraph Association.

4th. The sum of $25,574 47, due by John Wilson and his endorsers, and by divers other persons, John Wilson being endorser, which amount is composed of the following sums, to wit:

I. A draft of John Wilson upon William Lindsay, bearing date the 30th April, 1854, due 17th Sept., 1854, for $5,002.60, including costs of protest.

II. A draft of the same upon the same, dated 30th Aug., 1854, due 2nd Oct., 1854, for $5,002.60, including costs of protest.

III A promissory note of McDonald & Logan, dated the 23rd July, 1855, due 26th Aug., 1855, endorsed by John Wilson, for $5,002, including costs of protest, less $323.38 paid on account.

IV. A promissory note of the same firm, dated 1st August, 1855, due 4th September, 1855, endorsed by John Wilson for $4,002, with costs of protest.

V. A check by the same firm, McDonald & Logan, dated 9th June, 1855, for $1,000.

VI. A promissory note of R. H. Russell, dated 19th September, 1855, endorsed by the said John Wilson.

VII A draft of G. Chalmers, dated 4th May, 1855, due the 17th August, 1855, endorsed by the said John Wilson, for $1,302 60.

VIII. A promissory note of Daniel McGie, dated 14th October, 1857, endorsed by the said John Wilson, for $1,737 77.

IX John Wilson's overdrawn account with the Bank, amounting to $1,772 00.

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Considering that the plaintiffs have made default to answer to the interrogatories, Nos. 9, 11, 20. 21 23, 24, 25, 30, 31, 32, 33. 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, submitted by the *reprenants d'instance*, and to which by the declaration, pleadings, and issues in the cause they were bound to answer, but as to the interrogatories Nos. 1, 2, 4, 5, 6, 7, 8, 10, 15, 19, 26, the plaintiffs were not bound to answer;

Considering that the Branch of the Bank of Upper Canada, plaintiffs in this cause, was established in Quebec, in the year 1851, and that the defendant, from the 28th May, 1851, up to the 6th November, 1858, had the charge and management of this Branch under the immediate control of the Board of Directors in Toronto; that during the whole of this period all the account-books and vouchers relating to the said Branch of the Bank were in the possession of the plaintiffs under their orders and direction; that the account-books were kept by a book-keeper and other clerks and employees of the plaintiffs and paid by them;

Considering that at divers intervals during this period the said books—shewing all the transactions of which the plaintiffs complain,—were seen and examined by an Inspector appointed by the plaintiffs; and that lists or statements shewing clearly and distinctly all the notes or bills discounted, all those protested, and past-due bills, and the accounts of all the customers of the Bank who had overdrawn their accounts were frequently every month transmitted to the Board of Directors in order to keep the Head Office informed of all the transactions of the Branch in Quebec;

Considering that the Branch of the Bank of Upper Canada, established in Quebec, with a small capital, having the defendant as Manager,—in order to establish itself upon a good footing, and successfully to compete with several other Banks which had been for years established in Quebec,—had to shew considerable liberality in its discounts and in facilities to its customers, and in this respect to follow the example of other Banks in Quebec;

Considering that it is proved that it was the usage of the Bank at Quebec, during the whole time that the defendant was Manager, to allow its customers frequently to overdraw their accounts and to give them such discounts within reasonable limits as their commercial affairs required, with approved security, considered as such in the commercial community at the time of these discounts;

Considering that the Directors of the Bank at Toronto, by the instructions which they gave to the defendant, as appears by the voluminous correspondence which took place between them and the defendant, had given to the defendant entire control and full discretion with regard to the giving of discounts and making of advances to the customers of the Bank in Quebec;

Considering that the Bank at the Head Office in Toronto permitted and authorized large discounts and advances to its customers, to wit:—to the Grand Trunk Railway Company of Canada; to the Great Western Railway Company; to Samuel Zimmerman and to several other persons to an amount exceedingly large;

Considering that as to the transmission of the draft for £500, drawn at Hamilton on the 20th September, 1855, by James L. Wilson upon Samuel Newton, Secretary of the Quebec and Lake Superior Mining Company, the defendant was justified in making that advance from the funds of the Bank, seeing that it was the interest of the Bank to secure the custom of this Company, which had chosen this Bank for making its deposits, and by which it would have made large profits by discounts and the circulation of its notes;

Considering also that this Company, which holds its charter from the Provincial Legislature, still exists, and is composed of wealthy persons capable of meeting their unpaid instalments, which are considerably large, and much exceed the amount of the debt in question;

Considering that the Bank approved of this transaction, of the details of which it was placed in possession;

Considering that the defendant was a shareholder in this Company, and indebted to it in the amount of his instalments, in the sum of £600, and that he did not in express terms make known this fact to the plaintiffs cannot militate against him, because, in the first place the President of the Bank, himself, was one of the Shareholders of the Company, and ought to have known the fact, and secondly, because the commercial world is not ignorant of the solvancy or means of existence of a Company of such importance;

Considering that the fact of not having sent back the draft in question to Hamilton, with the protest thereof, cannot justify the suspicion that the defendant acted with any connivance whatever, seeing that by the testimony of Mr. Douglas, a clerk and witness of the plaintiffs, this draft had to remain in Quebec as a voucher and as proof of the advance; in addition to which the Bank must have known the transaction by the lists or statements, and by the entries in the account of the Company in the Bank-books;

Considering also that the transaction was made in good faith, at a time when this Company was considered in a very prosperous financial condition, and made in the ordinary course of the affairs of the Bank;

Considering the fact that the defendant was indebted for his instalments does not indicate anything other than that the defendant did not desire to mix up his private affairs with those of the Bank, but on the contrary, desired to keep them separate and distinct;

Considering that the acknowledgment which the defendant made of this sum and his promise to pay it are not legally proved, and cannot be invoked against him in consequence of the nature of the action; and that the only reasonable interpretation which can be given to the words of the defendant, concerning the admission of this debt, is that as the debtor of the Company he would pay his instalments, by which means the debt due the Bank would be settled, but from this avowal it cannot be concluded that the defendant departed from his obligations towards the plaintiffs;

Considering that the plaintiffs have not proved either the extinction or the insolvency of the Company, but that on the contrary their own witness proves that the Company is still in existence and solvent;

Considering that the plaintiffs themselves have produced the said draft, and are presumed to have found it among the documents and vouchers handed over to them by the defendant in November, 1858, and that they could therefore, from this time have exercised their recourse against the Company;

Considering that as to the promissory notes of William McKay, painter, above-mentioned, it is not proved that the defendant made the advances on these notes with a view to his own interest at a time when he owed William McKay;

Considering, on the contrary, that long before the defendant had any private business transaction with the said William McKay, the Bank had advanced him, in the shape of discounts, the amount of $34,227.87, and that in point of fact the said William McKay was an excellent customer of the Bank;

Considering that the said William McKay, at the time of the discount thus given him by the defendant, was perfectly solvent; that the notes which the defendant is thus accused of having discounted only became due after the defendant had left the service of the Bank, to wit: in December, 1858, and January, 1859, and that the plaintiffs themselves, after the defendant had ceased to be their Manager, allowed the said William McKay to renew one of the said notes;

Considering that the said William McKay was solvent up to the 24th May, 1860, at which period he lost by fire all he had economised, and that at the time the defendant discounted these notes for him he was perfectly solvent, and continued so for eighteen months after the defendant left the service of the Bank;

Considering that in November, 1860, the plaintiffs voluntarily, and without the consent of the defendant, and without giving him any notice, accepted from he said McKay a composition of five shillings in the pound, and that by this means, and certain payments voluntarily made by the said McKay, his debt to the plaintiffs was reduced to $475;

Considering also that the plaintiffs have not fyled in support of their claim the said notes of the said McKay, the amount of which they now claim from the defendant; and that the proof they incidentally made of the existence of these notes is illegal, not being the best proof, in default of their having accounted for the loss of those notes;

Considering that the discounts of the notes of the said McKay (supposing them to have been proved in the cause) were allowed by the defendant only in the ordinary course of the legitimate business of the Bank;

Considering that as to the advance of $1506.33 made by the defendant to the Canada Grand Trunk Company, that this Company, incorporated by and in virtue of an Act of the Legislature of Canada, had made choice of the Quebec Branch of the Bank of Upper Canada, in which to deposit its funds, and had opened an account current with the Bank; that this Company had at the time good prospects of success, promised well, and also to contribute largely to the profits of the Bank, not only by its deposits by which the Bank would profit, but also by the circulation it would give to the notes of the Bank, and by discounts and other transactions which would naturally result therefrom;

Considering that the small number of shares, £100, which the defendant had in this Company, could not have induced him to make the advance above mentioned, but, on the contrary, it is right to presume that the natural desire of the defendant to make profit for his employers, by securing a custom so advantageous as that of the Canada Grand Trunk Telegraph Company, could alone have induced him to make the above-mentioned advance to this Company;

Considering that these advances were known to and approved by the Directors of the Bank, and that on the 23rd October, 1854, they requested the defendant to forward them the paper of this Company, inasmuch as they had taken the necessary measures to secure payment of the amount due;

Considering that, according to the evidence of Mr. Anderson, a witness for the plaintiffs, this Company is still in existence and solvent;

Considering, also, that under all the circumstances, these advances were not of an extraordinary character, but appear to have been made in the ordinary course of the affairs of the Bank, and cannot be invoked as a reproach against the defendant, and are not proved to have occasioned loss to the plaintiffs;

Considering that as to the claim, so to speak, against the said John Wilson, the question to be decided between the plaintiffs and the *reprenants l'instance*, is,—whether the said John Wilson is or is not worthy of belief, or whether he is corroborated in the extraordinary revelations contained in his evidence, either by other witnesses, or by circumstances which render his evidence very probable, without its being in the power of the defendant otherwise to explain those circumstances;

Considering, in the first place, that the said John Wilson has a great interest in accusing the defendant as he has done, seeing that if the defendant is condemned he will find himself relieved of a debt, for which he is liable to the Bank, of the sum of £4,500;

Considering that the said John Wilson is contradicted by the witnesses Noad and Jeffrey concerning the fact of the reimoursement of a sum of £5,500, the price of the steamboat *Princess Royal*, which he says he paid them by means of drafts, while the contrary is proved by those witnesses, Noad and Jeffrey;

Considering that it was he who informed the Directors of the Bank of all these pretended fraudulent transactions, in which he admits he was a participant, and that in the course of his evidence he manifested a feeling of great animosity against the defendant, and a disposition to give a false coloring to all his transactions;

Considering that the said John Wilson contradicts himself in several portions of his evidence, and subsequently corrects himself, and is contradicted by the evidence, more particularly and notoriously so with respect to his statement to the effect that the defendant knew that Lindsay was insolvent when he accepted Wilson's two drafts upon him, while it is proved by Wilson's books that at this period and up to the close of the navigation of the year 1854, this same Lindsay, who was Wilson's agent in Montreal, had received the earnings of Wilson's steamboats, amounting to the sum of £9,500;

Considering that the said John Wilson is again contradicted by the evidence when he states that he never would acknowledge the amount of these two drafts upon Lindsay as payable by him, but that it was payable by the defendant in accordance with the contract which he swears to, while it is shewn that on the 7th February, 1857, the said John Wilson gave the Bank a mortgage upon his steamboats, the *Montreal* and the *Princess Royal*, as security for the payment of these two drafts, and binds himself to pay the amount of them;

Considering that in this respect the said John Wilson is again contradicted by his letters to the defendant, bearing date respectively the 26th and 27th February, 1857, and fyled in the cause;

Considering that it is established in this cause, and remarkably so, by the evidence of Edward Jones, Esq, that the said John Wilson was guilty of fraud towards his creditors, by making a fraudulent transfer in favor of third parties;

Considering that the evidence given by the said John Wilson, in a cause under the number 301, in which William Lindsay was plaintiff against John Wilson, junior, defendant, and filed in this cause as defendant's exhibit No. 69, exhibits on the part of the said John Wilson a supreme contempt for, and ignorance of, the obligations of an oath, and establishes the measure of the moral value of the said John Wilson as a witness;

Considering also the said John Wilson denied, at first, in his evidence in this cause, that during the seven months which elapsed between the commencement and the close of his examination, he had received any discounts from the Bank, and afterwards corrects himself, and finally ends by admitting a portion of the truth; and considering that it is proved that between the month of March, 1859, and the month of November, 1862, when the said John Wilson closed his evidence, the plaintiffs had given him discount to the amount of $144,942.81, of which $23,250 was given him while he was giving his evidence against the defendant, that is to say, between the 15th April and the 15th November, 1862;

Considering that the said John Wilson, while speaking in his evidence of the transaction of the advance made by the defendant of the £500, in February, 1857, to enable him [Wilson] to fit up his steamboats, and pay off the privileged debt upon them due the seamen, omitted to mention important circumstances connected with the transaction, namely, that the object of this advance was to induce his sons to give the Bank a mortgage upon the steamboats, which were claimed as their property by his sons, and omitted to state that it was Mr. Dunbar Ross who conducted the arrangements;

Considering that it is improbable that the said John Wilson would have been so regardless of his own interests as not to exact from the defendant a written acknowledgment of his undertaking and promises towards him, as the equivalent of the discharge which the said John Wilson had given him from all responsibility as joint owner of the *Princess Royal*;

Considering that during the progress of this suit, the said John Wilson made overtures to the defendant, intimating that if he would compromise with him, he could GENTLY COERCE the Bank to settle all its claims against him, the defendant, for £1,500;

Considering that the circumstances which appear to mititate against the defendant, and to corroborate the evidence of the said John Wilson, in that part where he pretends that the defendant only made him advances, and gave him facilities upon the drafts upon the said William Lindsay, and McDonald & Logan's notes, in order to indemnify him for having discharged him from all liability with respect to the expenses of the *Princess Royal*, namely: the long delay which the defendant allowed to elapse before taking proceedings against the said John Wilson and his endorsers, his omission to follow up the action instituted against the said John Wilson for the recovery of the two drafts of the said Lindsay; the suspension of the several seizures sued out against the said Wilson and the said McDonald & Logan, the fact that the defendant had in reality a half or other certain interest in the *Princess Royal*, jointly with the said John Wilson, and other circumstances in the cause, may be explained by the fact that from the year 1851, the said John Wilson, he being one of the largest steamboat owners, had transferred his accounts and the deposits of his agents in the Bank of Upper Canada; that he had up to the 7th February, 1857, received from this Bank discounts to the amount of £92,404 10s 2d, and that he was a very energetic and industrious man, who, though finding himself temporarily embarrassed, might re-establish his position, and continue to give a custom to the Bank which it was its interest to retain,—a presumption which is strengthened by the fact, that since the departure of the defendant from the service of the Bank, the said John Wilson has received from the new Manager discounts to the amount of $144,942.81; that the said John Wilson was considered solvent up to the year 1856; that in this latter year, the defendant being ignorant of the fraudulent transfer of the steamboats, made by the said John Wilson to his sons, as proved in the cause, in order to prevent the sale of them, and still believing the said John Wilson to be the owner thereof, being apprized of that transfer by the oppositions, fearing that the delay and the expenses necessary to contest these oppositions, and to set aside that transfer, would have the effect of increasing the debt due the Bank by the said John Wilson, thought it advisable to consult Mr. Dunbar Ross, the Bank Solicitor, and to make the compromise with the said John Wilson of advancing him the £500, a portion of which appears against the said John Wilson as an overdrawn amount, in the books of the Bank, in order to induce his sons to give the Bank a mortgage on the two steamboats, the *Montreal* and the *Princess Royal*, as security for the payment of the said two drafts and of the said notes; that McDonald & Logan, who were solvent up to November, 1855, had up to the very moment of the two notes in April 1855, honored all their paper discounted by the Bank to the amount of £21,757, endorsed by the said John Wilson;

Considering that in the opinion of the Court here, the said John Wilson, from the character of his evidence, is not worthy of belief, and that his statements must be considered tainted with suspicion and unworthy of credit; considering that as to the advance of the £500 in Feby. 1857, by the defendant to the said John Wilson, of which part was employed in paying off privileged claims upon the steamboats of the said John Wilson, and which had preference over those of the Bank; that this advance was only made after consultation with the Solicitor of the Bank, with the object of inducing the sons of the said John Wilson to give the Bank a mortgage upon the two steamboats, *Montreal* and the *Princess Royal*, which the two sons claimed as their property in and by their oppositions to the seizure sued out against the said John Wilson, and that this transaction was only made in the interest of the Bank, under the circumstances in which the Bank found itself with respect to the said John Wilson and his sons;

Considering that, as to the three other and last claims of the Bank against the defendant, namely, that relative to $802.50 as due by R. H. Russell, the draft of Chalmers for $1,802.60, and the note of Daniel McGie for $1,737.77; that the said John Wilson, though connected with these transactions, does not state that these advances were made in execution of the promises made by the defendant to him, and in fact he does not make mention of them in any manner whatever;

Considering that the notes of R. H. Russell and Daniel McGie are not fyled in the cause, and that no mention of these notes is made either in the plaintiff's declaration, nor in their bill of particulars, but that the plaintiffs incidentally cause the amount of these two notes to fall into and compose the sum of $26,614.50, mentioned in their bill of particulars as having been advanced to John Wilson, out of the funds of the Bank, to be employed in the speculation of the two steamboats in which the defendant was interested as partner;

Considering that the proof of these notes, without their being produced, is illegal, and that there is nothing to shew that the plaintiffs were the holders of these notes at the time of the institution of the action, or that they have not been satisfied;

Considering, also, that the three persons abovenamed were solvent at the time the above advances or discounts were given, and that it has not been found that they are at present insolvent, and that it has been shewn that these persons had previously received large discounts from the Bank, which they had honored at maturity;

Considering that, on the 6th Nov., 1858, the defendant handed over to the plaintiffs all the account-books, vouchers, notes, past-due-bills, monies, bank notes, and other papers and assets of the Bank;

Considering that the plaintiffs, up to the very last day of the management by the defendant of the affairs of the Bank, having expressed their confidence in his ability and the manner in which he had discharged his duties as Cashier and Manager at Quebec, and that during his administration of the affairs of the Bank at Quebec, the Bank had realized large profits; and that it is proved that the defendant devoted not only all his time to the service of the plaintiffs, but also, owing to the small number of assistants with which the plaintiffs provided him, he was obliged, for the proper conduct of the business of the Bank, to devote his evenings to work.

Considering that the plaintiffs have made default to answer to the interrogatories Nos. 9, 11, 20, 21, 23, 24, 25, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, submitted to them by the defendant, and which, by the issue joined, and the nature of the action and of the defence, they were bound to answer, the Court grants that part of the motion of the *reprenants l'instance* which asks that the interrogatories *sur faits et articles* Nos. 9, 11, 20, 21, 23, 24, 25, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 44, 43 and 44, submitted to the plaintiffs by the *reprenants l'instance*, should be received and declared as admitted and confessed, and declares the said interrogatories confessed and admitted, but rejects that part of the said motion which asks that the interrogatories Nos. 1, 2, 4, 5, 6, 7, 8, 10, 15, 19, 26 should also be admitted and confessed; and the Court, maintaining the *exception peremptoire en droit perpetuelle* (plea) of the defendants, dismiss the action of the plaintiffs, with costs.

Counsel for the Plaintiffs—Messrs. HOLT & IRVINE.

For the Defendant and *Reprenants l'instance*—G. OKILL STUART, Q. C.

INTERESTING LEGAL DECISION.

An interesting decision was rendered in a land question at the last term of the Court of Appeals in this city, in the case of George Jeremie Pacaud, Appellant, *vs.* Augustin Lessard, Defendant, and Pierre Chrysologue Pelletier, Respondent, before their Honors Justices Meredith, Drummond, Badgley, Taschereau, and Berthelot. The details of the case as set forth in the judgment we subjoin, as being of considerable interest, particularly in the Townships.

Honorable Mr. Justice Badgley, delivering the judgment of the Court, said:

The only question in this cause is one of costs.

In 1860 the appellant sold to the defendant the ½ lot No. 2, in 2nd Range of Halifax, for £100, payable by 8 instalments, and secured his price by a mortgage upon the lot sold and upon the adjoining lot ½ No. 2, in 3rd Range of Halifax, occupied by defendant.

The defendant having failed to pay to the appellant according to agreement, the appellant obtained judgment against defendant for balance of 4 instalments, £35 2s. 6d., with interest and costs. Issued execution [illegible] sold and levied, and for his balance [illegible] due issued execution *de terris*, and seized it the above lots; the sale to be had in December, 1863. Lot No. 2, in the 2nd Range was sold; that in 3rd Range was not, by reasons of opposition fyled by (*opposant*) respondant.

At the time of the seizure the lot was Crown property, and until patents issued therefore remained such. The defendant had occupied it and hypothecated it. The defendant went into possession in January, 1860, following *Couture*, whose better merits he acquired. The Government price was 2s. 9d. per acre. It is admitted that the lot was Government property, and that defendant had not the property either by himself or by Couture.

On the 29th July, 1863, the respondent acquired from defendant all his rights and patentees, buildings and ameliorations in question, for the consideration stated, and paid as by deed. Of this $66.50 was due for Government arrears; thereupon respondent obtained a location ticket for the lot, and finally, on payment of the Government dues on the 24th August, 1863, obtained his patent for the lot on the 31st August, 1864, whereby he acquired the property. The same never had been the property of defendant, nor until patent issued, passed out from the Government. The respondent fyled his opposition, and claimed the lot as his.

It is elementary to say that *l'hypotheque est le droit qu'a un creancier dans la chose d'autrui. In this l'immeuble est abrege etre au debiteur.* The defendant not having property of the lot, the hypothec, given under deed of 19th June, 1860, cannot avail to the appellant.

It is only elementary to say that until Crown property is patented it remains Crown property, and that the seizure of unpatented Crown lot cannot avail to the appellant, because it went from the Crown to the respondent.

The respondent was well founded in distracting the lot from seizures, and the judgment appealed from should be sustained, but as the respondent knew of the transactions between the plaintiff and defendant, both parties should pay their own costs in both courts.

COMMERCIAL LAW.

Many of our readers will remember the case of Morris Lumley, once an extensive merchant in Toronto, who swindled his English and Canadian creditors to a very large amount, it is believed to the extent of $200,000. It will be remembered that he was *capiased* in Lower Canada and brought to Montreal. The judge before whom he was brought made the very unexpected decision that as the debt on which he was arrested was an English claim, it should be considered a *foreign* debt, and on this ground Lumley was discharged. Every one unacquainted with the technicalities of law was surprised that any English obligation could be called foreign; but so it was, and not a few of our friends in Montreal and Toronto lost a pretty penny by the decision, for Lumley got out of the Province with his ill-gotten gain and the creditors have never received a cent. It seems that the lawyers in charge of the case, however, were unwilling to accept this decision, and though no practical advantage to the creditors would result, it was determined to test the validity of the decision for future guidance, and the case was accordingly carried to the Court of Appeals. As will be seen by the following, obligingly furnished by a legal friend, the judge's decision is sustained:

"It has been recently decided in the Court of Appeals at Montreal, that a British creditor has no right to arrest his debtor resident in Lower Canada, even on cause shewn by the usual affidavit, that the debtor was immediately about to abscond from the Province of Canada, with an intent to defraud his creditors, and that he was about to secret his property with a like intent. The ground on which this judgment was based, was, that inasmuch as it is laid down by the statute, whenever it is proved that the cause of action arose in a *foreign country*, any party arrested shall be discharged from custody; and as in this case it had been proved that the debt had been contracted in England, which, in the opinion of the majority of the Court, within the meaning of the statue, was a *foreign country*, that therefore the arrest was illegal, and that the debtor must be discharged from custody.

"It would be well for British merchants to bear in mind that, as regards Lower Canada, they have no remedy by arrest against their debtors, even when a gross case of fraud is shown."

We presume that the matter comes within the jurisdiction of the Provincial Legislature.

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(*Translation.*)

PADUA, June 21st, 1865

MY DEAR MR. GIANELLI,—

Your good father has informed me that y
would like to possess the recipe for my "Ton
Reale," which he tells me you think far super
to anything of the kind sold in America, where
would appear such articles are largely in dema
As I have no acquaintance with the "Bitter
(as I understand they are called) which are
fashion there, I cannot, of course, offer an opini
as to their merits in comparison with my own pr
paration. But as you think my recipe may
of service to you, I feel much pleasure, both
your own and your father's account (for whom
entertain a great esteem,) to accede to your wi
and enclose it herewith. I hope you will be car
ful to use the preparations of the constituen
with the utmost exactness, as upon precision
this particular, the excellence of the preparati
mainly depends. Be careful also, not to protra
the process of maceration beyond the time pr
scribed, or the color will be spoiled.

You have my full license and permission to se
the preparation as the "Tonico Reale" del Dotto
F. P. Verri, or by any other title you please, an
I sincerely hope the undertaking may answer yo
greatest expectations,

I should much like to have a sample when yo
have some ready, in order to test your work. Yo
can send me a small case through the Italia
Commercial Agency in New York. Believe me
ever, your very sincere friend,

F. P. VERRI,

Professor of Chemistry in the University of Padu

(*Translation.*)

PADUA, October 27, 1865.

MY DEAR MR. GIANELLI,—

I have received, through the Italian Commer
cial Agency of New York, six cases of the Tonic
Reale, or (as you style it) "Royal Italian Bit
ters." While I feel greatly obliged for your at
tention to my wish conveyed in my last letter,
am sorry that your good feeling and liberalit
should have caused you to incur so great an ex
pense on my account, in paying beforehand th
the costs of duty and freight, for which there wa
no necessity. One case would have amply suffice
for my purpose; but as you were kind enough t
place so much at my disposal, I took the opportu
nity to send samples to many of my professiona
friends, as a very precious article for the distanc
it came from. And I assure you that our unan
mous opinion is, that it is superior to what I hav
heretofore prepared. We attribute this improve
ment to your substituting sherry for our whit
wine. I do not think that had you used Sautern
or Bersac it would have been so good.

You are at liberty to quote the names of th
following doctors in approval of your preparatio
of my "Tonico Reale:"—Radolfo Andrea Quest
Director General of the Military Hospital; Lud
vico Benvenuto, Giuseppe Bandolini, Tomaso De
micheli, and Ferdinando Ricasoli. I am, wit
best wishes,

Yours affectionately,

F. P. VERRI.

*Letter from Dr. Peltier, Secretary, College o
Physicians and Surgeons.*

MONTREAL, 12th March, 1866.

TO MR. GIANELLI.

SIR,—I take great pleasure in recommendin
your "Royal Bitters" as a very pure liquo
most pleasant and useful tonic, an excelle
stomachic, which, as such, can be serviceable t
weak and delicate persons, and is also a very de

...ard the delay. What he (Mr. B.) contended for was, that, according to strict law, and according to all the precedents of this Court, where it has had to deal with statutes ordering proceedings to be had within a certain time, the Court would have no discretion even in the extreme case just mentioned. The only proper course would be to get the Legislature to give the Court a discretion in extreme cases, as has been done in the matter of the delays to fyle pleas, and more recently still in the case of the answers to articulations of facts.

But the fact is that those who hesitate upon refusing the Court all discretion in the matter, overlook the principles of law on the effect of an appeal. All the authorities agreed that the appeal had not essentiallly the effect of suspending the execution. He would only cite l Pigeon, p. 511.

"Il'y a des cas ou a' cause de l'importance et de la nature de l'objet, l'appel suspend l'execution du jugement; autrefois meme il la suspendoit presqueftoujours, mais lorsque cette voie devint plus commune par le mauvais usage quelques uns des premiers juges firent de leur autorite, et par les facilites qu'il fut ne'cessaire de donner aux plaideurs, lorsque ceux ci de leur cote abuserent des vues du Legislateur en se servant de cette ressource pour fair a une demande equitable, que l'attaque fut penible et ruineuse et la defense tranquille, on fut bien oblige de donner des entraves a cette facilite d'appeler; differentes lois et plusieurs reglemens etablirent donc que dans certains cas les premiers Juges pourraient ordonner l'execution provisoire de leurs sentences sans cependant prejudicier a l'appel!"

This is an answer to those also who think that because in the case of appeals from the Superior Court, the allowance of the appeal after the delays suspends the execution, the fyling of a certificate after the delays must also suspend execution of appeal to the Privy Council. The difference between the two cases is. the law has said expressly what would be the effect of fyling the certificate after the delays in appeal to the Privy Council, but has remained silent as to the effect of the allowance of an appeal to this Court after the delays, wherefore the appeal must carry with it *un effet suspensif*.

DRUMMOND, J.—There are cases where an *execution provisoire* can issue, but this is not one of them.

Mr. BARNARD—Of course the whole object of my argument is to shew that this case was one of them. In this case the Statute already cited says, that in default of producing a certificate within six months, the appeal to England will no longer operate as a stay of judgment and execution. Is that not sufficiently explicit? Besides, what is there unfair or unreasonable in this—apply it to any case you like? But, especially, what is there unfair in this when you apply it to the present case, where the appeal is so well known to be a sham appeal for the purpose of delay only. In fact he (Mr. B) would say that in no other country in the world, certainly in no commercial country, could a parallel case to the present one be possible. Here we have a debtor acknowledging, in a notarial deed, having received a large amount as a loan and giving a mortgage to secure the repayment, and not only is the creditor, when his debtor makes default to pay, obliged to obtain a judgment before he can enforce payment of the debt; but he can be kept, as in this case, for years before the Superior Court on a sham defence, and then as long again before a Court of Review, and afterwards before the Court of Appeals, and finally he can be taken to England and kept there for years and years; and should he, more fortunate than many, survive the final determination of the appeal he may find that the thing has cost him more than it was worth. It is only a question of audacity and money on the part of his adversary. In this case the appeal to the Court of Review, to the Court of Appeals and to the Privy Council, is founded not upon any pretention that the amount is not really owing, but simply upon the pretention that the Judge of the Superior Court, on an objection being taken against the form of the first answers of the Plaintiff on some trumpery questions put to him, had not the right, in order to remove all difficulty, to order the Plaintiff to answer a second time. Owing to that fatality, this "Dieu des mauvaises gens," which is so kind to rogues and thieves, the Appellants have found in the Superior Court one Judge out of three to side with him on this point, and in this Court one out of five—and such is the difficulty in the way of the Respondent getting back his money. It is not necessary to shew that such a thing would be impossible in England or the United States or Upper Canada; it would probably be equally impossible in China or in Japan. In fact, according to the old law as well as the new law of France, it would not in this case be a question of the *execution provisoire* of a judgment, because the notarial obligation itself would have been executory.

DUVAL, C. J.—The legal profession will not thank you for alluding to the *execution paree*. If this system were introduced it would take away three-fourths of the suits now brought.

Mr. BARNARD—Whether the profession would not be really benefitted is another question; but he did not raise either question. The allusion was to shew how far out of the way of reason and justice the Court would have to go if it were to refuse the present application.

DRUMMOND, J.—I viewed your motion of last Term with favor, but I am against you on the present motion. You ought to have been prepared to shew that the Appellants have not proceeded before the Privy Council within the three months from the 12th September last.

Mr. BARNARD—His Honor cannot say so without overlooking entirely the nature of the present application and of the remedy which I seek to obtain. I am not now proceeding under the rules of the Privy Council, but under the clause of our own statute, and whatever proceedings the Appellants may or may not have adopted before the Privy Council, cannot in any way affect the present application. Our statute is imperative, but in any case, if the default was inexcusable, can you give 9 months without setting the law at defiance?

DRUMMOND, J.—No, Mr. Barnard. I am decidedly against you on this point; while I was in your favor last Term. Now the whole Court is unanimous against you.

Mr. BARNARD—The trouble is, I no more know on what principle your Honor supported me last term than I know on what principle you are against me this term.

DUVAL, C. J.—The Court is against you Mr. Barnard; in fact, as Mr. Justice Aylwin knows, we have already decided the point several times.

Mr. BARNARD again repeated his impression that the point decided could not have been the same, But, even if the same, the judgment must have been founded upon some reason or some principle. The cases to which his Honors refers, even if applicable, are not reported. What was important for the profession, and for the public, especially for the commercial community, was to understand what that principle was, for it was idle to suppose that men whose main object is the introduction of new capital in this country, will be satisfied with a decision of this kind without even knowing on what it rests, and if the judgment already rendered rested on a wrong principle, surely this Court was not bound by them.

DUVAL, C.J.—It is a question of power; how can we, a subordinate Court, interfere when the case is before the Privy Council?

Mr. BARNARD—Does your Honor admit that if this were a case where the appellants had given security for the costs only, this Court, although only a subordinate Court, not only could, but should, order execution to issue *provisoirement*.

DUVAL, C. J.—Yes, but that is because we have a Provincial Statute giving us the power.

Mr. BARNARD—But surely, your Honor, you cannot have been attending to my argument. I have cited the clause of the Provincial Statute which gives you the power in the present case; and this clause is the one which follows immediately after the clause which relates to cases where security has been given for the costs only. (Here Mr. Barnard read the two clauses).

DUVAL, C. J.—Suppose you have executed the judgment, it is reversed by the Privy Council.

Mr. BARNARD—Let the appellants once be forced to pay and their appeal will be dropped. The objection besides, if good, would equally apply to the other case just now cited. If I execute the judgment, of course I do so at my own risk.

MONDELET, J.—Your error, Mr. Barnard, seems to proceed from this, that you will not see that you were bound to make diligence and shew us that the appellants have not made diligence before the Privy Council within the three months next after the 12th September.

Mr BARNARD repeated several times his former explanations, when the Chief Justice and Drummond and Mondelet, Justices, repeated their former objections.

Mr BARNARD—As I already observed, many of my confreres support me in the views I have expressed.

DUVAL, C.J.—Bring them to me out of Court and I will soon convince them of their error.

Here Mr BARNARD said it was evident that his argument was not understood, and that their Honors had read neither the law nor the motion before them. It would be better to stop the argument lest it should degenerate into a mockery and a farce. After a somewhat angry conversation between the Chief Justice and Drummond and Mondelet (Justices) and Mr Barnard, the latter finally proposed that if the Court would suspend the judgment they were about to render, and take the motion *en delibere* until next term, he would prepare and print a memorandum containing all the points raised by him and the authorities in support, if the Court would promise to take them fairly into consideration. This was agreed to. the Chief Justice saying, that for his part he would give the whole subject his best attention, and explain fully the principles upon which the decision of the Court would rest, so that there would be no trouble in future.

This brings us to the consideration of what cases the statute was intended to except from its operation; and he contended that the only reasonable interpretation of the statute was to hold that foreign debts meant such liabilities resulting from contracts where the implied assent of both parties may be invoked, as controlling their engagements, and the consequences resulting from them. But Mr. Carter said that no such construction could be put upon our statute as that contended for by defendants' counsel to cover the case in question, so as to afford immunity to thieves stealing in New York and seeking safety with their booty by sudden flight into Canada, and then withholding the property against the real owner, and refusing to restore it. The true doctrine was, that the withholding and conversion of the bonds was a continuance of the injury, giving rise, each day, to a fresh cause of action. There was here a marked distinction to be made between those *délits* which, being of a personal nature, received their consummation and completion where the injury was inflicted, and the larceny of property, to which the common law applied another rule which is recognized by all systems of jurisprudence, viz.: the right of the owner to claim his property or its value wherever he finds it. Mr. Carter said, in conclusion, that he had before him a number of other authorities, applicable to the exercise of the remedy, but, as this point was conceded, it became unnecessary to cite them.

Mr. KERR, in reply, said: In answering my learned friends, I shall, in the first instance, refer to the authority (2, Selwyn, 1389,) cited by Mr. Carter, which although it cannot be regarded as bearing upon the present case, has been referred to so triumphantly as proving the position taken, that in cases of trover, the original finding is mere matter of inducement, the conversion being the gist of the case. From that authority Mr. Carter argues that the conversion duly took place at Montreal, where the demand to restore was made and refused. Ere answering this authority, I might ask how, after his remarks upon our not being in an English Court of Law, where the slightest mistake often defeats the ends of justice, my learned friend cites an authority on the common law in this Court, which is ruled by the principles of the civil law. This, certainly, is the first time that I have heard that the principles of the common law in trover regulate the obligations flowing from *delits* under the civil law. But can it be pretended that, in opposition to the citations from Savigny and the other commentators upon the civil law, which all prove conclusively that the debt, in this case, the wrongful taking or larceny of the bonds, is the source of the obligations of the Defendants, this citation from Selwyn, writing on the common law upon trover, is to prevail, and the original taking is to be looked upon as mere matter of inducement.

But taking it for granted that my learned friend is serious in referring to Selwyn, which I can hardly believe, I am prepared to show that the quotation he has given has really no reference to this case, no bearing upon its merits.

My learned friend says, in this case the conversion took place in Montreal. The secreting, the demand to restore, and the refusal, all prove the conversion here; and consequently, as the conversion is the *gist* of the action, the cause of action arose here. I, on the other hand, pretend that when there is a wrongful taking, followed by a carrying away of the goods of another who has the right of immediate possession, that is of itself a conversion. 1 Chitty on Pleading, 153.

Thus in cases of larceny, where the property is removed by the thief, there is an immediate conversion of it. Conversion does not necessarily import an acquisition of property in the party converting. In this case, taking it for granted that the bonds were stolen in New York, the conversion by the defendants took place there on their removing the bonds from the office of the plaintiff.

A demand to restore and refusal are only necessary to establish the conversion in cases where the defendant became in the first instance lawfully possessed of the goods, and the plaintiff cannot prove some distinct conversion.—1st Chitty, pp 156-157, note (2).

For instance, in cases of loan or bailment, a demand to restore and refusal are necessary if the lender or bailer cannot show a distinct conversion, but if such distinct conversion is shewn, there is no necessity for the demand and refusal. In England, then, under the authority cited, the conversion would be held to have taken place at New York.

Moreover, why, if the larceny at New York is mere matter of inducement, did the learned counsel insist upon their having so clearly proved that the defendants were the parties who there effected that larceny? Why, if that larceny is a mere matter of inducement producing no effect upon the case, were they forced to admit that without the evidence of that larceny in New York, given under the commission, the defendants would have been entitled to their discharge, Routh's affidavit having been destroyed.

By the destruction of the affidavit as proof of the defendants' indebtedness, the capias is left without any base to support it; the plaintiffs have no right, with their evidence in reply, to satisfy the Court of that which should have been proved by the affidavit; but I have already enlarged upon the point sufficiently.

In leaving the case with your Honor, I believe that you cannot avoid coming to the conclusion that Mr. Routh's affidavit on the subject of the defendants' indebtedness has been destroyed, and that it cannot be bolstered up by evidence in reply. 2nd. That the larceny or wrongful taking in New York on the 10th Dec. last is the cause of action in this case, that it arose in a foreign country, and that consequently the defendants are entitled to their discharge.

Mr. Justice MONK, after the hearing of the case, which occupied the whole day, took it *en délibéré*.

COURT OF APPEALS.

Jones et al., Appellants before the Privy Council; and Lemoine, Respondent.—Mr. BARNARD, for Respondent, moved that inasmuch as the judgment of this Court allowing the appeal to the Privy Council in this cause was rendered on 9th March last, and the delay to fyle the certificate required by law to show that the Appellants were making diligence before the Privy Council, expired on the 10th of September last without any such certificate having been fyled at the Clerk's Office here, the Respondent had thereby irrevocably obtained the right to enforce the judgment of the Court provisionally (*provisoirsment*), that in consequence a copy of the judgment rendered by this Court on the 8th of March last be transmitted to the Court below with an order to execute it *provisoirement*; and further, that the bill-of-costs of the Respondents in this Court be taxed, and in order to tax the bill-of-costs in the Court below, that the Prothonotary of the Court below be allowed to inspect the Record in this cause now in the possession of this Court." Mr. Barnard said that with regard to his right of getting his bill-of-costs in appeal taxed, it had been denied to him by one of their Honors on the ground that, if his bills-of-costs were taxed, the Respondent would immediately issue execution. This was to say that the Respondent should not issue execution, whether he had the right or no. But moreover it seemed clear that, apart from the question of execution, the Respondent had an interest in getting his bill regularly taxed. But the main point of course was, has the Respondent the right to execute the judgment *provisoirement*? and it was in order to raise this point in its simplest form that the motion was framed as it is. The question thus fairly brought before the Court is simply this: Does the following clause of the Cons. Stat. of L. C., ch. 77, give an *execution provisoire* in any case. (Mr. Barnard here read the 53rd clause):—

"In all cases where an appeal is allowed to Her Majesty in Her Privy Council, execution shall be suspended for six months from the day on which such appeal is allowed, and from the expiration of that period to the final determination of the said appeal—if before the expiration of the said six months, a certificate is filed in the Court having jurisdiction in appeal in Lower Canada, signed by the Clerk of Her Majesty's Privy Council, or his Deputy, or any other person duly authorized by him, that such appeal has been lodged, and that proceedings have been had thereon before Her Majesty in Privy Council; but if no such certificate is produced and fyled in the Court having jurisdiction in appeal in Lower Canada within the said six months, the said appeal shall no longer operate as a stay of judgment and execution, but the party who obtained judgment in the said Court having jurisdiction in appeal may sue out execution as if no such appeal had been made or allowed."—20 v. c 44 s. 19, superseding 34, G. 3, c. 6, s. 31.

The clause of the Statute of 1794, which was thus repeated in 1856, was worded in exactly the same manner, with this exception only, that the delay instead of being one of six months as it is now, was a delay of 15 months, which helped the respondent's argument, since the inconvenience of giving the Court any discretion in the extension of the delay was much more apparent when the appellant had 15 instead of 6 months, to make due diligence and shew that proceedings had been had before the Privy Council.

The difficulty, or the supposed difficulty in the way of the respondent is, that on the 29th of September last a certificate was produced by the appellants at the Clerk's office, shewing that the transcript which left here on the 31st of August only, that is only nine days before the expiration of the delay, had reached London on the 12th September, this certificate further informing the appellants that if they did not proceed within three months from that date, *i. e.*, the 12th of September, their appeal would, under a special rule of the Privy Council, be dismissed.

The respondent might say that this certificate proves, not that proceedings have been had before the Privy Council, but that no proceedings had been had up to the 12th September last. It proves also the negligence of the appellant, who took six months to prepare a short transcript which could have been printed in a week. But these considerations, strictly speaking, are foreign to the matter in hand. The present motion does not refer to the remedy mentioned in the certificate, viz: the dismissal of the appeal, but to another and different remedy—that mentioned in our Provincial Statute, viz: the right of executing the judgment *provisoirement, i. e.*, while the appellants are proceeding with their appeal before the Privy Council—and all the respondent has to show to prove himself entitled to the remedy given by our Provincial Statute, is to shew, as he has shewn, that no certificate was produced in the Clerk's office here within six months from the 9th March last.

DUVAL, C. J.—The certificate in this case had not been fyled on the 10th September, but had been fyled on the 29th. It has already been decided that in such a case the respondent cannot take advantage of his adversary's negligence unless he has moved in the mean time, that is between the day on which the certificate ought to have been fyled, and the day on which it was actually fyled.

Mr. BARNARD—Not only the certificate produced is not the proper one, but moreover I should think that the unreported cases referred to by your Honor must have been where, in default of the appellant sending his transcript at all within the six months, the respondent subsequently moved that the appeal itself to England should be taken away. Here the motion is an entirely different one. Besides the respondent had on the 10th September called upon the clerk to transmit the record to the Court below, in order that he (the respondant) might execute the judgment, the respondant shewing his intention of taking advantage of his adversarys' default, and on the Clerk's refusal he served a notorial protest on him in order to be able to prove that he had made the demand.

DUVAL, C. J.—In thus acting the respondent was very wrong. The clerk is an officer of the Court, and he could not transmit the record without the order of the Court, and serving a notarial protest upon him was a contempt of Court.

Mr. BARNARD—How is it then that the statute in certain cases is imperative that the clerk must transmit the record without waiting for an order of the Court, and the present case, although not expressly included, is certainly one of those which the law contemplated; but moreover if there was no term between the 10th and the 29th September, how could the respondent make a motion, and what more could he do in order to take *acte* of the default than to make his demand at the clerk's office, and on the clerk's refusal to obtain the proof of both the demand and refusal by a notarial *acte*? If that is a contempt of Court it does not take much to constitute one. Mr. Barnard then proceeded with his argument, stating that if there could be no doubt as to his having properly expressed his intention to take advantage of the statute, the only question remaining was whether the statute was imperative and left the Court no discretion whatever.

MONDELET, J.—How can we grant your motion if we cannot send down the record to the Court below. It is true a transcript only of the record has been sent home to England, and the record itself is here *en corps et en ame*, but by legal fiction it is supposed to be in England, and in the power of the Privy Council. We have no power over it.

Mr. BARNARD—It seems the Court should not resort to legal fictions when there is no conceivable reason to do so. Would not the record be as much in the power of the Privy Council if it were in the possession of the Superior Court, subject to the order of this Court. Is not the Superior Court and its officers subject to the order of this Court as well as the Clerk of this Court? I do not therefore admit that the Court here cannot send the record down to the Court below. If the appellants had given security for the costs only, the Court would not only have the right, but would be clearly bound under the clause immediately preceding the one presently invoked to send down the record, especially if the execution could not issue without it. But as this difficulty about the sending down of the record was the principal objection raised last term against my first motion on this subject, and as I find that in this case, in order to execute the judgment, it is not absolutely necessary that I should have the record, I have said nothing in my present motion about the record being sent down.

Mr. BARNARD, proceeding with his argument, said: To refuse his right to an *execution provisoire* the Court must hold.

1st. That under the clause above cited it can exercise a discretionary power, and extend the delay of six months therein mentioned.

2nd. That this is a case where, in the exercise of a sound discretion, the appellant ought to be relieved.

This is a point of practice of great importance: for every one knows that out of every twenty cases wherein appeals are allowed to England, not more than one is ever meant to be seriously prosecuted; and the motion for leave to appeal, as a general rule, is made for the sake merely of obtaining six months delay, and sometimes a great deal more. Since last Term this question has been much discussed by members of the Bar, and the only difference of opinion is as to whether in an extreme case (for instance if the transcript were sent in time, but the ship carrying it were to be lost at sea) the Court might not

out assault and violent robbery are associated by the jurisconsulte with trespass, libel, and slander. All alike gave rise to an obligation or vincolum juris and were all requited by a payment of money." It will be perceived by the authorities above cited that the forum delicti in every case is the forum of the country within which the délit was committed. That country was the lieu of the acte obligatoire, it was there that the obligation was born, and it was there, consequently, that the cause of action arose, for the action is based upon the obligation, and the obligation, therefore, is the cause of action. A consequence of the admission of this principle is, that when an action is instituted in the forum domicilii of the debtor, grounded upon the commission of a délit in another country, the law of the forum delicti controls the case, so that amongst other things, what would be a justification in the country where the délit had been committed, would be a justification in the country where the action is tried.—Per Lord Mansfield, Mostyn v. Fabrigas, Cow. 175, 172.

In contracts it is laid down by all authors, that when any difficulty arises with respect to the rate of exchange and interest due thereunder, we are to take into consideration the place where the money is by the *originul* contract payable; for wheresoever the creditor may sue for it, he is entitled to have an amount equal to what he must pay in order to remit it to that country. In cases of delit the principle is the same, and thus the interest is measured by the rate of the locus delicti, and exchange in this case (if judgment were rendered against the defendants) should be so as exactly to replace in New York the bonds wrongfully taken there by the defendants. Etruis v. East India Co. 1, P. W. 395, 2 Bro. P. C. 382; Westlake, No. 230, 237; Story on Con. of Laws, §307 to 310.

We have, then, previous to the arrival of the defendants in Canada, certain rights acquired by the plaintiff against them, and certain obligations by them incurred towards the plaintiff; those rights and obligations all springing from the commission by the defendants of a délit in the city of New York. The plaintiff, immediately upon the délit being committed, had the right of instituting an action similar to the present one against the defendants, not only in the United States, but according to the principles of international law, wherever the defendants might be found. The obligation incurred by the commission of the délit travelled with the defendants wherever they went, and the plaintiffs' right to sue them accompanied them in their travels. But the changes of domicile did not create new obligations towards the plaintiff, or new causes of action against the defendants; so that, in fact, the holding in Montreal and refusal to restore add nothing whatsoever either to the obligation of the defendants or the right of action of the plaintiff.

But by the plaintiff it is pretended that the holding and refusal here give rise to the cause of action in Canada. But the very wording of the plaintiffs' affidavit, whereon is based the writ of capias, shows that the illegal obtaining on the 10th Dec. last, which by the evidence is shown to have taken place in New York, a foreign country, constitutes, even according to the plaintiff's ideas, a portion at least of the cause of action, for the illegal holding and refusal to deliver, followed there as a matter of course. But if, on the contrary, the plaintiff pretends that the original obligation incurred by defendants by the taking of the bonds is extinguished, may I ask where and when such extinguishment did occur; and if no satisfactory answer be thereto given the only conclusion to be arrived at is that it is in full force.

The argument insisted on by the plaintiff that because at common law the passage of thieves with their plunder through a district other than the one wherein the larceny was effected, justifies the indictment of the thieves therein for larceny upon the principle that every fresh removal is a fresh trespass, and that consequently the defendants' flight to Canada with the bonds was a fresh trespass, giving rise to a new cause of action here, cannot be admitted as sound.

At common law the general rule is that an indictment can only be presented in the district wherein the crime was committed. The case of the thief removing with his plunder into another district, and being liable there to indictment, is one of the exceptions to the rule; but it is founded upon a legal fiction of the common law which extends solely to the boundary of the State within one of the districts of which the larceny was committed and there dies, for it is clear that no indictment can be presented in Canada for a larceny of bonds effected in the State of New York.—2 Russell, p 331-332. 1 Archbold, P & P p, 69 and notes.

It is to be remembered also that although at Common Law, where the thieves enter another district without the stolen property, no right to indict for larceny accrues, yet that the right to sue as it existed where the theft was committed upon the obligation thereby incurred follows the thieves whithersoever they go. Of course the ordinary rules of the forum are applicable to all cases instituted before it, and if by legislative enactment a particular remedy is with held from a particular class of cases, no case belonging to that class can make use of that particular remedy.

Under our law no capias can issue in any action, the cause of which arose outside of the limits of the Province of Canada, nor can such action be commenced by writ of capias.

In conclusion upon this branch of the case, can it be pretended that if a party contracts debts in a foreign country, removes into Canada with his estate and effects, and there gives his creditor a promissory note for the debts so due, dated and payable in the Province, upon which note dishonored the payee takes out a capias, that the defendant is not entitled to his discharge from custody upon the ground that the cause of action arose within a foreign country. The case of Silverman and Jones, decided by Mr. Justice Badgley, is a case precisely in point in favor of the discharge.

The principle recognised in that case is one well known and admitted everywhere, that rights which have once accrued, and obligations which have once been incurred properly and well by the appropriate law, are treated as valid everywhere, and that where once an obligation exists, the acts of the party obliged, which if the original obligation had not been in existence would have created one exactly similar, are productive of no effect, but leave the original obligation to be the cause of action between the parties, and thus it is necessary, in order to discover the cause of action in this case, to fix the period and the place when and where the original obligation by which the defendants became liable to pay to plaintiff the value of the bonds stolen, as prayed for in the conclusions of plaintiffs declaration was incurred.

The period and place when and where the defendants so became liable are easily discovered. No one can doubt that the obligation so to pay to the plaintiff the value of the bonds so stolen, was incurred on the 10th December last at the city of New York, in the State of New York, one of the United States of America, and consequently the cause of action in this case arose in a foreign country, and the defendants are entitled to their discharge.

Mr. CARTER, Q.C., counsel for the plaintiff said that he would endeavour to abbreviate his argument by confining himself to the consideration of the only points which arise in this case, and to the objections urged by the defendants' counsel, which seemed to him to be deserving of an answer. The first question was one of fact, viz., Does the evidence establish that a larceny of the bonds was committed, and that the defendants were the persons guilty of it? It is contended by the learned counsel, Mr. Robertson, that the evidence failed to establish that fact, and he argues that there is no direct evidence to sustain it. His pretension is, that in a civil case positive and direct evidence is necessary.

Mr. Justice MONK, addressing Mr. Robertson: Is that your pretension, Mr. Robertson, and do you consider that stronger evidence is required in a civil than in a criminal case?

Mr. ROBERTSON: That is my pretension.

Mr. CARTER: Then I am not mistaken in what I understood my learned friend to urge; and, now that he re-asserts his proposition, I shall show, by positive authority, that he is in error, and that the distinction, if any, between civil and criminal cases, was to favor the admission of presumptive evidence, as supplying the want of direct proof in civil cases, whereas in criminal cases, such evidence, although admitted, was always received with greater caution. Mr. Carter cited, in support of his pretension, "Best Principles of Legal Evidence," p. 539; also, the cases of Armory *vs.* Delanoirie, 1 Strange, 505, and Mortimer *vs.* Cradock, 7 Jur, 45. Then as to the fact, the evidence consisted of not only strong presumptive proof, but positive, as derived from the admissions of the defendants, sworn to by two witnesses. It was proved that both defendants entered the Company's office at New York under pretence of effecting an insurance, and that one of them engaged the attention of the manager in such a manner as to divert his attention from the other. Within fifteen minutes after they had left, the box containing the bonds was missed from the safe. No other person entered the office between the time they left and when the loss was discovered. The defendants left New York the same day, and, within a few days after, they are found in Montreal with their wives, changing large sums of money, whereas it is proved that, when in New York, they were in needy circumstances. In support of the position Mr. Carter assumed, he cited the following authority to establish that, the loss having been proved, the sudden flight and the change of circumstances of the defendants, coupled with their presence at the Company's office very shortly before the bonds were missed, constituted complete evidence of their guilt: "Best Pr. Legal Ev.," pp. 564, 568 and 569. Then there was additional evidence afforded by the defendants' avowal of the commission of the crime, and the description given of the manner it was accomplished, agreeing precisely with the testimony of the manager as to what took place, to his knowledge, when the defendants were in the Company's office. The next point to be considered is that urged by Mr. Kerr, who pretends that the affidavit of Mr. Routh has been destroyed by his subsequent examination as a witness. The very reverse is the case. Mr. Routh's examination fully corroborates what is contained in the affidavit he made. The authority cited from Archbold by Mr. Kerr does not apply. It is not pretended that the affidavit is defective, but it is said that Mr. Routh has admitted that his knowledge of the Company possessing the bonds was derived from the New York manager, and was, therefore, hearsay. In point of fact, Mr. Routh, while admitting this, has also said that he was confirmed in his belief of what the manager told him, by what the prisoners said to him, Mr. Routh, when he demanded the bonds from them. Assuming even that Mr. Routh had not seen the defendants before their arrest, if the affidavit was otherwise perfect, the question is not what means of knowledge had the deponent, upon whose affidavit the capias issued, but whether the material allegations were true. Take, for instance, the case of a merchant who makes the affidavit of a debt being due to him; if he was examined as Mr. Routh was, he would have to admit that he had no personal knowledge of the sale and delivery which was made by his clerks. But would Mr. Kerr pretend that in that case the capias would fail? Certainly not; the statute requires that the defendant should establish that there was no existing debt, as the sole question is one of fact, does the defendant owe or not?

Mr. Justice MONK: I understand your argument perfectly, Mr. Carter; you need not dwell any longer on that point.

Mr. CARTER continued: The only point to be discussed, and, in fact, the only one which the Court would have to consider, is whether the cause of action arose in a foreign country. It was strenuously urged by Mr. Kerr, that in case of *délits*, the cause of action arose where it was committed, that its origin was inseparable from all the consequences flowing from it, and several authorities have been cited by him. It will be found that these authorities establish one important point in favor of the plaintiffs, viz., that the right of civil remedy exists. It was contended by Mr. Robertson that the civil remedy could not be exercised.

Mr. Justice MONK: Do you assert that proposition, Mr. Robertson?

Mr. ROBERTSON: I do.

Mr. KERR: I do not; I admit the civil remedy exists.

Mr. CARTER: We may, then, take it for granted Mr. Robertson remains alone in his opinion. It is a question that can admit of no doubt. It is a remedy recognized in Criminal Courts, as well as in other tribunals, as your Honor must be aware, that even in criminal cases power is given to a Judge, after conviction, to order restitution. Then as to the other point, it is urged that the cause of action depends upon the place where the wrong was first committed. This I deny, as the real cause of action in this case is the fact that the defendants are here in Canada in possession of plaintiffs' property, and withhold it, refusing to restore it. It is a principle of the common law that the owner may follow his property, and every new jurisdiction into which thief carries it is a fresh caption. This doctrine is applied even to criminal cases, so that the offence is regarded as repeated—as a new taking, (*capié*), and a new cause of prosecution established, altogether independent of the original taking. Mr. Carter cited, in support of this proposition, 1 Hawk, ch. 49, sec. 52, Rea *vs.* Parkin, 1 Moody C. C., and authorities cited in the note. In this case the plaintiffs complain that the defendants hold their bonds, and are converting them to their own use. It is the conversion which is the gist of the action. In support of the latter proposition, Mr. Carter cited 2 Selwyn, Nisi Prius, p. 1389.

Mr. Carter also contended that, as regards the remedy, we were to be governed by our law, which recognises the right of arrest in civil cases. This is the general rule. There are exceptions, and it is for the defendants to show that they come within the operation of one of them.

in answer to a question put to him in cross-examination, McDonald says: "I cannot swear from my own personal knowledge that the defendants ever took or had possession of said bonds in Canada." And none of the other witnesses examined say one word of the bonds ever having been seen in this Province. Mr. Routh admits he has no knowledge of any kind, except from information, as to the taking of the bonds, or holding them in Canada. He swore from what was told him by the plaintiff's New York agent and the detectives. There remains Mulvahill's statement, which is the only one he makes, of what took place in jail as to the bonds being in Canada. "I asked him, (Griffin) what have you done with the bonds?" and he answered, "We have got them all right here (Montreal) planted." This was the sole evidence, and it was unsupported. Even if it were uncontradicted and the story credible, it would be insufficient; and that because of the character of the man, and his expecting to receive a reward from the Company if he could drag out anything from the defendants that would serve the interests of the Royal. Was it likely that in the evening after the defendants were arrested on capias, a confession said to be made by professed thieves to a perfect stranger, without any reason or cause whatever. The debt had not been proved, and it should have been clearly proved by the affidavit itself, but it was not. The plaintiff must clearly show that in this case the Court has jurisdiction. He alleges the secretion of the defendant's effects in the affidavit, but states in it also, that they never had any effects, real or personal. Mr. Routh swears that they are "secreting their estate and effects, with intent to defraud their creditors;" that they are citizens and subjects of the United States—merely here in the city of Montreal temporarily; have no domicile in Canada, nor do they own any proverty, real or personal, in this Province. But all this was very vague, and could not at all induce the Court to hold the defendants in capias. It was urged that holding in Montreal these bonds, of which they were said to be in possession, was, as it were, a new cause of action, and, therefore, a capias would lie. But this holding must be traced back to its inception, and will and must continue to be qualified *by the first possession*, whether legal or illegal. If the defendants on the 10th Dec. illegally obtained possession of the bonds in question at New York, there was a commenced illegal holding *there*; the *delit* was complete there and arose there. In other words, the illegal holding commenced at New York, and the coming with the bonds into Canada on the 12th did not change the origin of the *delit*, and wherever the origin of the *delit*, there was the origin of the cause of action founded on the *delit*. So if a contract is made at New York, and the debtor comes to Lower Canada, his debt exists, but the cause of action remounts to the original contract. By using the words of the Consolidated Statutes, "no capias on a foreign cause of action," our statute includes both contracts and *delits* as causes of action, and excludes capias in both cases. It was held in Silverman's case, that where a note was given in Montreal for a debt which originated in the States, no capias lay. The note was held to remount to the place where the debt originated; although it was acknowledged here. Now, why should a liability founded on a *delit* committed at New York not be treated as having originated there, and as "a cause of action" prohibited? How can it be pretended that an illegal *holding* of bonds or other personal property (which all admit was the consequence of an alleged illegal obtaining possession thereof at New York) can of itself be treated as a new and independent cause of action, merely by ignoring New York as the place of the *delit*, and alleging a holding in the city of New York. There is but one phrase in the affidavit and one in the declaration. It charges the bonds were "illegally obtained possession of (without naming the place), and being illegally held in Montreal." The attempt to restrict the whole action to the holding *in Montreal*; the designed omission of the place where they were illegally obtained, arise clearly from the wish to get rid of the statute, which prohibits capias on every contract, *delit* or other cause of action originating in a foreign country. In case of a foreign contract the foreign *delit* remains; in case of the *delit* the *liability* remains; the action founded on the *delit* or liability remains, but there can be no capias.

Mr. KERR followed, and said the defendants were arrested under a writ of capias, issued at the suit of the plaintiff upon the affidavit of H. L. Routh, their agent, in which it was alleged that defendants were jointly and severally and personally indebted to plaintiff in the sum of $214,000, American currency, equal to $155,000 currency, being the amount of the several bonds—the property of the said plaintiff,—"which they the said defendants illegally obtained possession of on the 10th December, instant, 1866, and which they now illegally hold in their possession and under their control at the city of Montreal aforesaid." It is also alleged in the said affidavit that defendants are about to leave Canada, with intent to defraud, and, moreover, have secreted and are secreting their property with like intent. The defendants fyled petitions for discharge from custody, and examined H. L. Routh as a witness, who admitted that he knew nothing personally of the facts relative to the obtaining possession of the bonds on the 10th December by the defendants, or their holding them in Canada; that his knowledge thereof was derived from third parties; but he admitted that the alleged obtaining on the 10th December was an obtaining in New York, in the State of New York, one of the United States of America; as to the other points in his affidavit, with respect to the defendants leaving Canada and secreting their estate, his information was derived from Capt. Young, Chief of Detective Police in New York, and Mr. McDonald, agent for the plaintiff in that city. The plaintiffs issued a commission to New York and thereunder examined Mr. McDonald, Capt. Young, and others. By that evidence it may, for the sake of argument, be assumed that on the 10th December, 1866, at the City of New York, a wrongful taking by the defendants of the bonds in question is established; and that afterwards they (the defendants) sought refuge in Canada. There is no proof that the defendants meditated leaving Canada, or had secreted or were about to secrete their property, the evidence of McDonald and Young on those points being but hearsay and conjecture. A person of the name of Mulvahiile has been examined here, brought up under a writ of habeas corpus *adtestificandum* from the gaol; he deposes to admissions made, as he says, by Griffin, one of the defendants, to him the first night Griffin was arrested in this case as to the manner in which the taking the bonds from the safe in the insurance office at New York was effected, making Griffin the person who walked about the office whilst Knapp engaged McDonald in conversation; whilst McDonald deposes that it was Griffin who kept him in conversation whilst Knapp walked about the office. Mulvahille moreover declares that Griffin told him that the bonds were here. He also says that he told Payette, the gaoler, that he wished to see one of the plaintiffs' agents, and that in consequence of such intimation, Mr. Perry, the plaintiffs' inspector, called upon him. He also deposes that he had not after his return from Court on the 9th January asked to see Paxton, and finally he admits that he expects a portion of the reward of $10,000 offered by the Royal Insurance Company.

With reference to admissions by one party (cotrespasser) they do not avail against his cotrespasser, unless they form part of the resgestæ, while those which amount to mere admissions or narrative of past events can only be received against the party making them.—(Taylor §534, R. v. Blake 6, 2, B. 126.)

The first question presenting itself for consideration is, whether the affidavit upon which the writ of Capias was based, being shewn to be the affidavit of a person not having a personal knowledge of defendant's indebtedness to plaintiff, — is not thereby utterly destroyed. And such being the case, whether all the evidence adduced under the commission on that point is not illegal, and should be rejected from the record, and defendants discharged on the ground of want of proof of the existence of a debt by defendants to plaintiff. Under the clause of the statute, the evidence of such indebtedness in the affidavit must be positive and direct, derived from the personal knowledge of the person making it. An affidavit to the effect "that defendant is personally indebted to plaintiff in a sum of $80, as the deponent has been informed," is insufficient, and a Capias issuing thereon would be quashed on motion.

1. Archbold's P., p 655. Schræder on Bail; p 42. In this case, it is true, Routh swears positively in his affidavit, to the facts that defendants obtained illegally, the bonds, that they now hold them illegally at Montreal, and have refused to deliver them up; but when examined as a witness, he admits that he never saw the bonds, and has no personal knowledge of the facts he has sworn to, save the making the demand to restore. He cannot even swear that they refused to restore them; his affidavit, therefore, is destroyed, for his evidence must be taken as explanatory of, as incorporated with it, and as all his allegations are founded upon information, derived from others, and not on his own personal knowledge, the affidavit is of no more avail than if the words "as deponent has been informed," were added to statement of debt, and consequently there is no pooof of the existence of any debt, which is equivalent to proof of its non-existence, *de non existentibus*, &c.; is there any proof of the bonds ever having been in Canada. There is no evidence on the record to justify the assertions in the affidavit, that the defendants were about to leave the Province, or that they had secreted or were about to secrete their estate, &c, with intent to defraud. By the Capias Act, it is provided, that if a party arrested shows to a Judge of the Superior Court on summary petition, that the cause of action for which he had been arrested arose in a foreign country, he shall obtain his discharge from custody. By the plaintiff it is pretended, that it is a matter of no importance in this case where the larceny or wrongful taking of the bonds occurred. That the wrongful detention and refusal to restore them when demanded wherever the same occur, gives rise to the cause of action in the place where such illegal detention is continued, although that place may not be the same as that wherein the larceny or wrongful taking of the bonds occurred. That consequently, in this case the wrongful detention and refusal to restore having taken place in Canada the cause of action did not arise in a foreign country, although the original larceny or wrongful taking was effected in New York, in the State of New York, one of the United States of America. On the part of the defendants it is pretended that the larceny or wrongful taking in New York is the cause of action in this case, and that it consequently arose in a foreign country. It becomes necessary, in the first instance, to establish the meaning of the words "cause of action." In cases of contract it is perfectly clear, according to our jurisprudence, that a portion, at all events, of the cause of action arises where the contract was made. Warren vs. Kay, 6 L. C. R., 492; Jackson vs. Covworthy, 12 R., 416; 1 Felix, p. 222; Senecal and Chenevert, 6 L. C. J., p. 46. But I am inclined to go even further, and to accept "la jurisdiction speciale de l'obligation" of the Roman Commentators as the jurisdiction within which the cause of action on that obligation arose. It is unnecessary here to enter into the questions regarding contracts, I shall content myself with investigating the jurisdiction speciale de l'obligation arising from the commission of a *délit*. And, firstly, no doubt can be entertained that, immediately upon the commission of a *délit*, for instance, a larceny or wrongful taking of bonds arise not only the obligation to restore or pay their value on the part of the thief, but also the right of action in favor of the proprietor to recover the bonds so stolen, or their value. Mackelday Ms., §482, 485, p. 233, n. (4) (13); 2 Saviging Oblig., p 46, 449; 8 Saviginy D. R., p. 281, 237. "Quel est le véritable lieu d'un acte obligatoire? En d'autre termes. On prend naissance une obligation? La réponse a cette question est souvent assez difficile; nous allons donc essayer de la faire rélativement aux trois espèces d'actes obligatoires les plus importantes; les contrats, les actes unilatér aux licites, les délits." 8 Saviginy D. R., p. 231. He thus answers the question so put by himself, on the subject of délits: "La jurisdiction speciale que constituent les délits est étrangère à l'ancien droit romain elle ne date que du temps des empereurs. Mais depuis elle a été si generalement reconnu que dans les lois elle est placée sur la même ligne que la forum domicilii, contractus rei sitœ . . . la compétence du forum delicti n'est subordonnée ni au domicile ni à aucune circonstance extériéure autre que la perpétration même du délit. Cette jurisdiction a donc une nature toute particulière carelle ne repose pas sur une soumission voluntaire, mais sur une soumission forcée, consequence *immédiate* de la violation du droit dont le delinquant s'est rendu coupable."—8 Savigny D. R., p. 237. "The forum delicti," says Westlake, "is a conception foreign to the older Roman law, but placed in the imperial times on a level with that of contract, so that the plaintiff could choose between it and the personal forum. It does not rest on presumptive submission, but on the mere breach of the law, so that it needs none of the accompanying circumstances which, as guides to the expectation of the parties, are required for the forms of the contract where that is not expressly fixed on."—Private Int. Law, No. 108; vide also 114.

"Every authority which traces the force of a contract or of an obligation quasi ex contractu to the local law under which the agreement or the act is made or done, may, of course, be of equal avail to trace the obligation arising from a delict to the local law under which it is committed. The same conclusion follows from the generally recognized forum delicti, combined with the considerations which, in all cases, assert the law of the proper jurisdiction as that which must be applied if the cause emerges elsewhere."—Westlake, No. 237.

In Maine's Ancient Law will be found the following words:—"Offences which we are accustomed to regard exclusively as crimes are exclusively treated as torts, and not theft only

"The Court, or any Judge of the Court, whence "any process has issued to arrest a person, may, "either in Term or Vacation, order such person "to be discharged out of custody, if it is made to "appear on summary petition and satisfactory "proof, either that the defendant is a priest or a "minister of any religious denomination, or is "the age of seventy years or upwards, or is a "female, *or that the cause of action arose in a "foreign country*, or does not amount to forty "dollars of lawful money of this Province, or "that there was not sufficient reason for the be-"lief that the defendant was immediately about "to leave the Province with fraudulent intent, "where that is the cause assigned for the arrest, "or that the defendant has not secreted, or was "not about to secret, his property with such in-"tent, where that is the cause assigned for such "arrest."

This Statute, the' enacting general rules and provisions, applicable to arrest under civil process, it will be seen also clearly enumerates the exceptions, among which is found the case of the *cause of action arising in a foreign country*; and I have simply to determine what, in the present instance, is the cause of action, according to the technical meaning of the words, and where that cause of action arose. The clause of the Statute above cited settles the rest. Now, according to the plaintiffs' own showing, they lost possession of their property by theft or robbery, on the 10th December last, in the City of New York. I think they have also established that the defendants are the robbers—that they fled immediately to Canada,—that they detained the bonds,—refuse to restore them or disclose where they are. Upon the facts thus established in evidence a civil remedy arises. The plaintiffs seek to recover the value of their property by an appeal to our civil tribunals, and commence their proceedings by arresting the defendants under a "*capias ad respondendum*," and I am to determine what is the cause of action in this case. Is it the illegal taking alone? Is it the conversion or fraudulent detention of the bonds, or is it the refusal to return them or to disclose where they are? Are there so many separate causes of action, or do they, all combined, only constitute one, the same, and the real cause? It seems to me these questions can be answered without much difficulty or hesitation, and I am of opinion that the real cause of action is manifestly the illegal taking, coupled with the conversion or fraudulent detention of the bonds. Their refusal to restore them in Canada is no more, in point of law, than the refusal to pay a debt, contracted in New York. I, of course, view this question as one of law merely, and irrespective of the moral considerations which the facts of the case suggest. All that occurred in Canada, so far as we know, or can suspect, is the *continued* detention of the bonds, and the refusal to restore them. This is not the cause of action in this instance. I may reasonably presume, from the fact that they refuse to disclose where the bonds are, that they have them in their possession, or under their control in Canada,—in other words that they still fraudulently detain them from the plaintiffs. There can be no doubt but that this fraudulent detention constitutes an important element in the cause of action in this instance, as the refusal to pay a debt forms an essential ingredient in the cause of action arising out of a civil obligation or contract. But even so, did this fraudulent detention of the bonds take its origin in Canada, or in New York? Plainly in the latter place. It commenced there,—was simultaneous with the illegal taking, and it was complete immediately upon the perpetration of the robbery. Thus, the illegal taking,—the robbery, if you will, occurred in a foreign state,—the fraudulent detention therefore began, originated there. It may be remarked, moreover, that in regard to the *continued detention* of the bonds, I am left to deal with presumptions. There is no evidence whatever of a conversion of the bonds in Canada, or elsewhere as a matter of fact, though in contemplation of law it may be said that the conversion took place immediately upon the illegal taking. There is no positive proof that these bonds ever were in Canada. I presume they were, and I presume, moreover, that they are still in the possession, or under the control of the defendants. But on the other hand I have what I may regard as conclusive evidence, as before stated, that the robbery was perpetrated, and the illegal detention commenced, in New York,—in other words that the entire cause of action arose, originated there, and not in Canada. To hold the contrary, in my judgment, would involve us in difficulties not easily overcome, and in propositions not very intelligible as propositions of law. It was strenuously contended by the plaintiff's counsel that the fraudulent and continued detention of the bonds, coupled with the refusal to restore them, was a new cause of action, arising wherever the defendants went, even if they passed from the dominions of one sovereign state to another. That the mere fact of the defendants being in Canada with their property, under the circumstances disclosed gave them, the plaintiffs, a right of remedy by *capias*. That although the robbery was perpetrated in New York, the defendants immediately fled to Canada to consummate their villainy there; and there, where the plaintiffs first found them, and where they first became fully aware of their being the thieves, they have a right to the most rigorous remedy the law has placed at the disposal of a creditor. That robbers are an exceptional class of men, and must be dealt with accordingly in an exceptional manner. That the causes of civil actions arising out of crimes or *delits*, should not be dealt with in the same manner as those resulting from civil contracts. That the "lex fori" and not the "lex loci contractos," or in this case not the "lex loci delicti" governs the remedy, and that by the law of Canada, in a case like the present, arrest on civil process would be one of the means which our Courts would sanction in enforcing such remedy. It was also urged that in view of the facts proved, these defendants should not be allowed to evade the operation of our law upon the grounds set forth by their Counsel. That, in fact, the cause of action to all reasonable intent, and for the purposes of this case, arose in Canada. No doubt there is much force in all this, but as I view the facts before me, these arguments and these generalities are not decisive. What is proved or may be presumed to have taken place in Canada, in regard to this matter, constitutes no new element in the cause of action. The defendants were liable upon civil process in New York, if liable at all, to the same extent, and perhaps in the same way, they are liable here. Their coming to Canada makes no change in their original liability, or in the cause of action. I am not aware of any precedent, nor have we much law, except some elementary *dicta*, to guide us in this matter. But having bestowed upon the case very careful attention, I am forced to the conclusion that the whole cause of action in the present instance, as before stated, arose in New York—that it existed there wholly and entirely before the defendants reached Canada—and that no addition to that cause, nor any modification of it has taken place since their arrival here. Taking this view of the matter, reluctantly, but without much hesitation, I feel bound to grant the prayer of the petition, and to liberate the defendants. No doubt it is a hard case. Our statute may be defective, but I think not. In any case, I must take it as I find it. I am only the organ of the law, and as such I am bound to interpret it according to my understanding of it, and to apply its provisions with a strict and scrupulous adherence to its letter, where its language is peremptory and unambiguous. In a case like the present, had it been possible for me to entertain a serious doubt,—could I have found in the words of the statute any uncertainty, or that kind of elasticity, if I may so express it, which would have enabled me, in the conscieatious discharge of my duty, to refuse the defendants' application, I should have done so. But as it is, the law, and the facts of the case, however atrocious the latter may be, compel me to decide in their favour.

In conclusion, I would remark that our Legislature having employed language so intelligible and so decisive, I must assume that the law means precisely what is there so clearly enacted,—no more and no less. And I am of opinion that the letter and the spirit of the law are here in perfect harmony, and that this exemption from arrest on civil process, to be found in the statute, has not been made without good reason. Were it lawful to arrest foreigners here by *capias*, and to detain them in confinement upon civil liability, arising out of crimes or *debits* alleged to have been perpetuated in foreign States, such a mode of proceeding might lead to incalculable abuse and hardship in individual cases, and might, moreover, be fraught with perilous consequences. I am aware that this is not a case of international law. Neither treaties, nor the mutual comity between nations, come under my consideration. I have nothing to do with either, nor have I to analyze or discuss *ab conveniente, or ab inconveniente* arguments in this matter; but my duty is simply to decide a question of Municipal law; but in doing so, I may state that it is easy to conceive instances where parties might be subjected to long detention upon civil process in Canada, and be afterwards acquitted of the criminal charge in the county where the crime was alleged to have been committed. Besides, it would not be difficult to suppose a variety of cases in which false or doubtful accusations might result in flagrant injustice and mischief, unless special provision existed to avert such consequences.

In my opinion our Legislature has wisely guarded against the possibility of such occurrences, and although, in this case, it is much to be regretted that my decision should come to the relief of vagabonds and professional thieves, under the circumstances proved, yet, on the other hand, I must look to the statute and to the facts established, and not to the character of the defendants.

It would be in the highest degree dangerous for any court or judge, without the express, the clearest sanction of the law, to establish a precedent such as that contended for by the plaintiffs. The petitions are, therefore, granted.

THE ROBBERY OF ROYAL INSURANCE COMPANY'S BONDS.

SUPERIOR COURT.

SATURDAY, FEB. 16TH.

Present, His Honor Mr. Justice MONK.

This case, for quashing the capias issued at the instance of the Royal Insurance Company against two persons named Knapp and Griffin, came up for argument before his Honor Mr. Justice Monk on Saturday. We regret that our reporter was not in Court to take down the remarks of Mr. S. Bethune, Q.C., who, with Mr. Carter, Q.C., appeared for the Company, and against the defendants. But we understand that his remarks were substantially the same as those so ably offered by his colleague. Mr. A. Robertson, Q.C., and Mr. Kerr were for the defendants.

Mr. Robertson, in opening the case, spoke as follows:

Mr. A. ROBERTSON, Q. C., who appeared on the part of Griffin *et al*, argued that no capias could be issued on a liability like this, though there might be a right of action. In England, by 21 Geo. II., cap. 3, it was enacted that in all cases over £10, capias might issue on affidavit of *a right* of action. But in Canada there must be an "indebtedness;" the capias and action are distinct; the capias may be lost, while the action may remain. No judgment could be cited maintaining capias by any higher Court, on a cause of action not founded on indebtedness, on a debt sworn to. The learned gentleman cited the case of Beard against Mr. Isaac, in Review, decided on 30th May last, where a person came from Liverpool and hired a vessel and cargo, and refused to carry out his contract. A capias was issued charging him with the difference between the rates of freight. Badgley, J., held that in commercial cases, where there is a money loss, on a contract for money value, capias would lie. This went far, but not to the length of saying: "You took and converted my property, e. g., my horse, and are indebted in its value; therefore, I have a right to capias." The illegal holding possession of bonds or any personal property in Canada, if a good ground of capias, must cover the principle of illegal possession and holding of real property too. Real property is as much favored as personal. The capias must be for a debt, and that must be clearly sworn to as a present indebtedness to plaintiff, and indirectly as resulting from *delits*, or even felonies. A capias will not lie by, saying: You attempted to murder me (say in New York); you cut off my arm, therefore, I can capias you. Secondly, there could be no capias on any cause of action arising out of the Province. By the Consolidated Statutes, p. 810, it was enacted that "the Court or Judge may order any person to be discharged out of custody, if it be made to appear, on satisfactory proof, that the cause of action arose in a foreign country." The learned counsel cited numerous cases to show that the *whole cause of action* must originate in Lower Canada, or there could be no capias. He quoted from the clause in the affidavit and declaration made in this case, which said the defendants were indebted in so much, being the amount of bonds, &c., "which the defendants illegally obtained possession of on the 10th Dec. inst., without stating *where*, and which they now illegally hold in their possession and under their control at the city of Montreal." The declaration says the defendants are jointly and severally indebted to the plaintiffs in the amount of bonds claimed, "which they illegally obtained possession of on the 10th Dec. inst., and which they now illegally hold in their possession and under their control in the city of Montreal." There is but one phrase, one sentence, one cause of debt, one cause of action—illegally obtaining possession (somewhere not named) and illegally holding, in Montreal. Thirdly, the proof establishes the loss of the bonds at New York. They were missed after an interview of defendants with McDonald, plaintiff's agent—he says some fifteen or twenty minutes after they had left the office, and they have never been seen since. But this witness does not swear as to the indebtedness of the defendants, or that they took the bonds. But admitting for argument's sake that the bonds were illegally obtained possession of, it must have been at New York. This is affirmatively shown by plaintiff's own witnesses, and the cause of indebtedness as well as of action arises certainly out of Lower Canada. The pretended "illegal holding in the city of Montreal" is not proved.

had made a clear statement. The whole case lay in a nutshell. Mr McGibbon had felt Ryan was not treated right and taken the claim.

His HONOR then charged the jury at considerable length, to the effect that the evidence of Ryan might be considered as reliable, and had been corroborated by that of others. It had been urged it was impossible such an amount of property would be destroyed by such a fire, but there appeared to be no evidence of fraud. Once admitting that goods had been stolen, it would be difficult to stop at any amount. If, therefore, the jury were satisfied that goods had been stolen at the fire, the loss must be borne for the Insurance Company. His Honor then handed a series of questions to to the jury, agreed to by the counsel on both sides.

The jury then retired, and after an absence of half an hour came into Court.

The questions and answers are as follows :—

Did the defendants execute in favor of Ryan and Panneton, named in the plaintiffs' declaration, the policy of insurance firstly described in plaintiffs' declaration, at the date and for the amount recited by said declaration? Yes.

Was said policy destroyed by fire? Yes.

Did the defendants make and execute in favor of said Ryan & Panneton the policy of insurance secondly described in plaintiffs' declaration at the date and for the amount alleged by plaintiff? Yes.

Were John Ryan and F. X, Panneton doing business at Three Rivers as merchants and copartners, under the name and firm of Ryan and Panneton, and interested in the subjects insured, at the dates of the policies, and up to the time of the fire, in the sum of $12,000 currency or thereabouts? They were.

Did Ryan & Panneton, by deed of transfer, as alleged by plaintiff, resign, transfer and make over to plaintiff all their right, title and interest in said policies, and their rights and claim against defendants, and was such transfer duly served upon and signified to defendants? They did, and notice duly served.

Is the plaintiff the true and only owner of all rights and claims against defendants, arising from and out of said policies, and has he been recognised as such by defendants? Yes.

Were the premises of said Ryan & Panneton at Three Rivers, on the sixth day of March, eighteen hundred and sixty-five, partially destroyed by fire, and their stock in trade partially consumed? Yes.

What was the cause of the said fire? Unknown.

To what amount did the said Ryan & Panneton sustain loss or damage by fire, to-wit, at the date mentioned in the plaintiff's declaration, in respect of the property referred to in the policy issued to them by the defendants? $2,243 95.

Were any of the goods of the said Ryan & Panneton covered by the said policy stolen, and if so, to what amount and value, on the occasion of the said fire, to-wit, on the said sixth day of March, eighteen hundred and sixty-five? Cannot say.

Did said Ryan & Panneton forthwith, and within the delay required by said policies, to-wit, the 7th day of March, 1865, at Three Rivers, and also at Montreal, give notice to defendants, and deliver in an account, giving particulars of their loss under oath the fifth day of June last past, and offer all information to defendants, and make claim to the payment of said sum aforesaid of and from defendants? They did.

Did the said Ryan and Panneton, by their claim in writing, claim from the defendants the sum of two thousand two hundred and forty-three dollars and ninety-five cents, and was such claim false and fraudulent, and did it contain a fraudulent misstatement, in the terms of the twelfth condition, endorsed on the policy issued to to the said Ryan & Panneton by the defendants? Said amount was claimed but without fraud.

Did said Ryan & Panneton from the time of making said policies, until the date of said fire, fully pay defendants the premiums and sums of money due upon said policies; and were the same accepted by defendants? They did. It was accepted by defendants.

Were said policies at the time of said fire in full force and existing? Yes.

Did the defendants, to wit, on the 8th day of May, 1865, tender to the plaintiff the sum of $744 10, as indemnity for loss or damage by fire, suffered by the said Ryan & Panneton on the goods and property covered by the policy issued by the defendants to the said R & P., and was such tender sufficient, 27th December? Defendants did tender such sum, which was insufficient.

LEGAL INTELLIGENCE.

THE STOLEN BONDS OF THE ROYAL INSURANCE COMPANY AND THE NEW YORK ROBBERS WHO TOOK THEM.

In the case of the Royal vs. *Knapp and Griffin, in the Superior Court yesterday :*

In delivering judgment in this cause Mr. Justice Monk said :

This case has been brought up on two petitions to liberate the Defendants from imprisonment, under a *capias ad respondendum*, issued at the instance of the Plaintiffs on the affidavit to hold to bail, made by Mr. Routh, and which sets forth in substance :

That the defendants are personally and jointly and severally indebted to the plaintiffs in the sum of $214,000 U. S, currency, being the amount of the several bonds, coupons of bonds, and securities of the Government of the United States of America, the property of the plaintiffs, which the defendants illegally obtained possession of on the 10th December, and which they now illegally hold in their possession and under their control at the City of Montreal. That deponent hath personally demanded from the defendants the restoration of the said bonds and securities, but the defendants have wholly refused to restore the same or any part thereof to the plaintiffs, and the defendants still retain and secrete the same from the plaintiffs, so that the plaintiffs are wholly unable to revendicate or attach said bonds and certificates. That the deponent is credibly informed, hath every reason to believe, and doth in his conscience believe, that the said defendants are now immediately about to leave the Province of Canada, and abscond therefrom with intent to defraud their creditors, and the Royal Insurance Company in particular, and moreover have secreted and are secreting their property with intent to defraud their creditors, and the said Royal Insurance Company in particular. And for reasons of his belief deponent avers : That the defendants are citizens and subjects of the United States of America, and are merely here in the city of Montreal temporarily, that they have no domicile in Canada, either personal or real; that deponent hath been informed by John S. Young and John Jourdan, both of New York, police detectives, that the defendants are professional thieves and immediately about to leave the Province of Canada, without any intention of returning thereto; that deponent hath moreover been informed by Anthony B. McDonald, Insurance Agent of New York, that the defendants are possessed of the aforesaid bonds and securities, which they refuse to give up to plaintiffs' agent, and that the defendants are secreting said bonds and securities, and secretly endeavoring to sell and dispose of the same, and convert the proceeds to their own use and advantage, and that unless the said defendants are arrested under a writ of *capias ad resp.*, the said bonds and securities, and the said debt (the value thereof as aforesaid) will be wholly lost to the plaintiffs. That deponent saith, that without the benefit of a writ of *capias ad resp.* against the bodies of the defendants, and a writ of attachment, *saisie arret*, for the purpose of seizing and attaching such moveable estate and effects as may be in the possession of the defendants, the plaintiff will lose said bonds and certificates and said debt, or sustain damage.

This affidavit was made on the 20th Dec. On the 26th of the same month the defendants appeared separately, and severally moved to quash because the affidavit did not disclose any legal and sufficient grounds of debt against the defendants, and that the cause of action did not arise within this Province.

Judge Berthelot dismissed both the motions, holding that the defendants were rendered liable by the fact of their being found here with the property in their possession; the owner of stolen property had a right of action against the thief wherever he found him with the stolen property in his possession. In this case it was not material whether the property was stolen here or in New York.

In this decision of the learned Judge, I entirely concur, both as to the sufficiency of the affidavit *per se*, and so to the right of action against the thief wherever he may be found; nor did I understand the defendants' counsel, in the present instance, to contest very strenuously the right of action merely. I understood them to concede the point, and in any case, I entertain no doubt about the law in that respect. The question here, however, is not as to the right of action, but as to the right of arrest and detention under a writ of *capias ad respondendum*, in the face of the facts proved on these petitions. Keeping this distinction clearly in view, I proceed now to inquire into the merits of the defendant's applications.

Chapter 87 of our Consolidated Statutes provides that—

" The Court, or any Judge of the Court, whence " any process has issued to arrest any person, " may, either in Term or Vacation, order any " such person to be discharged out of custody if " it is made to appear on summary petition and " satisfactory proof, among other reasons, that " the cause of action arose in a foreign coun- " try."

Under this provision of the Statute the defendants presented each a petition to be discharged from custody, alleging that the cause of action for which the arrest was made arose in the United States of America and not in Canada; that no such debt as that stated in the affidavit existed; that the defendants were not about immediately to leave the Province of Canada, or to secrete their estate with intent to defraud their creditors; and finally, that the averments of the affidavit were untrue.

Upon these petitions, the plaintiffs and defendants proceeded to proof, and it has been, I think, conclusively established, as stated in the affidavit, that on the 10th of December last, the plaintiffs, who had a branch in New York, were possessed at their office in that city, of the bonds enumerated in the affidavit by Mr Routh; that on that day they lost possession of this property, and that it is still illegally withheld from them.

The first question of fact to be determined is, whether the defendants, as is alleged by the plaintiffs, were the parties who fraudulently took the bonds from the plaintiffs' office in New York. I think it clearly results from the evidence adduced, that on the 10th December the defendants called upon Mr. Macdonald, the plaintiffs' agent in New York, and spoke to him about effecting an insurance upon their lives. The conversation took place in an inner room of the plaintiffs' office, and lasted about twenty minutes, being almost exclusively carried on between Griffin, one of the defendants, and Mr. Macdonald. During all this time Knapp was walking to-and-fro, occasionally passing into an adjoining room, where there was a safe or vault, the outer door of which was open, and the inner one closed. In the inner compartment of this safe, or vault, was a tin box containing the bonds; The defendants finally left, saying they would call again, and in about twenty minutes after their departure, the agent Macdonald, perceived that the bonds were missing; the box containing them having disappeared.

This occurred early on the 10th, and on the 12th December, in the forenoon, the defendants arrived at the Ottawa Hotel, in Montreal, and on the 15th of the same month their wives joined them here. The defendants are proved to have been before this time, poor men and professional thieves. On the 20th December they were arrested on the *capias* issued in this cause, and immediately previous to their arrest, and while in jail charged with this robbery, they had the following conversation with Mr. Routh, who visited them with Mr. Macdonald, to demand the restoration of the bonds. Mr. Routh says :

" I went down to the jail previous to the mak- " ing of my affidavit. When I saw them I told " them I had come down about the bonds; that " my advice to them was to give them up, and " get out of that place, the jail; I think it was " Knapp that first spoke to me.

" They both denied having stolen the bonds, " or having them in their possession. After- " wards, when the conversation became more " free, Knapp said :—" 'We are prisoners, and " this is not a place to do business in. We " shall soon be released, and may then call upon " you, and deal or do business with you.'

" He (Knapp) then addressed Mr. Macdonald " and had considerable conversation with him " respecting the value of the bonds, upon which " he, Knapp, put his own valuation, and then " asked me what reward was offered for the re- " stitution of the bonds. I replied ten thousand " dollars. He then said, 'Gentlemen, you must " take us for *pretty God dam fools* to give up " such an amount for such a sum.'

" The other defendant, Griffith, first was angry, but afterwards cooled down, and spoke " much to the same effect that Knapp did."

Question by Counsel :—" Did the said Griffin " state he had any bonds in his possession, or " had taken any ?"

Answer.—" He did not distinctly say so."

This testimony requires no corroboration, and if it did, that corroboration is furnished by the evidence of MacDonald, the New York agent. Two men, respectively of the name of Mulvihilll and Paxton, were examined by the plaintiffs, and they state that they had a conversation with the defendants in jail. They say the defendants admitted they were the robbers of the bonds, and described, moreover, how the robbery was committed, and that they had the bonds *safely planted here in Canada.*

To this testimony I attach but little importance; it is extremely improbable, and the statements therein made contradict, in some particulars, the evidence of MacDonald, and so far it is unworthy of confidence—it may be true or not. In any case, for the purposes of this decision, even admitting it to be true, I do not regard it as material. The remarks, however, of the defendants to Mr. Routh, taken in connection with certain other portions of the evidence adduced, leave no doubt in my mind of the robbery, or by whom it was perpetrated. As I view the testimony, therefore, I find it proved that the defendants abstracted the bonds in question from the plaintiffs' safe in New York on the 10th December, under the circumstances stated by Mr. MacDonald. On that day they became illegally possessed of this property against the will of the plaintiffs, and the probability is they have the bonds still in their possession, or under their control. It is also proved that they refused to restore them to the plaintiffs, or to disclose where they are, so that the plaintiffs might revindicate them; and upon these grounds mainly, if not exclusively, and under these circumstances, the plaintiffs had recourse to the remedy by " *Capias ad respondendum.*"

Now, as to the right of action in this case against the defendants, as before stated there can be no doubt, and it was also conceded by all the Counsel, except one, Mr. Robertson, for the defendants, that had this robbery been perpetrated in Canada, the remedy by *Capias* would be a proceeding sanctioned by the law. (Upon this point I have no opinion to give, and I studiously abstain from pronouncing any judgment in regard to this view of the law.) But there is something more in this case, and that which gives rise to the whole, or at least the chief difficulty, I have to decide whether the robbery, the conversion, and first detention of the bonds, having occured without the limits of Canada, and within the dominions of a foreign State, the defendants are under our law, upon their refusal to restore the bonds, and their continued and fraudulent detention of them here, liable to imprisonment under *Capias.*

That is the real question to be determined in this case. The clause of the Statute invoked by the defendants, in relation to this point, is to the following effect: It has been quoted in part above, but is reproduced here in order that we may not lose sight of the law we are called upon to interpret and apply.

LEGAL INTELLIGENCE.

SUPERIOR COURT.

Present: JUDGE MONK.

McGibbon vs. The Queen Insurance Company.

May 16.

His Honor took his seat at 10 o'clock.

A Special Jury were sworn, consisting of the following gentlemen:

Edward Lusher, foreman; Wm F Lewis, Samuel Moss, Wm Minchin, Andrew Law, H J Lawton, Jas Benson, E V Morely, Jos May, Edward Murphy, Thos Evans, J Livingstone.

Messrs J A Perkins and B Devlin appeared for the plaintiff; and Messrs F Torrance and J L. Morris for the defendant.

Mr Perkins then opened the case by addressing the Jury. He said in this case he appeared for the plaintiff. Sometime in April 1864, two young men went into partnership in the grocery business in Three Rivers, and did a fair business The last purchases for the year were always made in the Fall, and these young men, Messrs Ryan and Panneton, made a large purchase of the value of $5,000. They wished to insure $2,000 in the Queen and $4,000 in the Royal. The Agent, however, gave the whole amount on the Queen. In March the premises were burnt, the stock and the store being insured. It was a question whether the fire had caught in the neighbour's premises or not. Mr McGibbon was a creditor for about $4,000 The fire occurred in the evening, and for one hour there was no water. The Agent of the Company was present, and there was a large number of people who took what they could get hold of. The fire raged for an hour and the stock was destroyed. Ryan, one of the partners was absent, and the other, Panneton, did all he could. The following day the streets were strewn with debris of the fire. He would leave it to the jury to say how much was lost. The Insurance Company closed the store for fifteen days, and sent down an agent. What he did would appear in evidence. Finding the insurance was not paid, Messrs. Ryan and Panneton transferred the policy to Mr. McGibbon, and thus it was that he sued the Queen Insurance Company to-day for the loss. There was great rivalry among the Companies at Three Rivers, and all settled only the Queen, which refused to do what was reasonable. It became the duty of the jury, therefore, to settle the amount of loss.

The sum which Mr. McGibbon claimed was $2,243.95. The defence urged this was not true, and put in a plea of fraud and over estimation; also, that no such loss had been sustained. They offered $744 as the loss sustained by fire. He would say the only way to ascertain the damage done to the stock was to estimate what remained unaccounted for, which had been done by Ryan & Panneton, but not by the defendants.

ALEX. McK. FORBES was Agent of the Queen Insurance Company, and was so on 26th Dec, 1864. Witness here examined the 2nd policy, dated 26th Dec., 1864. Under this policy Ryan & Panneton were insured for $4000 on their stock in-trade in Three Rivers. The premium was paid on that policy. Ryan & Panneton were insured for another sum previously. They effected a policy of $2000 on the 8th of June, 1864, [the books of the Company were here produced] on their stock. The whole amount of insurance effected was $6000. Never was in the premises of Ryan & Panneton. Believed they were only partially burnt. Was notified the policy was transferred to Mr. McGibbon after the fire. The witness' office sent W. H. Woods to Three Rivers to enquire into the amount of loss. The Company received an inventory shewing the amount of loss sustained by fire was $744. It was sent to them by Mr. Woods. Another inventory produced shewed a loss of $1499.85. This was prepared by Ryan & Panneton. It was for goods lost or missing. Witness now produced a claim sent in by Ryan & Panneton, shewing a full statement of their losses. Witness received this on the 5th of June. Received an inventory, marked No. 5, signed by several people at Three Rivers, being a complete statement of losses and amount of stock on hand after the fire. This was the only loss at Three Rivers. They offered Mr. McGibbon $744. Witness called on Mr. McGibbon yesterday; asked, as an individual, if he was willing to compromise, as he once offered to do. Witness did not offer him anything; Mr. McGibbon spoke of $2000; witness said he would see about it. The offer made by him then was $744; called to see if Mr. McGibbon would make an offer; called a second time. Mr. McGibbon said the matter had gone too far. Witness said he had called in consequence of Mr. McGibbon's clerk being at his house.

Cross-examined by Mr. TORRANCE.—Told Mr. McGibbon his proposition was ridiculous Produced the 4 documents as sent in by Ryan & anneton in support of their claim. Mr. Ryan lso made use of the report of the arbitrators Shortiss and Woods). Had no talk with Mr. Ryan about these papers.

JOHN RYAN was doing business at Three Rivers with F. X. Panneton. Began business 1st May, 1864; purchased goods 17th September, before the fire; was a grocer. The amount of goods purchased from the time they commenced business, in May '64 to March '65, was...$14699 74
Charges thereon..... 100

$14799 74

Sales for Cash..... 7816 40
On Credit..... 2047 57

Total sales..... $9863 97
Profit of 20 per cent deducted..... 1972 79

7891 18

Total..... $69 8 56
Less shop and private expenses..... 494 80

Leaving..... $6413 76
Goods as per inventory made by Messrs. Olivier, Godwin and Lord, and duly attested..... 4169 81

$2243 95

The shipment and cartage would be about $400. Private expenses were £124 from 1st of May, 64, and 6th of March, 65. The profit on sales was about 20 per cent. The store was situated corner of Notre Dame and Papineau Streets; 3 story brick house; on 6th March, 1865, goods were placed in the cellar and store. Was absent the day of the fire; on returning there was dirt, together with tea and sugar lying about the floor, part of which was broken up. When witness left he had between 50 and 60 hogsheads, a great number were full of liquors and wines. When he went down the cellar was covered with liquor. A part of the barrels were in the yard, turned upside down. In the yard there were contents of boxes of tea. Barrels of molasses had been emptied. He found tea from their store to the City Hall. The principal part of stock was in the cellar consisted of General Groceries. The house was in a dangerous condition. The loss according to books was $2,223,81. The store was closed by order of the Agent of the Company for about two weeks. There was an inventory taken of the stock after the fire. Witness called in four merchants and told them to make out an inventory of the stock. They were estimated at cost price $4,169,81. Witness transferred his claim to Mr. McGibbon who was his creditor to the amount of $3,000

Cross-examined by Mr Torrance. Transferred the claim in full amount in payment. It was made before Mr. Knight the Notary. Did not transfer it with warranty. If Mr. McGibbon succeeded or not was a matter of no interest. The personal expenses were made up of rent of house, £50, board of partner £21; drew only a small amount himself. The partners expenses might be over £35. Paid clerks $2 per month in goods. The gocers license was $40. There was £5 to the inspector. Gas would be $16 or 18 All that himself and partner got out of the business was £124. The witness was here examined at length as to the articles in the inventory. Mr Woods asked him to make a rough estimate which was $443, and by a more accurate one $350. Mr. Woods wished to leave that afternoon and told witness to send in his demand and the office would make him an offer.

The witness was here cross-examined at considerable length regarding the inventory of the goods by Mr. Torrance. He had fixed the profit on the goods at 20 per cent to be sure, but 25 per cent was perhaps nearer.

It being 1 o'clock, the Court now adjourned for recess.

AFTER RECESS.

FRANCOIS X. PANNETON sworn—He was in partnership with John Ryan at Three Rivers. There was a fire there on the 6th March. Nothing was taken out of the store after John Ryan left. The fire occurred in the cellar in the evening. The next door neighbor told them that the fire was in the cellar. People came and broke the door with axes. The store was full of people breaking and removing goods. They tried to take out all they could. The Company's Agent was in the store, and gave directions. After the fire the Corporation put two men as a guard. Witness went into the cellar, and found the taps of the casks turned, and things generally destroyed. After the fire he went in and took charge of what was left, which was a good deal damaged. The loss was estimated at $2,223 according to the books. His partner, John Ryan, managed the books. The profits made were about 20 per cent. There were more than fifty people working at the store; saw nothing stolen.

Rev. LOUIS LAFLECHE sworn, deposed to the circumstances of the fire.

J. OLIVER sworn, stated he was present at the fire, and afterwards helped to make the inventory. The goods valued were partly damaged.

T LORD sworn, corroborated the evidence of previous witnesses.

ED. A. ROCHELEAU and GARIEPY corroborated preceding testimony.

Mr. DEVLIN wished Mr. Ryan recalled to ask him if the invoices produced were the same that the inventory was made from.

Cross-examined—Got them back immediately after the inventory was made. They reach from May, 1864, to March, and amounted to $3,674.18.

B LOISELLE, Fire Inspector at Three Rivers, sworn: The fire came out of the cellar, and was difficult to extinguish.

George GRANT, sworn: Was aware those goods had been sold to Messrs Ryan & Panneton by Mr McGibbon ($4,339.54) in the month of November.

Mr MORRIS now addressed the jury, maintaining there had been misrepresentation on the part of Ryan & Panneton with regard to their losses, which according to the 12th clause of the Policy rendered it void. The first question was if the had $1400 worth of goods, besides those destroyed, at the time of the fire. One feature of the case was that the parties interested had given all the evidence. They had insured against loss by fire only, and the defendants were not liable for goods stolen.

Mr TORRANCE followed, asserting there had been false representation. The Insurance Agent told them though the fire had raged an hour and a half only $107 worth of damage had been done to the premises, though it was urged $2,000 worth of stock had been made away with. He also stated it was unfair that those interested, in being brought forward as witnesses, should be made judges of their own cause. The real amount of damage was only $444, the other $300 being allowed for broken bottles. It was a question, even supposing the statement made by plaintiffs to be true, if they Company were liable for any loss not caused immediately by fire. Mr Torrance then read a list of questions for the consideration of the jury, and then addressed the Court, contending if the jury found plaintiffs had made false statements his clients would be entitled to an acquittal.

His HONOR remarked in reply to Mr Torrance concerning the damage by fire, that if the jury found other things correct it would be a fair presumption that the goods were destroyed by fire. His Honor thought there was no evidence to show they were not destroyed by fire.

Witnesses for the defence were then called.

GEO. BAILEY HOULSTON sworn—Was agent for the company. He related the circumstances of the fire, which was extinguished in about an hour. The fire was confined to the cellar. Simply acted as assistant to Mr Wood. Messrs Ryan and Panneton first claimed $3000; a few hours afterwards they came down it might be to $2000 or some other lesser sum. The only explanation received was that goods were missing, disappeared, lost or stolen. They had not explained how the $1400 had been stolen when they made the claim of $3000. Mr Woods and witness saw it was necessary to appraise. When the award of $774 was given in, Mr Ryan said it was correct, but made another claim of $1400 for goods lost or stolen. There was very little goods destroyed by fire. There was nothing entirely consumed. Could not imagine where the $1400 worth of goods could have gone. The fire was confined principally to two barrels of bottled ale, and was exceedingly trifling. It seemed to witness difficult how such an amount of goods could disappear. There was no order at the fire.

Cross-examined—Ryan and Panneton had a large stock of goods in the Fall. After the fire were completely emptied out. Heard the other partner had taken sick at the fire.

JOHN McDOUGALL sworn—Was a merchant in Three Rivers, Was present for a short time at the fire on the 6th of March. Saw goods carried away and destroyed. There was no fire upstairs. Every body was moving the goods. The $1400 worth of stock was not consumed by fire, it was so small a one.

CHAS. OGDEN sworn—Was Postmaster at Three Rivers. Deposed as to the circumstances of the fire. The fire was in the cellar, and was eventually put out. There was considerable noise in the store. Did not think any goods were destroyed. Only saw two barrels of ale which had been burnt. The property might have been stolen or carried away.

WM. H. WOODS sworn—Was selected by the Queen Insurance Company to look after the fire. The cellar was in perfect order; saw that goods had been removed with care. In the afternoon proposed to Mr. Ryan that he should take an estimation of damages; next morning he said he would accept $3000; witness laughed. In the afternoon, Mr. Houlston, Ryan and witness met. It was then proposed to appraise the loss by fire. Mr. Shortiss was selected as the other arbitrator. Finished on Friday. The appraisment was read in Mr. Houlston's office in presence of a number of Insurance Agents. Mr. Ryan said he was satisfied as to the amount of damage by fire, but wished to make a statement for goods stolen. In consequence of Messrs. Ryan & Panneton saying they would make a claim of all the goods they were short, telegraphed to Montreal for instructions; the reply was to stay. To arrive at the value of stock, agreed to remove goods from Town Hall and place them on shelves. Allowed $80 for breakage, removal and expenses. Proposed to Mr. Shortiss to allow $200 for bottles. There was a number of broken packages on the floor; agreed to allow $100,—allowing altogether $744 10.

Cross-examined—The second inventory was commenced on Tuesday to see what amount of stock was on the premises. On Friday witness came to Montreal. Mr. Ryan made a mistake of $4000 in the addition of the inventory. Took the prices from the invoices—the amount being $4069.35.

Mr A SHORTISS, sworn: Deposed as to the general circumstances of the fire already given.

Cross-examined by Mr PERKINS: The puncheons were on tap and everything turned topsy turvey. Mr Woods offered to pay a little more than the valuation to have the affair settled.

Henry M BALCAR, sworn: Evidence immaterial.

JAS SPEARS, sworn: Deposed the amount of damage done to the cellar was $107.

JOHN RYAN recalled—To Mr Devlin: The first policy for $2000 was lost.

Mr DEVLIN then addressed the jury for the plaintiffs. He said the defendants claimed—

1st. They were not bound to recognize the policy because of fraud.

2nd. If damage was sustained it was to no greater amount than $744

3rd. If there was a greater loss they were not responsible.

He contended they were responsible, and as for the objections to the evidence it was ruled by the Court it was authorised by law. Ryan's evidence was above suspicion. It had been proved goods had been stolen, also the purchases made by Ryan and the various amounts sold. Few storekeepers

COMMERCIAL. 1865

IMPORTANT DECISION IN THE ENGLISH COURTS.

EXCHEQUER CHAMBER.

Marine Insurance.—Deckload.—the Jane.—Wilson v. Rankins.

(Sitting in Error.)

This was an appeal from a decision of the Court of Queen's Bench. The action, was tried before Mr. Justice Shee at the Liverpool Spring Assizes last year, was brought to recover on a Policy of Insurance on freight, valued ot 1,400*l.*, on the cargo of timber of the ship Jane, for a voyage from Restigouche, in British North America, to Liverpool. The ship was chartered to proceed to Restigouche in ballast, and there load from the Charterer's Agents a full and complete cargo, and "deckload (if in season) of deals," and then sail to Liverpool. The ship went out and loaded a full cargo of deals at Restigeuche, and left that place in the early part of November, 1861. It appeared that the vessel loaded part of the cargo on deck, though it was only a small portion of the deals, and no part of the chartered cargo, for which the freight was paid, and they were put there without the knowledge or the authority of the Shipowner, the plaintiff, and were for the use of the ship, though not upon this particular voyage. It was stated to be the practice at timber ports of British North America for Captains to provide themselves with spare spars at Restigouche, and it was admitted that the deals loaded on the deck were for the ship's use. The ship was lost in the course of the homeward voyages, and the plaintiff, the Shipowner, claimed for a total loss. The Underwriter pleaded several pleas, to the effect that the loss was not by perils of the sea insured against; that the ship was not seaworthy; that as to so much of the freight which accrued, the ship cleared out and sailed from Restigouche between the 1st of Sept., 1861, and the 1st of May, 1862—that was in Nov., 1861—with the deals stowed snd loaded upon and above deck (contrary to the Statute); that there was nothing in the form of the policy to lead the defendant to suppose, and it was then wholly unknown to him, that any part of the cargo would be, or was, stowed or loaded upon or above the deck of the ship; and that it was improper, and contrary to all valid customs and usages among Shipowners and Shippers in the trade of carrying timber and wood from British North America to England, to sail between the 1st of September and the 1st of May with any part of the cargo stowed on deck. The defendant further pleaded, that, at the time of sailing, the whole of the cargo was not below deck, but that the Master had caused part of it to be placed on deck, contrary to the Statute 16 and 17 Vict. (Customs' Consolidation Act), and that he had not obtained from the Clearance Officer any certificate that the whole cargo was below deck. The jury found that the ship was not made unseaworthy, that there had been no fraud or concealment, and that the whole of what was properly the cargo was below the deck. They also found, that though the deals and spars laden on the deck were for the ship's use, yet that they were more than was necessary for the ship's use on that voyage.

Mr. Justice Shee ruled that the spars, &c., were cargo within the meaning of the Customs' Consolidation Act, 1853, snd a verdict was entered for the defendant upon the 3rd and 4th pleas, which set forth that deck cargoes were prohibited during the winter months, leave being given the plaintiff to move to enter it for him.

The case then came on for argument, both upon demurrer and on the rule, and it was argued on behalf of the Underwriters that there clearly had been a loading of part of the cargo on the deck, and there had been a breach of the Statute.

Mr. Cohen, for the defendant, urged the same points that had been submitted in the Court below, and contended that the plaintiff could not recover. It was contended that the Master was the Agent of the Owner, and that his knowledge must be taken to be that of the Owner. There was an implied warranty on the part of the Owner that the Statute had been complied with Non-compliance with the Statute in that respect amounted to statutory unseaworthiness.

The Court affirmed the decision of the Court below. The Court of Queen's Bench were of opinion that the authority of the Master, although extending to the stowage of the cargo, did not authorise a violation of the Statute in loading it; neither was it an act of the Master which the Owner must have been presumed to have assented to. In that judgment they concurred. With regard to the point urged as statutory unseaworthiness, the certificate of clearance merely related to the rights of the Act, and did not bear upon the risk of the voyage after the ship was out of the port.

Judgment affirmed.

LEGAL INTELLIGENCE. July 66

COURT OF CHANCERY, UPPER CANADA

SMITH *vs.* STUART.

One of the most important cases which has lately occupied the attention of the Court of Chancery was decided a few days since, and the points involved are of such moment to the public and profession that we venture to insert an abstract of the principal questions raised.

The bill was filed in London, and was brought by the plaintiffs (three in number) who were cestuis que trustent, under an indenture dated 6th October, 1855, made between the Venerable George Okill Stuart, late of the city of Kingston, and Ann Ellice Stuart his wife, of the first part, and George Okill Stuart, one of the defendants, of the second part. By this instrument, which was in its nature voluntary, certain premises in the city of Kingston, forming the north-west corner of King and William Streets, and now in the occupation of Dr. Yates, and which belonged to Ann Ellice Stuart, were attempted to be conveyed to the defendant, George Okill Stuart upon trust for herself, the said Ann Ellice Stuart for life, and after her death, in trust to sell the premises and divide the proceeds between the three plaintiffs, who were related to Ann Stuart.

The third and fourth paragraphs of the bill state as follows:—

3.—"That the said deed was duly executed by the said Ann Ellice Stuart before the Judge of the Surrogate Court, whose certificate is thereon indorsed, and was duly registered on the 23rd day of January, A.D. 1856."

4.—"That the said deed was not executed by the said party thereto of the second part, and that neither of the parties thereto of the first part ever made mention to him of their intending to execute such a document; and that the said party of the second part never consented to act as such trustee, and disclaims any interest as trustee in virtue of the said deed, and refuses to execute the trusts therein contained."

The bill further stated the death of Archdeacon Stuart in October, 1862, and of Ann Ellice Stuart in November, 1856, and prayed that the trusts of the indenture might be carried into effect.

To this bill a demurrer for want of equity was filed on behalf of one of the defendants.

The case came on for argument before His Lordship V. C. Spragge on 19th January, 1866.

Mr. Walkem, in support of the demurrer, argued that the trusts had never been perfectly created. That the deed had never in fact been effectually delivered. That the estate in the lands had never passed to the trustees, or if it had passed it became revested in the grantor, by the trustees dissent to receive it and by his disclaimer. That a disclaimer of a freehold estate need not be by deed, but may be by parol, and that the grant was therefore void ab initio. That the means by which the grantors attempted to create the trust having failed of effect, the trusts themselves fell to the ground. That the Court would not assist to perfect a defective voluntary trust, though it would interfere if the trust had been created for valuable consideration. That the estate in the lands descended to Ann Ellice Stuart's heirs-at-law, and that the assistance of the Court could not under the circumstances be invoked against them so as to divest them of their estate. That the deed failing to operate as an indenture, could not be regarded as a declaration of trust, that being contrary to the intention of the grantors. A large number of cases were referred to on the various points.

Mr McGregor, in support of the Bill, contended that the deed had been effectually delivered. That though the trustees refused to act, the Court would not allow the trust to fail on that account. That the rights of cestuis que trustent should not be allowed to depend upon the caprice or whim their trustee. That the grantors had done all in their power to render the trust perfect and that was all that was required.

His Lordship V. C. Spragge, after taking time to look into the various authorities cited, gave judgment, allowing the demurrer with costs. His Lordship considered that the effect of the diffent and disclaimer of the trustee was to render the deed void, ab initio for all purposes, and that the trusts were therefore ineffectual. That the estate of Ann Ellice Stuart had descended to the heirs at law. That the plaintiffs being volunteers could not call upon the court to perfect the defective trusts as against the heirs of Mrs. Stuart. His lordship intimated that it was his opinion that a freehold estate could be divested by parol. The principal authorities were reviewed at great length and his Lordship's judgment teems with valuable information on the doctrine of voluntary and defective trusts.

SMUGGLING FROM CANADA.

AN IMPORTANT LEGAL DECISION.

(From the Buffalo Courier.)

The first trial in a United States Court with regard to the liability of persons who may have purchased clothing in Canada for tha actual use of the wearer, and not intended to be sold as mercandize, has recently occurred in Detroit. The case was tried before Judge Wilkins, and his decision, which was rendered on Saturday last, will be found of more than ordinary interest hereabouts. The case was that of John P. Simmons, who admitted having crossed the river which divides Detroit and Windsor, C.W., for the express purpose of buying an overcoat for his son, a minor, at the latter place. The overcoat was purchased at a much lower figure than it could be bought on the American side—placed on his son's back, and both recrossed the river, When stopped by the revenue officer they declared they had no idea of entering the goods. The court ruled that if the jury believed the facts as stated the ofience was clearly made out. The jury accordingly brought in a verdict of guilty.

Section 5 of the act of June 30th, 1864, (Session laws of 1864, page 207) provides for duty on clothing as follows:—

"On clothing ready-made, and wearing apparel of every description, composed wholly or in part of wool, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, except hoisery, twenty-four cents per pound, and in addition thereto forty per centum ad valorem."

The defendant relied upon section 3 of the act of March 3rd, 1857, (vol. 11, statutes at large, U. S., p. 194), which provides for the free entry of "wearing apparel in actual use, and other personal effects, (not merchandize), professional books, implements, instruments, and tools of trade, occupation or employment of persons arriving in the United States." In Judge Wilkins' view of the law, the overcoat, although on the back of the young man, was in "the actual use of a person arriving in the United States." within the meaning of the exemption. The use referred to in the statute, he held, in use prior to coming into the United States, by a person who has been abroad, or lives abroad, and who has not visited the foreign country for the very purpose of bringing in the clothing upon his body, with the design of thereby escaping the payment of duty. Otherwise, he argued, a dozen men might cross repeatedly during the day, and bring over clothing enough on their bodies to supply a clothing store. Moreover, in all cases of wearing apparel in use, tools, etc., a free entry must be made at the custom house, and a declaration made under oath, in writing, bringing the party within the exemption. (See general regulations Treasury Department, pp. 560, 600). The Judge said he understood the practice was quite general of persons going to Canada and wearing back new clothes; but it was illegal.

By this decision the overcoat trade between Fort Erie and Buffalo may be considered broken up, and those who are congratulating themselves over centemplated saving of $30 or $35 on that important constituent of their winter wardrobe, will have to content themselves with patronizing their friends on this side, and paying what they ask.

Code de Proc: Civile & Code de Proc: Civile du B. Canada

C de P C	Articles	C de P C	Articles	C de P C	Articles
419	66				
act 401	459	act 581	558	act 800	493
402	450	582		805	494
403	451	584	569	812	538
	452	586	559	839	1244
480	503		560	841	
495	511	590	564	842	1230
514	514	591	569	853	1239
518	515	592	536	856	1240
521	518	602	540	854	1241
	520	605	596	865	942.
522.	519	622	595	840	946
529	526	624	593	841	945
530	521	625	592.	842	948
532	520	683	646	904	1280
533	523	680	645	909	1281
534	522	686	644	912	1280
535	526	684		914	1282.
540	532	690		915	1283
545	545	691	648	916	1284
554	612	692		921	1286 1288
558	855	693			1284
559	614	696	648	922	1284 1288
	859	705	644	924	1289
563	614	706	684	928	1295
541	614	411	646	929	1296
543		480	481		1299
544	619	481	484	936	1302
548			485	938 939.	1324 1303
546	861		486	940	1293
544	624	495	492.	941	1304
				934	1300

Code de Proc: Civile & Code de Proc: Civil du B.C.

C. de Proc. Civ. Articles | Code de P.C. Articles | C. de Proc. C. Articles

art. 942	1305	art. 957	1298	1005	1345
	1306	966		1008	1344
943	1304	964	919	1009	1346
	1308	968	921	1012	1348
944	1309		922	1014	1349
	1310	970. 971	923	1026	1352
945			924	1019	1346
944	1315				
		975	925	1033	24
949	1316	976	926	1036	9
950	1318	982	925	1034	55
951	1319	1003	1342		
	1299	1004	1344		

Ordonnance de 1667 & Code de Proc: civil duBc.

Ordonnance	Articles	Ordonnance	Articles
Titre 28 art 2	art 515	Titre 35 art 34	14 & 505
3	516 & 518	Titre 10 art 1	221
	& 520	2	222.
4	519	3	223
7	523	4	
8	521-522.	5	224
18	525	8	228
22	531	9	224
Titre 29 art 11	526	10	232
13	524 & 529		
20	532.		
Titre 30 art 1			
2	445		
3			
Titre 31 art 1	448		
Titre 33 art 1	54 9 & 560		
3	550		
5	569		
6	539		
7	561		
8	560		
14	556		
17	593		
18	592-594		
Titre 34 art 3			
10	483		
11			
Titre 35 art 2	510		
6	508		
33	509		

Code de Proc Civile & Code de Proc Civil du B.C.

C. de Proc	Articles	C de Proc	Articles	C de Proc	Articles
art 61	49 & 50	art 221	164	art 305	323
63	54	225		306	326
64	52	226	168	309	326
65	56	224		310	324
66	44	228	169	316	329
68	54 & 466	229	140	320	338
69	60. 61. 468	230	141	323	329
42	45	242	148	324	221
43	68		204	325	222
88	4	252	208	326	223
90	8		211	329	
104	102	260	244	330	
128	441	261	235	331	224
129	445			336	
130			254		
131	448	262.	205	339	133
133	482.		264	342	434
149	83 & 86	263	288	343	435
134	82		249	344	200
168	113	241	289		202
140	114	242	293		434
175	119		264	345	437
174	120	243	296	352	192
144	124		294	353	195
214	159	244	264	354	196
215	161-162	244	280	354	194
216	165	285	280	360	199
214	166	289	260	394	454
219		302	268	398	456
220	164	304	322	399	458
			324	400	454

Ord: de 1667 Ordonnance	Articles	Code de Proc Civil du Bas Canada Ordonnance	Articles
Titre 2. art 1.	art 50	Titre 21 art 13	323 & 336
1 & 2.	57 & 44 & 49	14	345
3	47	Titre 22 art 13	280
2. 3. 5	52. 44 & 8	14	288
6	49 & 99	15	296
art 33	103	16	293
Titre 3 art 6	24	17	289
Titre 8 art 1 & 2	120 & 123	18	294
3	121	Titre 22 art 13	265
4	124	14	264
5	122.	15	254
9 & 10	124	16	264
11	124	Titre 23 art 2	268
Titre 4 art 2	120	24 art 5	146
3 & 4	52	6	186 & 176
26	149	7 & 8. 10	146
Titre 11 art 26	150	10	144
33	103	15	184
Titre 19 art 4	847	17	149
6	848	18	148
7. 8. 9	848	19	180
10	880	20	181
12	846 882	23	183
13	560	21	182
16	886	24	184
18	881	Titre 26 art 1	468
19	883	3	436
Titre 20 art 6	15	5	469
Titre 21 art 9	323 & 226	6	471
10	329 332	2	200
12	334	Titre 24 art 1	476 & 33

totally different from those here; no inconvenience to the public being there shown to have arisen from the arrangement into which the Company had entered; whereas here it is distinctly shown that the public are inconvenienced by the the preference shown by this Company to the five favoured proprietors of flys. It appears that, at the terminus in London, all vehicles are allowed to enter the Company's premises in turn without any partiality or preference; and it is sworn that the same arrangement might be made at the Brighton station without any inconvenience or obstruction to the Company.

Cresswell, J.—I am of opinion that no ground is presented to justify the interference of the Court. Before we put the powers of the Act in motion, we must be satisfied that there is some substantial injury or inconvenience to the public, and that the complaint is *bona fide* made on behalf of the public.

Williams, J.—The complaint must come from those who use the railway.

These decisions, in my opinion, bear directly upon the question under consideration. I think they show clearly that a case of public inconvenience or injury must be made out, and that the peculiar remedy sought by the petitioners can only be enforced in cases of public interest, and was not created for the benefit of individuals. It will not, and cannot be applied to remedy private grievances. It is true that the complainants in this case allege several instances in which it is contended that the Company have violated their charter, and that these infractions of the law are the consequences, more or less direct, of their doing the business of common carters within the limits of the city of Montreal. But I must take care that this application is made *bona fide* in the interest of the public, and in doing so, I must not only not confound the private grievances of the complainants with those of the public, if it has any, but I am bound to discriminate between the interests of individuals and those of the public. In this case the public interest seems to be at variance with that of the petitioners. The latter do not, in point of fact, suffer; they have not suffered from the Company's mode of imposing and levying tolls and cartage, nor from the illegality of the Company's system of carrying on their business; unless, indeed, their employing their own carters exclusively in the collection and delivery of freight and their refusal to employ the complainants be contrary to law; and this brings us to this important, really chief, point in the case.

In support of the second proposition, it is urged that the defendants do not rely solely upon the absolute want of legal interest which the public, or the private persons, more immediately concerned, have in its prosecution. The defendants assert, that the course adopted by them in the collection and delivery of freight at Montreal, and other places in this Province, is, in every respect, legal; that, in adopting it, they conform to the well-established usage of railway companies in England and other countries; and that, besides being supported by settled legal authority, it conduces, in a great degree, to the public convenience, and that it enhances the usefulness of the Company as a public body whose interests are closely identified with those of the country at large. The question of convenience to the public is always of paramount importance, in cases where the exercise of equity jurisdiction is demanded. It is to that I must make continual reference in forming my judgment upon the case presented. To establish the right of the Company to convey goods beyond the limits of their Road, reference was made to several authorities. Since the case of Muschamp vs. Lancaster and Preston Railway Company, (8 M & W, 421), establishing the liability of railway companies for goods which they undertake to carry beyond the limits of their line, the right of such corporations to contract for the carriage of goods beyond the *termini* of their road has never been doubted. Judge Redfield (the highest American authority) in his work on Railways, (Chapt. 16, Section XII and XIII), reviews the cases, both English and American relating to the question, and fully acquiesces in the holding of the English Courts. He says (§ 136): "It was "for many years regarded as perfectly settled law "that a common carrier, which was a Corporation "chartered for the transportation of goods and "passengers between certain points, might enter "a valid contract to carry goods delivered to them "for that purpose beyond their own limits. Most "of the American cases do not regard the accept-"ing a parcel marked for a destination beyond "the terminus of the route of the first carrier a "*prima facie* evidence of an undertaking to carry "through to the point. But the English cases do "so construe the implied duty resulting from the "receipt.

"But the cases, until a very recent one, do hold "that a Railway Company may assume to carry "goods to any point to which their general busi-"ness extends, and whether within or without "the particular state or county of their locality. "And it has generally been considered, both in "this country and in the English Courts, that re-"ceiving goods destined beyond beyond the ter-"minus of the particular Railway, and accepting "the carriage through, and giving a ticket or "check through, does import an undertaking to "carry through, and that this contract is binding "upon the Company.

"The case of Hood vs. The New York and New "H. Railway assumes the distinct proposition "that the conductor could not bind the Company "by such contract, because the Company had no "power to assume any such obligation. The case "is not attempted to be maintained upon the basis "of authority, but upon first principles, showing therefrom the innate want of authority in the "Company. It must be admitted the reasoning "is specious; so plausible, indeed, that if the "matter were altogether *res integra* it might be "deemed sound.

"But it must be remembered that in the con-"struction of all legislative grants, many things "have to be taken by implication as accessory to "the principal thing granted. And, if we are not "allowed to assume such indispensible incidents "as are necessary to the exercise of the powers "conferred in such a manner as to accomplish "the main purpose, in a reasonable and and prac-"tical mode, we shall necessarily be led into in-"extricable embarrassments. Hence we conclude "this case may have assumed possibly too narrow "grounds, and such as might render the princi-"pal grant of the Company to be common carriers "of freight and passengers, from New York to "New Haven, less useful to the public, consis-"tently with the security of the Company than "the circumstance required. The strict and un-"deviating requirements in all cases, that all Rail-"ways shall be restricted in their contracts for "transporting persons, parcels, baggage and "goods, to the line of their own road, and a safe "delivery to the next carriers, and that nothing "like co-partnership in the business of a particu-"lar route, consisting of different Companies, "could exist, would certainly be throwing serious "hindrances in the way of business, and with-"out any adequate advantage."

"The same decision was maintained by the Supreme Court of Vermont in the case of Noyes vs. The Rutland and Burlington Railway, (27 Vt. R. 10). The grounds of the decision are thus stated:" It seems to be now well settled "that Railway Companies, as common carriers, may make valid contracts to carry beyond the limits of their own road, either by land or water, and thus become liable for the acts and neglects of other carriers, in no sense under the control. Muschamp vs. L. and P. Junction Railway Co., (8 M. and W, 421); Weed vs. Saratoga and Schenectady Railway Company, (19 Wend, 534); Farmers and Mechanics' Bank vs. Champ. Trans. Co., (23 Vt., 186.)

"It has never been questioned that carriers, whether natural or artificial persons, might by usage or contract, bind themselves to deliver parcels and merchandize beyond the strict limits of their line, in town and country; and in such case could only exonerate themselves by a personal delivery. (23 Vt., 185,) and cases there cited.

"It seems to us in principle, that these two propositions control the present case; for, if a Railway Company may contract for carrying merchandize and goods beyond the limits of their line, where the carriage is by porters, stages, by steamboats or other water-craft, or by other Railways, and this is to be justified upon the grounds of usage and convenience, or common understanding or consent, the same rule of construction must equally extend to contracts to receive freight at points on the line before it reaches the Company entering into the contract. It may be true in one sense, that this is extending the duties and powers of the Company beyond the strictest interpretation of their charter. But the time is now past when, as between the Company and strangers, any such literal interpretation of the charter is attempted to be adhered to. It is true that such Corporations, even as to strangers, are not allowed to assume obligations beyond the general objects of their incorporation, as if they should assume to build steamboats or other railways, perhaps. But, within the general business of their creation, a very considerable latitude is allowed in contracts with strangers. This is done for the advantage of the Company, as well as others, and to avoid embarrassments in the common business of life, which must be constantly liable to occur upon any such limited construction of the powers of Corporations."

In Crouch vs. the London and North Western Railway Co., (25 English Law and Equity R., 287,) the question came before the Court of Common Pleas in a new aspect. The Plaintiff sued the Defendants for refusing to carry packed parcels from London to Sheffield and Glasgow. The Defendants' road extended only a part of the way from London to the respective places, but they had arrangements with the intermediate companies, so that cars from their road passed over the whole distance without the interference of the other companies. The Defendants were in the habit of receiving packed parcels to carry to Sheffield and Glasgow, and they had agents in the places to distribute the parcels when received. The Defendants refused to receive parcels from the Plaintiff to carry to these places, though they offered to carry them to the terminus of their line. The Plaintiff brought an action for the refusal, and the Defendants contended that they were not bound as common carriers to carry beyond the limits of their own line. But the court held that, like natural persons, Railway Companies were bound to discharge the duties of the charters which they assumed, and if they held themselves out as carriers to a place beyond their line they were liable for refusing to carry." (2 Am. Railway cases 478 Note.)

"The English courts have thus refused to consider the liabilities of Railway Companies as being in any way limited to the line of their road, but hold them liable upon their contracts, which are to be ascertained by the verdict of a Jury.

The doctrine that the cartage of goods may be done by Railway Companies is also well settled in France.

"Cependant, *il n'est point interdit* de deroger a "cette faculte par des conventions particulieres *et* "*de stipuler que le camionnage sera opere par les* "*soins de la Compagnie.*" Blanche, Contentieux des Chemins de Fer p. 150—Cour. de Cass. 13 Juillet, 1859, Gibiat C. Chemin de Fer d'Orleans.

"La remise ou livraison des marchandises se fera donc, soit en gare, soit au domicile du destinataire, selon l'enonciation de la lettre de voiture, &c."—*Ib.*

Lorsque l'expediteur a fait au chemin de fer la remise de la marchandise, en indiquant le destinataire sans dire *en gare* ou *gare restant a tel point designe du parcours*, il a laisse croire a la compagnie qu'elle etait chargee de livrer a domicile. Or, les conventions faites par l'expediteur *doivent necessairement lier le voiturier, aujourd'hui le chemin de fer, qui remplace l'ancien mode transport.* Ces conventions tiennent lieu de loi entre l'expediteur et le voiturier, et ne peuvent etre modifiees au gre du receptionnaire, qui refuserait de payer le prix du cammionage." Tribunal de commerce d'Orleans, 11 Juillet, 1849, Rebu et Briere C. Compagnie du chemin de fer de Paris a Orleans.

In the general tenour and rulings of these decision and authorities, in so far as they apply to the present case, I fully concur. I am clearly of opinion that the exclusive employment of any particular carter or carters by the Grand Trunk is incidental, if not absolutely essential, to their business of common carriers, and that, therefore, the Company does not, in this particular instance, stand charged with an illegal act. This I hold to be true under the facts proved in this case, in so far as this exclusive employment by Mr Sheddon goes. I think, moreover, that this right rests upon principles of the common law. But, by a provision in the Railway Clauses Consolidation Act, the Company are empowered to do all things necessary or requisite for the more effectually fulfilling and carrying out the objects of their charter, and I incline strongly to the opinion that this is one of the means of attaining such a result, impliedly granted to the Company. It has been said that although this course may be essential in other localities, yet that it is not so in the city of Montreal, where hundreds of carters are ready, willing and effectually to perform all the cartage in collecting and delivering for the Company. In point of fact, this may be true, but in my view of the law, it is clearly incidental to their business as common carriers, and if so, the Company must, in the administration of the important interests confided to their charge, and in their extended responsible relations to the public, be the sole judges, whether they will follow their present system or revert to the old course of business. They collect and deliver now under special contracts with their customers. In my opinion these contracts are legal, and I cannot declare them illegal, so long as the public at large are not injured, and do not complain, I cannot interfere by injunction as prayed for by the petitioners. The motives of this decision, as embodied in the final judgment of record, will concisely disclose the grounds in law and in fact, upon which my refusal to issue the injunction rests.

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sel, or it might become a means of systematic coercion; and is obviously calculated, in a manner more or less direct, to cause unjust and perhaps unreasonable references, and likewise to destroy that perfect equality in the business transactions of the company, which as a corporation, they are bound to exercis, and strictly to observe towards the public. I will go further, and add that, had I been required, at the instance of persons who had suffered wrong, to issue an injunction to restrain the company in the two particulars last mentioned, I should have probably done so, assuming always that, in addition to individual cases of injustice and hardship distinctly alleged, and as clearly proved, this course was demonstrated to be injurious to the public. The same remark would apply to an applicatiod to restrain the company from levying tolls not sanctioned by the Governor, as directed in the statute. But if there be any parties who have suffered from ihese objectionable modes of working the road, they do not complain to the courts. The seem, from apathy or indifference, or perhaps because the public do not in reality suffer, willing to allow the company to follow its own course. As to the present complainsts, they show no direct personal interest in restraining the company from the commission of these illegal acts. I cannot concur in opinion with their counsel that these infractions of law are the necessary consequences of their doing, through Mr Shedden, their own cartage. Each violation of the law stands alone, and must be viewed separately; and the complainants should have shown that they are directly interested, and also that the public are injured. This they have not done. And as regards these special grounds of complaint, I would also remark here that they do not set forth or prove a single instance in which the law has been violated in these respects; nor in regard to any of these illegal acts and omissions of the Company, is there any specification of time, place, or circumstance. In order to enable me to issue an injunction ordering the Company to desist from these illegal acts, all this was absolutely necessary. Without such allegation, and without such proof, even supposing all the other conditions of individual wrong and public injury to have existed, I could not have interfered. This pretension, therefore, of the petitioner is in my judgment unfounded.

But it is contended that the Company usurp a franchise and privilege not conferred by their Charter, in exercising the business of carters within the limits of the city of Montreal. Now I feel satisfied, whether this right be or be not essentially necessary to their business of common carrier or not, that this is not a franchise or a privilege in contemplation of the statute, and that upon that ground alone I cannot issue the injunction prayed for.

The case, then, in my opinion, is narrowed down and limited to this: The Company, by their own carters exclusively, or through Shedden, carry goods and merchandize for their customers to and from their depots, and to and from the stores and residences of the city of Montreal. And I have to determine whether this course of proceeding be legal or illegal; and if illegal, can I restrain them from doing so. And this brings me to the chief grounds of defence taken up by the defendants.

The objections urged by the defendants may be considered under the following heads:—

1. The complainants, by their petition and the proof adduced, do not disclose a case of public interest, nor any right or interest, on the part of the private persons referred to in the petition to initiate or carry on the present proceedings.

2. The Company have, as common carriers, a right which is incidental to their principal business, to take delivery of, or to deliver outside of the limits of their road, goods which are intended to be or which have been carried upon the railway, and, consequently, that their employment of Mr Sheddon is no violation of law.

In support of the first proposition, it was urged that the Statute, under which the writ in this matter was issued, provides an extraordinary remedy in cases of public inteast, in which Corporations are guilty of certain acts or omissions. It will not be denied that complaints of a private nature against corporate bodies, or those arising from illegal acts or omissions affecting individual interest only, cannot properly be brought under the Act. It was argued by Mr Ritchie that a very grave ground of objection against the petition in this cause is, that it contains no allegations disclosing illegal acts or omissions on the part of the defendants in any way prejudicial to the public interests, nor in what way the rights or interests of the public are affected. Also, that the petition is equally defective in not showing any legal interest on the part of the carters named in it, whether considered as acting for themselves or as also representing others following the same occupation. These persons, it is contended, do not show in what way they have been injured by the alleged course of the defendants. The tolls said to have been illegally exacted by the Company have not been paid by them; and even if excessive, which they are nowhere stated to be, the carters are not prejudiced. That there is nothing in the petition but the vague inference that, if the Grand Trunk Railway Company were not to collect and deliver freight, the carters in whose interest these proceedings are carried on might obtain an increase of business; nor is there anything to show that judgments or orders such as prayed for would be in any degree beneficial to the promoters of the present action. This line of argument bears strongly on the case, for we find that in England it is held that the Court will not interfere to grant an injunction at the instance of the Attorney-General, except in cases of manifest danger of injury to the public interests. The first case cited in support of this view was that the Attorney-General and the Birmingham and Oxford Railway Company — 7, Railway and Canal Cases, p. 972. In that case the Lord Chancellor said: "The Attorney-General appears here in order that the defendants *may be stopped from doing that which is not expressly forbidden by the Act of Parliament*, but unless I was prepared to say that the Attorney-General is entitled, in every case where the public interests may be or are alleged to be neglected, to come into equity, I must hold that in the present case no sufficient grounds have been shown for his interference. Undoubtedly the Attorney-General has a right to represent the public, either in equity or by prosecution at law, in cases where the public interests are exposed to danger or mischief; and, in the course of the argument, several authorities were cited to show that such interference is recognised in equity; but the informations, in all these cases, were directed to the repression of acts which the parties had no legal right to do, and which were not only not authorised to be done, but were, in fact, acts of public nuisance." Even where there has been a manifest violation of law, but no serious injury results, the Court of Chancery will not maintain an injunction. In the case of the Attorney-General vs. the Eastern Counties Railway Company (3 Railway and Canal Cases, p. 337), V. C. Knight Bruce said: "I think there has been an infraction of the law, and that, too, without any favourable circumstances. No case of any great practical inconvenience has been made out, and I do not think it necessary, considering all the matters before me, nor do I think it necessarily the duty of the Court, to interfere by injunction."

In the case of Morton against the Great Eastern and Midland Railway Companies, Chief Justice Cockburn and the other Judges expressed themselves to the following effect:—

"Cockburn, J.—I am of opinion that no case has been made out by the complainant for the interposition of the Court, and consequently that the rule should be disbarged. I agree that to justify a party in calling upon the Court to enforce the provisions of this act, it is not indispensably necessary to show a case of individual grievance; but it is clear that a case of public inconvenience must be made out. It does not appear, even upon Mr Barrett's affidavit, that there is any complaint of a want of sufficient accommodation on the part of the public; and it is clearly shown by the affidavits filed in opposition to the rule that no complaints have been made. I can quite understand that two competing companies may so arrange the departures and arrivals of their respective trains as to operate injuriously to the shorter line and inconveniently to the public. In such a case the Court would be justified in interposing under this act. But it appears here that abundance of accommodation is provided on the Midland line; and though the distance travelled over is somewhat longer no additional cost is incurred, nor any materially greater loss of time sustained by the public. And one very striking fact is that the Great Northern Railway Company, the parties by far the most likely to be injuriously affected by it, so far from complaining, are satisfied with the arrangement existing, and appear by their counsel to oppose the rule. I think we must discharge the rule with costs.

Williams' J.—I also think that we can only be justified interfering where it is made out to our satisfaction that the public convenience requires it. The application of the affidavit shows very slender grounds for the rule; and the affidavits filed in opposition to the rule entirely remove all shadow of pretext for the motion. If the complainant had satisfied me that public convenience did really require that which he asks, and that the accommodation sought could reasonably be granted, I should have paused considerably before I assented to the rule being discharged. But this he has altogether failed to do. Rule discharged with costs.

The case of Beadell against the Eastern Counties Railway Company is as follows:

Prentice moved for a writ of injunction against the Eastern Counties Railway Company, under the Railway and Canal Traffic Act, 17 and 18 Vic. c. 31s2, to restrain them from giving an undue preference to one Clark, and imposing an undue and unreasonable prejudice on the applicant, under the following circumstances:—The complainant was the proprietor of two cabs, which were duly licensed as hackney-carriages; and he complained that the Eastern Counties Railway Company refused to permit him to ply for passengers at their station at Shoreditch, they having for a consideration of £600 per annum paid to them by Clark, granted him the exclusive privilege of taking up passengers within their station. It appears from the affidavits upon which the motion was founded that the company allowed all cabs to enter the station for the purpose of setting down passengers at the booking office, but that, having set down the persons they brought to the station, they were compelled to leave the yard. Reference was made to the case of Marriott 1, C B N S 499 (E C L R, Vol 87) as a case very nearly in point. There, the London and South-Western Railway Company made arrangements at one of their stations, with the proprietor of an omnibus running between the station and Kingston to provide omnibus accommodation for all passengers by any of their trains to and from Kingston, and allowed him the exclusive privilege of driving his vehicle into the station yard for the purpose of taking up and setting down passengers at the door of the booking office; and it was held that, in the absence of special circumstances showing it to be reasonable, the granting of such exclusive privilege to one proprietor, and refusing to grant the like facilities to the applicant, who also brought passengers from Kingston as well as from other places beyond, was a breach of the prohibition and against the granting of undue and unreasonable preference, contained in the statute. (Cresswell, J—That case is very far from being an authority in your favor. Williams, J—There is no suggestion here as there was in that case, that there is not ample accommodation for the public.) There is not; but it is submitted that it is contrary to the spirit of the Act, to give such an exclusive privilege to one cab proprietor, to the prejudice of all others. (Williams, J—In Marriott's case, the decision rests expressly upon the inconvenience inflicted upon the public, not upon the particular grievance to the applicant. Cresswell, J—Besides, there the applicant was prevented by the company from setting down his passengers at the door of the booking office. Here, the only complaint is, that the the applicant is not permitted to ply for hire in the station yard. The case of Barker *vs.* The Midland Railway Company, 18 C B 46, (E C L R, Vol 86,) has some bearing upon this. The Court there held that an omnibus proprietor who carried passengers and their luggage for hire to and from a railway station, could not maintain an action against the company for refusing to allow him to drive his vehicle into the station yard. I am of opinion that the applicant has made out no case for the exercise of our jurisdiction under the statute.

Williams, J—The affidavits upon which this motion is founded do not show that the agreement with Clark is not highly beneficial to the public as well as to the company. And it has been expressly laid down, in a case which has not been cited. In re Barret, 1 C B N S 423 (E C L R Vol 87) that the statute in question was passed for the benefit of the public, and not for that of individuals.

Wilies, J—Concurring, rule refused.

The case of Painter against the London and Brighton---

The motion was founded upon the affidavit of the complainant, which stated that the Directors of the compaay, or their officers at Brighton, had granted to five fly-proprietors at that place, numed, &c., owning together about fifty-six flys. certain privileges and advantages for the entry of the whole of their flys into the terminus at Brighton, for the conveyance of passengers arriving there by all the down trains, in priority and exclusion of all the flys belonging to the other proprietors in the town; the arrangement being that, until the whole of the flys in attendance of the above named persons had entered and obtained fares, no other flys were permitted to enter or approach the platform, or take up passengers, which virtually was almost a monopoly of the traffic, as only on occasions when heavy trains arrived were more flys required than the persons above named could supply: That the fly proprietors generally considered the preferential arrangement above described so made with the persons named, not only unfair towards them, but also very disadvantageous and prejudicial to the passengers by reason of its preventing a proper supply of flys at the terminus, as the fly owners who had not the same privileges, and were prevented entering the station in due turn of arrival, could not afford to wait on the bare chance of a sufficient number of flys of the privileged persons not being there, or of the passengers by any train being more numerous than could be accommodated by the flys of the privileged persons; the consequence of which had frequently been that many passengers had been detained at the station a considerable time, namely until the privileged flys which had obtained fares had been and set down and then returned to the station, or other flys had been sent for and brought up to the terminus. The affidavit then went on to detail particular instances of obstruction offered to the complainant by the servants of the Company, and refusal to permit him to enter into the arrival part of the station for the purpose of obtaining fares, and alleged that the above described arrangement was also prejudicial to the interests of the public, as in many instances it compelled the passengers, although the weather might be wet or cold, to ride in open carriages against their wishes. That the fly proprietors were willing, and had frequently offered to conform and abide by any general rules of the Company for enforcing order and regularity; that if the station were open to all flys without preference, and all were allowed to enter in due course of arrival, the complainant's fly would be in the habit of attending, and complainant believed the flys of the other owners would attend also, and that there would be a much better supply of flys, and that the public would not be subjected to the inconvenience they were often put to under the existing arrangement; and that the complainant believed that the Company's station at Brighton was large enough to admit many more flys and carriages than the privileged parties usually had been in the habit of sending there to meet the trains, and that it would be no inconvenience to the Company if all cabs and flys, without distiotion, were allowed to enter in turn to take up fares in the same manner as the deponent was informed, and believed they did at the Central Station in London.

There were also the affidavits of six other fly proprietors who were similarly excluded from the railway station, and who deposed generally to the inconvenience sustained by passengers from such exclusion.

It was submitted that the affidavits disclosed a clear violation of the statute. (Cresswell, J.—Referred to *in re* Beadell where a similar application was made on behalf of a cab proprietor against the Eastern Counties Railway Company, and refused.) The counsel there agreed that the circumstances of that case were

the public, or be or be not, in the opinion of a majority of the citizens, a convenience to the community, the infraction of the law alone justifies the application of the restraining power of the Court.

Upon the first point, it is unnecessary to say more than that the fact asserted by the Petitioners is clearly and conclusively established. Mr Shedden is the agent or employee of the Grand Trunk, and is employed in the manner and for the purpose set forth in the petition. It is quite true the Company derive no pecuniary advantage from this arrangement, but it is equally certain that the Company have granted to Shedden an exclusive preference, and that he is exclusively employed by them. Whether this proceeding on the part of the Company be in itself illegal or not, and if it be so, whether it is an infraction of the law which the present petitioners can have stopped by an injunction, will come up for consideration in the sequel of these remarks. I may also state that the Company's system of charging, generally, cartage in the regular tolls, on their road, without distinguishing between these charges, is proved as alleged by the petitioners, but no instance is given, or brought under my notice. It is, moreover, established as a matter of fact that the Company are in the habit of charging cartage for collection and delivery, whether the work be done by their own carters, or by those of the assigner or assignee. But here again the petitioners have failed to allege or prove a single instance in which this has been done. It is likewise clear, in my opinion, from the evidence adduced, that in the charge for cartage of freight, to and from their depots, the Company exact the same amount for carting one or two miles that they do for the shortest distance; that in other words the tariff of carting is uniform, irrespective of distance. But again no cases are shown where this has occurred. From this peculiar mode of doing business and dealing with their customers, I think it cannot be denied that, as a matter of fact sufficiently proved, there must inevitably result something very anomalous; that is inequalities, perhaps unreasonable preferences in the tolls and rates which the Company charge the public. Finally, it is proved that a highly respectable body of men are almost entirely, if not entirely, excluded from all participation in a branch of business very extensive and important, and which they contend should be free to them and open to competition. Upon the law of this case a great number of decisions and authorities from England, France and America, in support of the claimant's pretensions, have been cited.

Most of the cases cited by Mr Stuart go to establish the nature and effect of the writ of injunction and point out the cases in which such a remedy will apply, he has also cited authorities to show the limited power of corporations.

"A corporation being the mere creature of law possessing only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence." Trustees of Dartmouth College vs. Woodward, 4 Wheaton, 518: 4 cond. rep. 526—(see page 443.) "That a corporation is strictly limited to the exercise of those powers which are specifically conferred on it will not be denied. The exercise of the corporate franchise, being restrictive of individual rights, cannot be extended beyond the letter and spipit of the Act "of incorporation." Beatty vs. Knowler, 4 Peters, 152, (seee page 444.)

The first case cited was that of the company of proprietors of the Navigation of the River Dun, against the North Midland Railway company. Thus it was held by the Lord Chancellor "that when it clearly shown that a public company is excluding its powers the Court cannot refuse to interfere by injunction." The special circumstances of that case were very different from the present. But what was then held is, no doubt, good law.

The next citation is from Shelford on the law of Railways vol. 1, p. 100. He says "If a railway or other companies go beyond the powers which the legislature has given them, and in a mistaken exercise of those powers interfere with the property of individuals, the Court of Chancery is bound to interfere for the purpose of keeping such companies within those powers (Agar vs. Regent's Canal Co., Coop. 77) "of course it must be a case in which the Court is very clearly of opinion that the company are exceeding the powers which the act has given them [River Dun Navigation Co. vs. North Midland Railway Co. 1 Railway C, 154] "This is a most wholesome exercise of the jurisdiction of the Court, because great as the powers necessarily are to enable the companies to carry into effect works of magnitude it would be most prejudicial to the interests of all persons with whose property they interfere, if there were not a jurisdiction continually open and ready to exercise its power for the purpose of keeping them within that limit which the legislature has thought proper to prescribe for the exercise of their powers whenever a proper case for it is brought before the Court," otherwise the result may be that after property has been taken and destroyed, after a house has been pulled down and a railway substituted in its place, the owner may have the satisfaction at a future period of discovering that the Railway Company were wrong [River Dun Don Navigation Co., vs. North Midland Railway Co., 1 Railway, C. 153, 154; Kemp vs. London and Brighton Railway Co., 1 Railway, C. 399 [note.] "Where a railway company had by its charter the exclusive right to transport and carry persons produce merchandize and all other things.

"That injunctions in substance mandating though in form merely prohibitory, have been and may be granted by the Court is clear. This branch of its jurisdiction may be one not fit to be exercised without particular caution, but certainly it is one fit and necessary under some circumstances to be exercised, under what circumstances it should be exercised must be matter for judicial discretion in each several case. Per Bruce V. C. Great North of England, &c., Junc. Railway Co., vs. Clearance Railway Co., 1 Coll E. C. 521. In that case a mandatory injunction was granted, which in effect compelled a railway company to pull down walls which they had built, in order to prevent another railway company from crossing their line.

The next case is taken from the Georgia Reports, page 221, and would seem to bear directly upon the question under consideration, in the case by the Mayor of Macon against Macon and the Western Railroad Company, in which it was held "that where a railroad company had by its charter the exclusive right to transport and carry persons' merchandise and all other things over their road from Atlanta to Macon, yet the charter conferred no power upon the company to engage in the business of transporting produce through the city of Macon, across OcMulgee Bridge," of their customers (Mayor of Macon vs. Macon and Western Railroad Company, Georgia, 221) I shall have occasion to consider this case hereafter. I come now to the consideration of the case of Boxendale against the Great Western Railway Company. Much reliance was placed upon the case at the argument of the petitioner's counsel. I find the Report to be as follows:—

The Railway Company make one general charge for the conveyance of goods, whether they are delivered at their station at Paddington, whether they are delivered at their receiving-houses in different parts of London, or whether they collect them from house to house in their own waggons. The plaintiffs are the great carriers, Pickford & Co., and they brought this action to recover back sums of money which they had paid for tolls and for carrying their goods on the railway, but which they contended included, in fact, charges for the collection and conveyances of goods to or from the different receiving-houses of the Company, but which they as carriers collected, to the Paddington station, When the case was argued in the Court of Common Pleas, Lord Chief Justice Erle delivered a judgment in favour of the defendants, but the rest of the Court differed from him, and the decision was, therefore, in favour of the plaintiffs. To this was a writ of error. The Court of Appeal, which assembled in the Exchequer Chamber, consisted of Lord Chief Justice Cockburn, Justices Crompton, Blackburn, and Mellor, and Barons Martin, Channel, and Pigot. At the close, the Chief Justice said that they were all agreed that the judgment of the Court below must be affirmed. The matter appeared to turn, not on the Traffic Act, but upon the Company's own Act, which contained a clause for equality of charges which were afterwards renewed. It is said that the charges should be made equally, and the construction had been upon it in a case in the Court of Common Pleas, which applied to a case like the present, and it will not be competent for a railway company to superadd by the tolls they were entitled to charge another charge for collection of conveyance to or from the railway, inasmuch as in doing that they were imposing upon those who did not require their service for such collection or conveyance, and a charge which might be a reasonable charge, as regarded those who require the service, but unreasonable as regarded those who did not, therefore it was an equal charge. That construction having been put upon the Act by the Court of Common Pleas, this Court were all of opinion that that was the right view, and that the jujdgment was correct, and they hoped that in future a charge for those services might not be under the guise or disguise of tolls on a railway—Judgment affirmed.

It is worthy of remark, indeed it is essential that the fact should be borne in mind, that this was an action at law brought by the party aggrieved to recover back from the company sums of money paid them for services they had never performed. It may perhaps be considered astonishing that the case should have ever admitted of a doubt.

In the present case this application is for a writ of injunction against the Grand Trunk Company and complaint is not made by parties who use the road—at least that does not appear from the evidence—or by persons who have employed the company and suffered by irregularity and inequality in the rates and tolls—this case, therefore, cannot be held to have any direct application to the one under consideration. After referring to there authorities.

A number of *arrets* rendered in France in railway cases during the past fifteen years were cited by Mr. Dorion—after a careful examination of these decisions I do not see that they throw much light upon the questions raised in the present proceedings. The first case cited was that the company *du chemin de fer de Strasburg a Bale Pflug & Cie.*, (Dalloz R. P. 1852 part 1 p. 204) Pflug & Co. had obtained an *arret* prohibiting the Railway Company from carrying beyond their line, but this decision was reversed by the *Cour de Cassation* as a violation of art. 5 of the Code Napoleon. If this authority have any bearing, it seems to be somewhat against the pretentions of the petitioner. Three other cases were cited by the first of which (Dalloz R. P. 1852 part 1 p. 226) it was held that a consignee has a right to receive his goods at the station and to do the cartage at his own expense, the *cahier de charges* of the railway expressly reserving to him the right; and by two other cases (Dalloz R. P., 1860, part 2, p. 175, and 1861, part 1, p. 317), the same right in the consignee was recognized, notwithstanding the agreement between the Company and the consignor, as shown by the *lettre de voiture*, was that the goods should be conveyed to the consignee's domicile. The reasons given for these judgments were that the consignor is not the agent of the consignee, and that the *cahier de charges* reserved to the latter the right to receive his goods at the station.

The *arret* cited from Dalloz R. P., 1854, vs. *Chemin de fer*, 110, part 4, seems to have held that the Railway Company had violated a provision expressly prohibiting them from giving special advantages to one company over another. The facts do not appear to correspond with those in the present case, and the question was, in a great measure, one of interpretation of the Company's character.

The only other French *arret* cited which remains to be noticed is found in Dalloy R. P., 1850, part 1, p. 197. In that case damages were recovered by a rival carrier from a railway company for having lowered their tariff without giving the notice and observing the formalities required by law. Many of the principles laid down in these *arrets* it would be impossible successfully to combat, but it is to be observed that they are all applied in cases of a private nature, and where the ordinary legal remedies were sought, by parties bringing actions against railway companies for specific acts. The only decision granting a general prohibition (that first cited above) was reversed by the *Cour de Cassation*.

The value of these modern French authorities will however depend much upon the terms of the particular laws establishing the Railway Companies which were parties to the cases—more of which enactments have been laid before me.

I may remark that in referring to the foregoing *arrets* my attention was arrested by a case reported in Dalloz R. P., 1854, part 1, p. 221, and which was not cited on behalf of the defendants. It was there held that Railway Companies, in establishing offices in cities for the forwarding of merchandise, only exercise a right conferred on them by the *droit commun*, and that their doing so gives rise to no claim for damages on the part of *commissionaries de transport* existing in the same cities, based upon the injury done by the Railway Company to the business of such *commissionariers*

Upon a careful review and examination of the decisions and authorities above cited by the learned counsel for the complainants, it will, I believe, be found that none of these cases involved or turned upon the question raised here, unless it be that the one in Georgia may be considered as bearing directly upon the point. But the circumstances upon which that decision rests are not given, nor has the charter of that Company been laid before me. It may be that in it were some provisions which restricted the operations of the Company, or impliedly prohibited the extension of their business beyond their line of road. I would not, moreover, feel justified in following this precedent, if found to conflict with the decisions in the English or other American courts. With insufficient knowledge of the facts, and amidst a various and fluctuating jurisprudence, such a ruling would scarcely be an authority which I could safely adopt. If it be true, as contended by the petitioner's counsel, that the real complaint in this case is that the company impose the payment of tolls for a service not authorized by their charter, namely, for the carriage of goods in carts in the limits of the city of Montreal, and beyond the limits of their railway, thus offending against the acts creating them, and also exercising a privilege and franchise not conferred by law. Then he contends—the imposition of tolls, including the cartage of goods not allowed by law, is a matter of public interest, requiring the interposition of the public authhority.

Besides, that the carriage of goods by the carters of the company, is a necessary consequence of this imposition of tolls for such service, and the judgment declaring such tolls illegal, must be followed by an interdict preventing them from carting as a clear contravention of the law. This, no doubt, is complained of in the petition; and I am asked to declare that these acts of the company are illegal; but I am not required to restrain them from the perpetration of these acts. The question as to the legality of these tolls and the mode of imposing them, incidentally arise; and I have no hesitation in saying that no railway company have the right to impose a charge for the conveyance of goods and merchandise to and from their stations when their customers do not require such service to be performed; and more especially is this true, when, as a matter of fact, the cartage is not done: and an action at law would lie at the instance of parties aggrieved, to recover back such an illegal charge. It was so held in the case of Baxendale against the Great Western Railway; and in Garton against the same company; also in a more recent case of Garton against the Bristol and Exeter Railway Company. This is a plain infraction of law; but to what extent it has occurred in this branch of the Grand Trunk Company's business, if it exist at all, the evidence does not disclose. Adopting the views of the petitioner's counsel with certain limitations and reserve, I would go further, and declare it to be my opinion, that the system adopted by the Grand Trunk Company of including the charge of cartage in their regular railway tolls, and as they do in most cases,—omitting to distinguish the charge for cartage from the toll on the road,—in fact including both charges in one block sum, is a mode of doing business which the law can hardly sanction. It is, in fact, as contended by the petitioners' coun-

turned. In the event of wet weather we would frequently have these bills returned, marked wet and in bad order for which we had no recourse. I mean by that no recourse against the Railway Company, and they would not allow any deduction even if the goods were wet afterwards by other accidents. I think the system as a whole conduces to the convenience of the merchants of Montreal; and it is the way in which I have done business in Glasgow before I came to Canada for several years. I am not aware that the Grand Trunk Company make it compulsory upon me to do my carting business in this way. I prefer it. I am not aware the Grand Trunk Company would make no abatement on the bills charged for the transport of the goods if I used my own carters and paid them for the transport.

Question—If this system be in reality a compulsory one leaving you no option as to the mode in which you choose to carry on your cartage business in the city of Montreal, would you approve of it?

Answer—I would approve of this system because I believe it to be a practical one for our business.

Mr. Stevenson—I at present hold the appointment of General Western Freight Agent for the Grand Trunk Railway Company. I was appointed General Freight Agent in November eighteen hundred and sixty-three. I have been acting for the last three months as General Eastern Agent as well. The district included in the Eastern Agency extends from Kingston eastward to the termination of the Grand Trunk line and includes the city of Montreal.

In my present position I have the means of knowing thoroughly the working of the entire Grand Trunk Railway system. There are thirteen hundred and seventy-seven miles of Railway open, there are about three thousand tons of freight moved on the Grand Trunk Railway every day, amounting to about eighty-three thousand tons a month. The freight has to be handled at least twice, first when it is loaded in the cars, and secondly when it is unloaded from the cars. We receive at Montreal about four hundred and fifty tons of received freight daily and we forward from Montreal about five hundred tons daily. About six hundred consignees will receive the five hundred tons of forwarded freight that I have spoken of.

The present cartage system was introduced about the month of January, 1863, although it only came into thorough working order in the following spring. One object of the change was to reduce the rates of freight, another was to give facilities and convenience to merchants and shippers in Montreal; a third was to lessen the cost of handling to the Grand Trunk Company, and to afford security both as to the condition and as to the quantity of the property entrusted to the Company at Montreal.

Question—Will you explain whether the present cartage system does or does not conduce to the facilities and convenience of the shippers of freight in Montreal and of the business public requiring to send goods over the railway; and if your answer is in the affirmative, please explain in what way the working of the present system conduces to such convenience, and please state its working in comparison with the previous cartage system?

Answer—I state that the present system conduces more to the facilities and convenience of the shippers of freight than the system before the present cartage system was in operation. In the working of the system prior to January, 1863, when merchants employed their own carters in regard to the forwarded freight, the carter came and took the goods from the merchant's warehouse and carted them to Point St. Charles or the Bonaventure Station, where they delivered a shipping note along with the goods, and if the goods were found to be in good order when received from the carters, what is called a clear receipt was given to the carters, which they took back to the merchants; but in cases where the goods were not in perfect order when delivered at the station by the carters, a bad condition receipt was given, thus throwing the entire responsibility of the safe cartage of the goods between the merchants warehouse and the depots of the railway wholly upon the merchants or the shippers.

In regard to the received freight the responsibility of the receiver was somewhat the same, only that there was more detention involved in the receiving of goods than there was in the forwarding of them.

It will be seen that a system in connection with so large a freight business as is transacted between the Grand Trunk Railway and the merchants of Montreal in received freight involving the carrying of sums of money, large in the aggregate, in men's pockets, no matter however careful and honest he may be, who, in the majority of instances, were obliged at the same time to drive their horses and cars between Montreal and Point St Charles, an average distance from the centre part of the city of not less than two miles, was dangerous and inconvenient, and called for a remedy. The system at present adopted, and which involves no additional charge over what was formerly made prior to the introduction of the present cartage system now carried on by Mr Shedden in connection with the Grand Trunk Railway Company, includes, with some exceptions, cartage rates for the reception and delivery of goods. In regard to the forwarded freight the working of the system is as follows: A merchant having goods to send from Montreal to any part of the Canadas or the United States, has merely to go to the office of Mr Shedden in McGill Street, and leave Instructions for the number of trucks or double teams he requires. The trucks, carts or waggons are then immediately, or as soon after as practicable, sent to the merchant's warehouse requiring them. The merchant then delivers to the teamster the consignment note or shipping directions, signed by himself or some one in his employ, and made out on the form supplied by the company, on which is entered to be forwarded. The merchant also writes out a receipt which contains the articles enumerated in the consignment note, and is also on the form supplied by the company for the purpose. If the teamster finds that the goods delivered to him are in accordance with the receipt, he signs it and takes his freight, together with the consignment note, to the Railway Station. The merchant by this system receives the receipt at his own door when he delivers the property, and his responsibility is then at an end. As regards received freight—freight arriving at Point St. Charles, and on which the cartage is included in the tolls charged, is generally loaded direct from the cars on to the carts and waggons of John Shedden, arrangements being made for the requisite number of teams to be in waiting at Point St Charles in the morning when the men go to work. The goods are then taken immediately to the merchant's warehouses, where a receipt is obtained for the goods, and the money is paid to the carter, who takes it and gives it to Mr. Shedden, who in turn hands it over at the end of each week to the Railway Company less his charge for cartage, or it may be in instances where satisfactory arrangements are made between the merchants and Mr Shedden, that the carter does not collect the freight, but that Mr Shedden's office clerk goes round and collects it. The merchant is not obliged to go out of his warehouse to pay his freights, nor is he called upon to give a receipt for his goods until they are delivered to him in his own store.

In regard to the working of the system as respects the convenience of the Railway Company—I may remark that in conducting the affairs of a Railway of such magnitude, an economical system of moving and handling freight is indispensable in the interest of the bondholders and of all others interested in the prosperity of the Company. In order to conduct the business of the Station with due regard to safety, it cost the Company under the system when the merchants employed their own carters at the rate of thirty-five cents per ton for what is termed the handling service; that is the cost of the checkers to check the freight, and the porters to receive it from the trucks, weigh it, and load it in the cars. This is at Bonaventure street. Under the new system it only costs them on an average eighteen cents per ton, making a saving of sixteen cents per ton.

William Smith, merchant, declares: I am a member of the firm of Stark, Smith & Co., manufacturers of tobacco in this city. We do a pretty large business in our line. I have been in business in Montreal for the past ten years, about three years of which has been in the tobacco trade. I am acquainted with the working of the present cartage system by the defendants, and carried out by Mr John Shedden.

Question—Will you state from your knowledge and experience of the present cartage system, whether or not it conduces to the convenience of the business public of Montreal in the forwarding and receiving of Railway freight?

Answer—I think it is more convenient than the old system. Under the present system we get our bills of lading signed at our own doors, and our goods delivered. So far as the experience of our firm goes, the present system works satisfactorily. All the raw tobacco we use comes over the railway, and we also send the manufactured article over the railway, although a large part is sold in Montreal. I think the introduction of the present system is a convenience to the trade.

Champion Brown, boot and shoe manufacturer, says:

I am a member of the firm of Brown & Childs, boot and shoe manufacturers in this city. I believe we have the largest manufactory in the city in our line. I have been in business in Montreal for upwards of 20 years. I am acquainted with the present carting system adopted by the defendants and carried out by Mr Shedden.

Question—Will you state from your knowledge and experience of the present cartage system whether or not it conduces to the convenience of the business and public of Montreal, in the forwarding and reciving of railway freight.

Answer—Yes, I think it does. The carters call at our place of business, and whenever goods are to be shipped, are counted and delivered at the door, and the necessary papers and bills of lading are signed there. The goods that we receive over the railway are also received at our store. So far as my experience goes, the system as a whole works satisfactory.

Thos Workman, Esq., merchant, thus states his opinion:

I am a member of the firm of Frothingham & Workman, hardware merchants, of this city. I have been in business in this city for about 23 years. My firm does a large business in the hard ware line. I am acquainted with the present cartage system adopted by the defendants, and carried out by Mr Shedden, and the firm has occasion constantly to send and receive goods by railway.

Question—Will you state from your knowledge and experience of the present cartage system, whether it does or does not conduce to the convenience of the business public of Montreal requiring to send or receive goods by the railway.

Answer—We find it very convenient, inasmuch as we get receipts for goods forwarded on our own premises. I think we have less trouble under the present system than previously, when we had to employ general carters, and get our receipts signed at the station.

In cross-examination he says that previous to this arrangement, we had our cartage done to our satisfaction by the city carters. It was equally as satisfactorily done as by the present system, with the exception that we now get our receipts signed on the prmises.

Sixteen other witnesses were examined by the company, and they are, I may say, unanimously of opinion that the system complained of by the Petitioners has proved and still proves a great benefit and convenience to the public. After considering this conflicting testimony with great care, I have no hesitation in expressing the opinion that it is proved that the collecting and delivering freight, merchandize, packages, &c, by the company's carters, is a convenience and beneficial to the public. It must, I think, be obvious to every dispassionate and unbiassed mind, that, if not absolutely necessary to carry on the business of the company, yet that their system in this particular, and wholly irrespective of some very objectionable features to be adverted to hereafter, must be highly useful to their customers; and it appears to me, moreover, that this opinion is fully corroborated by the evidence adduced by the defendants. But the complainants contend that public conveniences alone is not the question here. Assuming that the public at large are benefitted by this arrangement, there still remains the complaint by the Petitioners.

That the Grand Trunk, particularly by the occupation of common carters in and within the limits of the city of Montreal, and by the charging of tolls including cartage rates, and by the absence of any By-law authorizing any tolls to be collected approved of by competent authority, *have offended against the provisions of the Act and acts creating, altering, renewing, or re-organizing them as a corporation, and have exercised and assumed to exercise franchises and privileges not conferred upon the corporation by the Act or acts*—or by any law, and have exceeded the capacity and jurisdiction conferred by law on the corporation, and illegally assumed powers and privileges beyond, and in addition, and contrary to those which by virtue of the act or acts, creating, altering and renewing or re-organizing said corporation, were conferred on the corporation, thereby affecting the public interest to an extent sufficient for all the purposes of this Petition.

Before proceeding to consider at length the arguments and the authorities offered by the respective counsel of the parties, it may be proper to dispose at once of one point in this case. It was formally alleged by the complainants that the company have no by-law regulating and establishing the tolls upon their line of road, and that if such by-laws have ever been passed they have never been submitted to, or been approved of by the Governor in Council. To this the company replied that such by-law had been passed and sanctioned by the Governor according to law. Now the defendants have wholly failed to sustain this averment by proof, and, in the absence of such proof, I must assume as true, that there has been a great and serious omission here.

This no doubt is a very grave irregularity, amounting to a violation of law, and the sooner it is remedied, and the express requirements of the Statute are complied with, the better.

It has been urged, however, by the defendant's counsel that I have nothing to do with this alleged infraction of the law on the present occasion.

But without anticipating opinions which will receive a more suitable expression as the authorities and decisions applicable to the case are more fully developed and examined, I come now to the consideration of the law as presented at the argument by the respective counsel who have submitted the case with so much ability and learning.

Mr. Stuart's propositions upon the facts, as proved on the behalf of the Petitioners, may be stated as follows, viz:

1st. It is clearly proved that the company, through Mr. Shedden, their subordinate agent, or *employé*, exercise and use the occupation of carting for hire to and from their depots within the limits of the city of Montreal.

2nd. That in doing so, it is established as a matter of fact, that the company is guilty of an infraction, a violation of law, because their charter does not confer on them any such right, privilege or franchise, but on the contrary limits their operations to their line of railroad.

3rd. That in addition to this violation of law, it will be seen that they in this way exercise a monopoly which is directly detrimental to the master carters of Montreal; and both for that reason, and because such an occupation is a violation of law, the case is one of public interest, and concerns the master carters and the public at large.

4th. That the carrying on the business of carters by the Company under the system pursued by them, and as proved, necessarily involves a variety of distinct violations of the law, such as are fully enumerated in the conclusions of the Petition, and each and all of which, whether considered separately or combined, in one continuous, open and public transgression of their charter, brings the acts of the Company under the provisions of the Statute, and imposes upon me the duty to restrain them from a course of proceeding at once illegal and of the highest interest to the public generally, and to the Master carters of this city in particular.

5th. That whether these open and public violations of the law conduce to the advantage of

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The special demurrer is therefore dismissed with costs. There remain the three pleas above referred to, and the answers to them, which are general.

Upon this issue the parties have proceeded to *Enquete*, and it becomes essentially necessary that the evidence adduced should be now carefully considered. The most important testimony on the part of the Petitioner will be found in the depositions of the following witnesses:—

Alexander McGibbon says—I have been doing a considerable business as a grocer in the city of Montreal, wholesale and retail, for the last nine years, and I have frequent occasion to use the Grand Trunk Railway Company in both importing and exporting merchandize. For the last eighteen months and upwards, the Grand Trunk Railway Company have charged an uniform rate of tolls for the transport of goods and merchandize from other places in the Province to the city of Montreal. They deliver the goods at my store without making any special charge for cartage They also cart the goods from my stores to the Railway station without making any special charge for cartage. These tolls are uniform and the same, whether carted at my expense by my own carter or by the defendants by persons employed by them for that purpose. This is their manner of dealing with the merchants of Montreal generally.

Mr Damase Masson says: I have been doing business as a wholesale merchant in the city of Montreal for a great number of years, until about November, 1861, when I retired in favor of my sons, since which time I have constantly attended at the store about in the same manner as when I was directly interested. The firm under the name of D. Masson & Co., import and export goods and merchandize by the Grand Trunk Railway Company of Canada. For the importation of merchandize and goods they charge, and the ffrm pay them tolls for the transport of goods and merchandize from distant places to the city of Montreal. They deliver those goods at the stores without making any special charge for cartage. These tolls are uniform and the same, whether carried at the expense of the receiver of the same by his own carters,or by the defendants by persons employed by them for that purpose. It is a matter of public notoriety that they deal in this manner with the merchants of Montreal generally. The amount of freight now charged is a higher rate than that previously charged before they performed the cartage of the goods.

Olivier Bouchard states: I have been a Sergeant of Police for two years and upwards, and am so still. It became my duty in the years 1864 and 1865 to issue the licences to carters in the City of Montreal. In 1864 and 1865 I issued licences to one John Shedden. Upon a reference to my book, which I have with me, in 1854 I find there were seven licenses issued on the 1st of May to John Shedden for trucks with single horses attached, and on the 6th of May of the same year, seventeen double horse heavy waggons. At other periods of the year he took other licenses. I am not able to say how many.

In May, 1965, John Shedden took out licenses for thirty-five trucks and single horses. No one is allowed to exercise the occupation of carter in the City of Montreal without obtaining these licenses. He also took out license for twenty-six heavy waggons with two horses attached. He paid the tariff rate for these licenses.

James Power Cleghorn says: I am in the employ of J. G. McKenzie & Co., a large wholesale dry goods house in this city. I am one of the principal clerks, and have been for the last seven years, as general manager of the business. I have the control of the cartage business of the firm. I am familiar with the present cartage system of the Grand Trunk Company, and so far as our business is concerned, I consider the system inconvenient, and we would infinitely prefer the old cartage system.

In shipping goods, we have often, during the evening before, packed enough of goods to entirely block up our packing rooms. Under the old system, the first thing in the morning, after opening, our carters were sent for, the goods shipped, and our packing rooms cleared, ready for going on with packing again. Under the present system, the Grand Trunk carters are for say for elen o'clock, and they make their appearance at one, greatly to our inconvenience. The reasou of their delay is manifest, because all other houses are likely to be in the same position as ourselves, all anxious to have their goods shipped early in the morning. The old system we prefer, again, because, during wet weather,or appearance of rain,the Grand Trunk carters will not take goods for shipment, because they refuse to take the risk. Under the old system, our own carters would, if it were only a shower, remain until it was over, and remove the goods at our convenience, we having tarpaulins and other conveniences for the protection of our goods at our own risk. Again we prefer the old system, because during the spring receiving season, that is, our goods coming via Portland, the old plan was, so soon as we were advised of our goods being to hand our entry was at once passed, one or two of our storemen sent to Point St Charles, and with our carters, laid aside our goods as landed from the cars. In the present sysstem we have to take our chances with others in getting our goods early, which, to do so, is of great importance to us during the selling season.

The Hon Louis Renaud says:—I am and have been for the last 20 years and upwards, in business in Montreal, principally in provisions and produce, in which line I have done a very large business. In fact, as large a business as any house in Canada. I am acquainted with the present cartage system of the Grand Trunk Railway Company. I found the old system of carting more convenient than the present system, and, indeed, for the trade generally, in my opinion.—My reason is, that if a customer of mine, living in the Townships, or any other place, sent me an order for pork, flour or grain, he would write me that he would send his horse, sometimes 20 or 30 miles, or more, if I ship the order on such a day; and it has happened that the stuff was not shipped, because I could not get the Grand Trunk carters to come in time, they were so busy. If I had shipped in the way we used to do by my own carter, or another from the market if he were too busy, my customer would not have lost two or three days waiting, and the expense attendant thereon. I have been upon one occasion to the Grand Trunk requiring cartage, and they failed to send them in time, so that I had to employ carters at my own expense. I have had occasion to send my clerk for cartage frequently, and on many of those occasions the carts have not come in time.

Victor Hudon says:—I am a wholesale merchant, dealing principally in groceries and produce, and have been so in the city of Montreal for 20 years and upwards. I know the present cartage system adopted by the Grand Trunk. We prefer our system, that is, the system of employing our own carters instead of the Grand Trunk carters. We then could both transport and receive our goods at the times we desired. I found the old system of cartage more convenient than the new one, and if I had the privilege I would return to it.

George Thompson testifies:—I am and have been for many years in the employ of Joseph Tiffin & Sons. They carry on a very extensive business as wholesale grocers. I am familiar with the present cartage system adopted by the defendants. We find it very inconvenient, and would be glad to return to the old system of cartage. I believe it to be inconvenient to the trade generally. In the first place, the Grand Trunk carters choose their own time, both for collecting and delivering freight, and they come frequently at inconvenient seasons. We also have to furnish labor to load the carts, while, with our own carters, there was no such necessity. We are receiving to-day, for instance, one hundred hogsheads of Molasses, and upwards, through the Grand Trunk carters. We will be obliged to keep a gang of helpers to help the carters for the whole day, whereas, if we had the privilege of using our own carters it would not take more than half the day.

William Stephen gives his evidence as follows:—I am one of the firm of William Stephen & Co, wholesale dry goods merchants in this city. The firm has been in existence for some 30 years and over. I know the cartage system adopted by the Grand Trunk for about two years. The freight is carted by the Grand Trunk carters, the forwarded freight we cart by our own carters. We find it the more convenient in a certain measnre. If the Grand Trunk carriage was made a separate charge, we most decidedly would do our own cartage. One reason for which we prefer our own carters is, that we are enabled to send off the stuff as it is ready, instead of filling up our packing rooms. We cannot depend upon the Grank Trunk carters coming at the time appointed.

George Chapman says:—I am, and have been, for the last fourteen years, in the employ of Messrs Maitland, Tylee & Co, wholesale grocers and wine merchants of this city. They do a very large importing trade here. I am familiar with the cartage system adopted by the Grand Trunk for the last two years or thereabouts, and have found it very inconvenient, and infinitely prefer the old system of using our own carters. I don't wish to be positive, but my opinion is that it is very inconvenient to the trade generally. In the first place, merchants have to suit their time to the convenience of the carters, by which means the premises get blocked up with goods prepared for shipment, having frequently to send two or three times before carters can be obtained. This is especially inconvenient when goods are being received from ships in port, as it is often necessary to arrange for deliveries at one time of the day and for receiving goods at another. This cannot be done when carters cannot be obtained at the time when they are wanted. I have often sent to the Grand Trunk cartage office, complaining of the delay in sending their carters to our store.

Richard Holland declares:—I have been in Montreal for the last sixteen years. I am acquainted with the present Grand Trunk cartage system. I prefer the old system of employing our own carters, considering it more convenient.—When I get my goods by the Grand Trunk Railway carters, they suit their pleasure for delivering and receiving; whereas, if I were permitted to use my own carter, I would suit my own time. I may mention that I am occasionally put to the expense of hiring other carters, in order to despatch my business. Occasionally I require my goods to fill orders and cannot wait their convenience. I consider the interference of the Grand Trunk, by forcing their cartage upon me, an interference with my rights to manage my own business as I think proper.

Several other witnesses were examined on the part of the Petitioner, and they are generally of opinion that the system is objectionable; and the tenor of their testimony is much to the same effect as those already published.

On the part of the Defendants, a very extended *enquete* was made, and the principal features of that evidence will be seen by the following extracts:—

Thomas Symington, Agent, declares,—I have been in the employ of John Shedden, collection and delivery agent of the Defendant's in Montreal, for about two years and a-half past, that is during all the time he has been employed here in the cartage of goods in connection with the Grand Trunk Railway Company, and I have a knowledge of Mr. Shedden's business; and of the arrangements existing between him and the Company. The horses, harnesses, vehicles, and all other things employed by Mr. Shedden in his business of cartage in the city of Montreal, belong to him, and the Defendants have no interest whatever in them. Mr. Shedden has taken out licenses, in accordance with the city regulations for the vehicles that he employs in his business. Mr. Shedden alone derives the profits accruing from the cartage of goods to and from the Railway Stations. All the goods that Mr. Shedden carries to and from the Railway Stations under his arrangements with the Defendants,are goods that have been carried, or are intended to be carried, as freight upon the line of Railway of the Defendants. The rates of freight charged by Shedden, as agent of the Defendants, and which include cartage for goods to be carried on the Railway, are invariably consented to by the shippers of the goods, and they sign what is called a consignment note of such goods. In the arrangement between Mr. Shedden and the Company, he acts in the collection and delivery of freight as the agent of the Company; but in respect of the cartage, he acts for himself alone, and receives rates charged for cartage for his own benefit. We settle accounts once a week with the Company, and Mr. Shedden then retains the cartage rates, none of which are paid to the Defendants at all. The present cartage system has been in operation about two years and a-half. The system as a whole, works very satisfactorily. It is a more economical way of handling freight sent from or received at Montreal by Railway. The public generally, so far as I can find out, like the present system better than the old one. I have had about four years experience on Railway lines in Great Britain. The same system, so far as I know, prevails in Great Britain, in the cities and large towns, that has been adopted by the Defendants, and is now in operation here. The same may be said of the cartage system adopted by the Great Western Company in Upper Canada. Mr. Shedden does the cartage and it is not done by the Defendants. The letters G. T. R. on the waggons owned and used by Mr. Shedden in his cartage business, indicate that the waggons are used in connection with the Railway in the carriage of goods to and from the stations at Montreal. These letters are not intended to indicate that the waggons belong to the Grand Trunk Railway Company. Mr. Shedden has no partners. The Defendants established the rates of freight to be charged for the transport of goods and merchandize on their Railway, and for the last two years these rates so established by Defendants include the cartage of the goods in the collection and delivery in and within the city of Montreal. The exception to this rule will be found in the tariffs fyled in this cause, being Flour, Grain, and Lumber. The invariable consent to the rates of freight mentioned by me in my examination in chief, is to be found in their signing the consignment notes. We insist upon obtaining a consignment note signed before removing the goods from the stores. Of course, if we receive instructions in any particular case to deviate, we obey them; but I have no recollection within the last two years of any shipper declining to sign them.

Sigismund J. Doran says.—Since April of last year, I have been Freight Agent for the Defendants in Montreal, and during that time John Shedden has been agent of the Company for the delivery and collection of freight in Montreal.

Question—From your experience in connection with the Railway in Montreal, and from your knowledge of the working of the present cartage system adopted by the Defendants in the conveyance of goods to and from their stations in Montreal, will you state whether this system does or does not, on the whole conduce to the convenience and advantage of the business public of Montreal.

Answer—So far as my knowledge is concerned, if it was not conductive to the interests of the public, I would have heard complaints, and during the time I have been Freight Agent for the Defendants, I have never heard complaints from any person doing business with us against the system, with the exception of Hudon & Co. I consider that it is greatly to the interest of Merchants doing business with us to receive a clear receipt for their goods at their store or place of delivery to us, and equally so that they do not give us a receipt for goods consigned to them until the goods are actually delivered in their warehouse.

The freight business of the Defendants at Montreal is extremely heavy. The system at present pursued by the Defendants gives them much greater facility in keeping their freight sheds clear than if the cartage was done by city carters. This matter is an important one so far as the Defendants are concerned, as by keeping the freight sheds clear, it enables the freight to be handled much more economically. I cannot say whether it would be practicable to revert to the old system; but it would be decidedly more inconvenient to both the Defendants' employees and to the Merchants who deal with us, and so far as I can say, I consider that by the old system of cartage our present large freight business could not be performed satisfactorily.

Andrew Robertson, merchant, states—I am now in business in Montreal in the Wholesale Dry Goods line, under the style of A. Robertson & Co. I am doing a pretty good business in the Dry Goods trade, and have been in business for about 12 years past in Montreal.

Question.—Will you state whether or not you are acquainted with the system of carting goods to and from the Railway Station in Montreal now and for the last two years adopted by the Defendants, and if so will you state whether or not the said system conduces to the public convenience in the forwarding and receiving of Railway freight?

Answer—It does in our business. In the first place we get our bills signed at the door; goods when shipped by the carters—previous to this system we had to wait for the bills till the carters re-

ral, as broad, and as advantageous an interpretation as was necessary, in order to reach the objects contemplated by its acts, and to put in force all its different provisions according to its true sense, intent and meaning. In form the intention of the legislature is not doubtful; it is even admitted in a sense favorable to the dissidence of the non-resident. And here is how the judicious Dwarris resumes the teaching and the jurisprudence of England. "The real intention, when collected with certainty, will always, in statutes, prevail over the literal sense of the terms. A thing which is within the object, spirit and meaning of a statute is as much within the statute as if it were within the letter." The dissidence of the Catholic or Protestant non-resident "is within the object, spirit and meaning of the statute." A jurisconsult, whose opinions should have the greatest weight, but principally in the study of the rules which should be followed in the interpretation of the laws,—the learned Domat taught that it was by the spirit and intent of the laws that they should be heard and applied. To judge properly of the sense of a law we should, he said, consider what is its motive, what were its inconveniences and its utility. Thence it followed that if some of the terms or some of the expressions of a law appeared to have a different meaning from those which were evidently fixed by the tenor of the law in its entirety, we should seize these latter and reject the others which were in the terms, but contrary to the true intention of the law. With the liberty of creeds and their equality before the law, the rights of the minority are as absolute as those of the majority. The true intent of the law seems to be the equal protection of these rights; the other sense the law is capable of must be rejected wherever it seems contrary to its real object, although it is evidently couched in much the same terms. An important observation on this part of the subject would be omitted if we did not recall what was so often shown by the most eminent magistrates of France and England. When it is proposed to set aside the principles of eternal justice or to elude fundamental rules, the law expressing the intention of the legislator must be expressed with irresistible clearness to induce the tribunals to suppose that he really has the intention to effect such a result. The present organization was established for the purpose of guaranteeing the Catholics as well as the Protestants from the fear and possibility of seeing their contributions employed in propagating doctrines which they hold in repugnance. The law would destroy the law if by its application under any circumstance whatever it did away with this guarantee. The reasons of inconvenience urged by the plaintiffs in support of their pretensions cannot be supported, inasmuch as their system does not provide any remedy, can only tend to hinder public education and would inaugurate everywhere the provocative policy which the Legislature has endeavored to prevent. It would be as just in Canada as it is in England, to say with Baron Parke, "We must always construe an act so as to suppress the mischief and advance the remedy according to the true intent of the makers of the law."

The examination which I have made into this subject, leads me to believe that it is demonstrable to evidence that the right of the rate-payer to superintend the employment of his rate in public education is the corollary of his right to the exercise of his religion and of his faith; and that the law examined as to its object in its whole, and in its details, has consecrated so just and necessary a principle to peace, in a country where races find shelter in their contrasts, and religions protect one another by their diversities.

It also seems to be demonstrated that a strictly legal interpretation of the text of the law, followed in its Parliamentary as well as in its usual and legal sense, cannot allow or admit an exception to this right, which flows from our civil and political constitution as well as from the natural law.

THE GRAND TRUNK AND THE CARTERS.

Recs 1405

His Honour Mr. Justice Monk delivered an elaborate judgment in Chambers in this case, on Saturday, which we give below. The Petitioner was the Hon. G. E. Cartier, *pro Regina;* the Defendants, The Grand Trunk Railway Company of Canada. His Honour said:

This is an application made to me at the instance of the Attorney-General against the Grand Trunk Railway Co'y of Canada for an injunction to restrain that Company from the exercise of the business of common carters within the limits of the city of Montreal. It would appear from the evidence adduced, that the Grand Trunk Railway Company employ exclusively a Mr. Shedden to collect and deliver freight within and near the city of Montreal. That the master carters of this city are excluded from all participation in the business of collecting and delivering for the Grand Trunk; and consequently it is sought, upon the ground to be hereafter fully stated, to restrain the Company from the exercise of this privilege or monopoly, carried on in this way through the instrumentality of Mr. Shedden.

Before proceeding to develope the particular facts of this case (which is one of considerable importance to the parties in the cause, and also to the public), and to adjudicate upon the points submitted, it may be proper to remark that in England this proceeding is by rule, and the cases are tried upon affidavits. In this country we have special legislation on the subject. These provisions of law are found in the 88th chapter of the Consolidated Statutes of Lower Canada, and are to the following effect:

"Whenever any association or number of persons act within Lower Canada as a Corporation, without having been legally incorporated, or without being recognised as such Corporation by the Common Law of Lower Canada; and whenever any Corporation, Public Body, or Board offends against any of the provisions of the act or acts, creating, altering, renewing, or reorganizing it, or violates the provisions of any law in such manner as to forfeit its charter by misuser; and whenever any such Corporation, Public Body, or Board has done or omitted any act or acts, the doing or omitting of which amounts to a surrender of its corporate rights, privileges, and franchises; and whenever any such Corporation, Public Body, or Board *exercises any franchise or privileges not conferred on it by law*;—it shall be the duty of Her Majesty's Attorney-General for Lower Canada, whenever he has good reason to believe that the same can be established by proof, *in every case of public interest*, and also in every such case in which satisfactory security is given to indemnify the Government against all costs and expenses to be incurred by such proceeding,—to apply for and on behalf of Her Majesty to the Superior Court sitting in the district in which the principal office or place of business of such persons so unlawfully associated together, or of such Corporation, Public Body, or Board is situate, or to any judge of such court in vacation, by an information, declaration, or petition, *requete libellee*, supported by affidavit to the satisfaction of such court or judge, complaining of such contravention of the law, and praying for such order or judgment thereon as may be authorised by law." Thereupon a writ issues, and the defendants are called upon, as in all the other cases, to answer the declaration or petition, and the subsequent proceedings are similar to those in ordinary suits at law.

Thus it will appear that an essential difference exists between the course adopted in England, and that which is incumbent upon parties seeking to enforce this remedy in Lower Canada. Though the mode of proceeding is to this extent modified, and is more completely adapted to our usual forms of procedure, and although the statute contains some very special provisions, yet the common law, in so far as its principles are applicable to the present case, may be stated to be the same here as in England.

The Grand Trunk Railway Company of Canada was incorporated, altered, and amended under a variety of statutes to which it is not necessary to refer at the present moment; and to this Corporation the clauses of the Railway Consolidation Act, 14 and 15 Vic. cap. 51, are applicable, and some of which will have to be considered hereafter.

After these preliminary observations (rendered in some degree necessary to test and fully comprehend the decisions and the authorities to be referred to in the sequel), we come to the consideration of the important case before us. And here I may remark, that I consider it proper to review the pleadings and evidence at greater length than in ordinary cases, because the question is new here, and of public importance; and moreover it is desirable if new in fact, that the parties whose rights and interests are to be affected by my judgment, should rest satisfied that no essential point has escaped the attention of the Court.

The Petition sets forth several distinct charges against the Grand Trunk Railway Company. Some of these charges are general—some specific; and they may be succinctly stated to be as follows, viz.:

1st. That the Grand Trunk Railway Company of Canada exercise the occupation of carters in and within the limits of the city of Montreal, and carry and transport for hire, goods and merchandize from their depots to and from the stores and residences of the citizens of Montreal.

2nd. That the Company charge tolls for the transport of goods and merchandize from Montreal to places on their line of Railway, and that such tolls are uniform, and the same, whether the goods and merchandize are carted at the expense of the sender and receiver of the same, by his own carter, or at the expense of the defendants by persons employed by them for that purpose, and paid by them from and out of the tolls so charged.

3rd. That the defendants openly, publicly and in violation of law, have used for a year and upwards, and do now use carts and sleighs, with horses attached, for the transport of goods and merchandize to and from their depots, with the letters G. T. R. printed thereon, to wit: Grand Trunk Railway, in and within the limits of the city of Montreal, and do exercise the occupation of carters in and within the city.

4th. That the defendants demand and obtain payment of tolls, which are not payable at the same time and under the same circumstances upon all goods; but that, on the contrary; they exercise an undue advantage, privilege and monopoly, injurious to the carters of Montreal and the citizens, and which could not by law be authorised by any by-law, legally enacted or approved by competent authority.

5th. That the tolls enacted by the defendants for the transport of goods and merchandize on their Railway include cartage rates, and are levied without the authority of any by-law to that effect, approved of by the Governor in Council, and that the same has not been published in the Canada *Gazette*.

6th. That the defendants have not printed and stuck up in the office or place where the tolls are to be collected, or in every or any passenger car, a printed board or placard exhibiting all the tolls payable, and particularizing the price or sum to be charged, for the carriage of any matter or thing.

And the conclusions of the Petition ask for seven different orders or judgments, viz: that it should be adjudged and declared,

1st. That the Company have exercised a franchise and a privilege not conferred by law.

2nd. That the Company have offended against the provisions of the Act or Acts creating, altering, renewing or re-organizing the said Corporation.

3rd. That the defendants have exceeded the powers, capacities, franchise and jurisdictions conferred upon them.

4th. That the imposition of tolls, including the cartage of the goods and merchandize, in and within the limits of the city of Montreal, may be declared illegal, and in contravention of the law.

5th. That the imposition of tolls without the authority of a by-law, approved of by the Governor in Council, &c., be declared illegal.

6th. That it be declared that the defendants carry on the business and occupation of common carters within the limits of the city of Montreal, and that their doing so is illegal.

7th. That the Company be enjoined to abstain from using the occupation of carters within the city of Montreal, and be restrained for carrying goods and merchandize from and to their depots to and from the residences and stores of the citizens of Montreal.

The defendants met the action by a motion to quash the Writ and Petition, by a special demurrer, and by three other Pleas amounting to the general issue. It is necessary to advert to this preliminary plea. The reasons assigned in the demurrer (omitting the first reason) are:—

2nd. Because the said allegations of the said Petition are wholly vague, uncertain and indeterminate, and the pretended offences or contraventions of law therein alluded to are not particularized or specified as to time, place, or circumstance, and no specification of the alleged acts or ommissions, intended to be proved or relied on, is contained in the Petition.

3rd. Because it is not alleged in the Petition that any person or persons was or were injured or defrauded, or, if so, in what manner any such person or persons was or were injured or defrauded, by any of the alleged acts or omissions of the defendants.

4th. Because the Petition illegally combines and includes several pretended illegal acts and omissions of defendants; some of which are properly the subject of a writ of *Mandamus*, and others of a process or proceeding in the nature of a writ of prohibition, and which require separate pleas and issues, and call for a separate and distinct orders of judgments, and cannot by law be contained in one complaint or Petition.

5th. Because no interest whatever is disclosed by the Petition, on the part of the private persons named therein in the pretended illegal acts or omissions of the defendants, nor in the maintenance of the conclusions of the Petition.

6th. Because the conclusions of the Petition are wholly vague and insufficient, and judgments and orders are thereby illegally demanded, not upon alleged distinct and defined acts, defaults, or omissions of the defendants, but upon general abstract questions of law, in the decision and determination of which no interest is alleged by the Petition on the part of any person or persons, and a judgment upon which questions would be of no practical force or effect.

7th. Because the defendants were and are, by law, common carriers for hire of goods and passengers, and, as such, had and have the right for the convenience of the persons employing them, as well as for their own convenience, in the ordinary course of their business of common carriers, and as incidental thereto, at any place in Montreal, to receive goods for carriage, or deliver goods which have been carried, on the Railway.

8th, Because in and by the Petition, no infraction is shown on the part of the defendants, of any of the rights conferred, or obligations imposed upon them by the Acts incorporating or referring to them, such as to justify the conclusions of the Petition.

After hearing upon the motion as well as upon the demurrer, I gave the following judgment on the 26th of April last:—

"Having duly considered the motion of the "12th day of April instant, made on behalf of "the said defendants, that the writ of summons "issued, and the Petition fyled in this matter, "and each of them, be quashed and set aside. "Having examined and considered the reasons "urged in support of the said motion and heard "the parties by their respective Counsel upon "the said motion, I do dismiss the said motion "with costs; and, having considered the special "demurrer or *defence en droit* pleaded by the defendants, to the Petition and demand of the "said Petitioner, and heard the parties, I do order, *avant faire droit* upon the said demurrer, "that evidence be adduced."

I was then, and I am still of opinion, that the motion to quash should be rejected, and I have no hesitation in saying that the special demurrer is likewise unfounded. So far as this complaint goes, I think the Petition is prepared with great skill and with marked ability. The allegations set forth the whole case with force, clearness and precision. It may be that here and there, in the statement of the facts, and the matter of complaint some vagueness and want of detail may be apparent, and a slight redundancy of averment occasionally may be found. But this superabundance of allegation—the accumulation observable in the conclusions of the Petition, do not, in my judgment, impair or weaken the point and effect of the whole. The case is fairly and fully stated, and in such a way as legally to force the Company upon their defence, and to bring the cause up for adjudication upon its merits, more particularly as all the points of law urged [illegible] come up under the

IN THE SUPERIOR COURT, DISTRICT OF ST. JOHNS.

The School Commissioners of St. Bernard de Lacolle, vs Joseph C. Bowman.

In giving judgment in this cause Mr. Justice SICOTTE said,—The liberal character of our Legislature in religious matters at all times is a fact which cannot be questioned. By its permanence it has brought about, among the races and the different religions which exist on our soil, sentiments of confidence; a mutual spirit of respect, of good will and charity, confidence and peace. Whenever the law has to be applied in matters relating to religious liberty this constant state of things, so universal in its tendency, constitutes an important point in the consideration of the question. We have no reason to believe that the Catholic element has retrograded. Everybody understands that the education of youth is of all causes the most energetic, the most active, the most penetrating and the most powerful, which can influence religious ideas, as also the tendencies and habits of every day life. From thence, therefore, arises the just anxieties, the demands of each faith to have the moral and religious superintendence of its fellow-believers. Our Legislature gives each denomination the free control of its own educational matters subject to general law, which provides for civil and political order, the equality of religion and the liberty of conscience. The equality of the different religions by the law, and the absolute right inherent in each citizen to the free exercise of his faith and religion being admitted, the control of educational matte s must be recognized as an essential corollary and the logical consequence of these rules of natural right. With a law based on these principles, enacted with the avowed and evident object of giving them complete and due effect, no one can refuse to admit that the way of giving such instruction should be subordinate to the principles of the law. It is proper in this inquiry to take into consideration the true and liberal arguments made during the hearing of the case by the learned advocate for the defence. "There is no doubt," said the Hon Mr Laberge, "that the intention of the Legislature was to allow each and every one to lay out his school-rate after and according to his religious opinions." In fact if the contributor is a resident or not, his religious belief remains unaltered, as well as his desire to protect it, which is founded on similar reasons. What the law intended was the prevention of all causes of irritation; that all classes should live in that confidence which is assured by religious peace; that fanatics should have no cause for agitation, and that no one should be oppressed. The Legislature seemed to understand that if no one desires to be oppressed, it is unfortunately too true that every one wishes to be an oppressor. With a degree of wisdom which cannot be too highly praised, the Legislator aimed at giving religious intolerance no opportunity to establish itself on any occasion under the protection of municipal or civil intolerance. It would be a strange anomaly if a law led to two opposite results when applied to the same person,—that it should not protect the individual in the highest exercise of his liberty, by reason of a principle; but would only do so by reason of an accidental fact, such as his residence, and that the immunities which such law confers should be trampled upon by its own action. It would be a still greater anomaly if an order of things, consecrating the principle of the utmost liberty in education and belief, should, when applied, lead to acts of intolerance and oppression. It is indubitable that the law affirms, without disguise (*sans deguisement*), without obscurity, and in a way as positive as it is clear, the right of the Protestant, as well as the Catholic, to control the use of the funds required for the maintenance of the Common Schools, and to direct by such control the education of their children. This is a personal statute elevated above, by its principles, all subtilties, such as the meaning of words, and should not be limited to any particular place. The wish of the dissentient is the measure of the exercise of his right; and is a franchise which should cover his contribution as well as his person, *in omni loco*: otherwise it would be impotent and illusory. The principle of the law, as to dissentients, is in the diversity of the religions, and not in that of places. * * * * * * * Whence, therefore, comes the difficulty, the doubt, in the application of the law? It is pretended that the law is expressed in such a formal manner in the case of non-residents, that the judge has not to distinguish when the law does not distinguish, and that he cannot seek for an interpretation of the aims or intentions of the legislator, or deduce from principles, when the law contains a positive order and a formal disposition. I will not discuss what is so well understood—that the judicial power cannot intermeddle with legislation. But few cases are susceptible of a decision on the precise text of the facts in litigation. It is from general principles, from doctrine, from the science of law, that we must pronounce in nearly all cases. If the science of the legislator consists in adapting the most favourable principles to the common good, the science of the judge consists in putting these principles into action, and in extending them, by a wise and reasonable application, to circumstances; the role of the judge is to be as liberal and more tolerant than the law (*plus tolerant que la loi*); and his duty should never lead him to place civil intolerance in the power of fanaticism. It principally appertains to judges to show an example of the utmost deference for the sentences and the opinions pronounced by the Courts; and it is by reason of this respect for a judgment in which I cannot acquiesce that I have thought it proper to enter into a more extended examination of the question by studying the law under all its different aspects, and in analyzing it, with impartiality, so as to understand its nature, its aims, its whole, and verify by these means its application to the case What is important to decide is the security of each person, by putting an end to those grievous situations which, by their doubtfulness, almost sanction ignorance and fanaticism (*qui donnent presque droit a toutes les ignorances, a tous les fanatismes*); to settle their demands by referring to the law as interpreted and applied in the egotistical point of view of each local interest, varied as it is by the accident of Catholic and Protestant majorities. Here is the clause which is cited, asking for a judgment declaring the defendant deprived of the dissentient right which he claims, and which is refused him, on the ground that he does not reside in the municipality of the plaintiffs.

"When in any Municipality, the regulations and arrangements, made by the School Commissioners for the conduct of any School, are not agreeable to any number whatever of the inhabitants professing a religious faith different from that of the majority of the inhabitants of such Municipality, the inhabitants so dissentient may collectively signify such dissent, in writing, to the Chairman of the Commissioners, and give in the names of three Trustees, chosen by them for the purposes of this Act:"

Is this text so precise and so clear that its perusal alone leads to the understanding that it desired to exclude non-resident proprietors from the advantages and rights of dissentients? To understand these questions of language and signification, it may suffice to recall the two contradictary judgments which have been cited and the declaratory law submitted by government in 1863, with the assent of the Department of Education and the opposition, offered on all points, to this interpretation, which manifested itself in judicial proceedings. When the terms of an act appear to conflict with its aim, its whole, the general spirit of legislation, the tendencies of society as well as its habits, it should not be admitted in an hostile sense to the object of the law and the opinions of all, unless the intention of the legislator is evident by the expressions which he has used, unless the order is formal and leaves the Judge no course but to apply the law. There is certainly no such precision, no such expression, no such order in the enactment on which judgment is demanded by the Plaintiffs. The expression "the inhabitants" does not in parliamentary, legal or vulgar language, imply in absolute and necessary sense, residence. It is generally used to designate proprietors. In the English Statutes and the commentaries it means the rate-payer. The Poor Law says "overseers shall raise by taxation, of every inhabitant, and of every occupier of lands and houses in the parish" Burns in his commentaries says, "The taxation ought to be made upon the inhabitants and occupiers of lands within the parish, according to the visible estates and possessions they have within the parish." Blackstone treating upon the same subject, thus expresses himself. "The overseers are empowered to make and levy rates, upon the several inhabitants." The Statute relating to the maintenance of Roads, contains the following terms: "An assessment upon all the inhabitants, owners and occupiers of land, rateable to the poor, shall be made." In these two cases the rate is imposed upon persons possessing goods subject to taxation, whether they reside or not in the place. Nevertheless, the Statute designates the rate-payers by the appellation "inhabitants." Burns shows us how these words were interpreted, "Abundance of orders have been quashed, for not setting forth that the persons (who by the Statute must reside in the parish) were substantial householders, and describing them only as principal inhabitants and substantial householders, without adding 'in the parish.'" This surely shows according to these judges the words "the inhabitants or householders" did not essentially imply residence. Phillips, in his excellent work on evidence, speaking of the changes brought about by the operation of Lord Denman's Act, thus expresses himself, "Rated inhabitants were before that Act incompetent witnesses." This incompetency applied to all rate-payers, whether they resided or not in the parish. Therefore, according to the Parliamentary language of England the words "the inhabitants" referred to a rateable property, a rateable and a rated inhabitant, without regard to residence. The edict of 1679, which regulated in Lower Canada the obligations of parishioners with respect to the erection of churches, ordered that they should be built at the expense of the inhabitants. Several ordinances have been published, and several judgments have been delivered since 1790, in which the proprietors in a parish, residents or not, are condemned to contribute for the construction of the churches, and are called "the inhabitants." In the Municipal Law of 1841, the electors are designated in the English text "the inhabitant householders," which has been translated "*les habitant tenant feu et lieu*" The statute of 1845, which reformed the District Councils by Municipal parishes, in designating the electors indicates them as follows: "the said inhabitants being inhabitants *tenant feu et lieu*." In Upper Canada the statute gives the right of voting at the first election in a municipality "to every resident made inhabitant of sufficient property," and at subsequent elections "to every male freeholder" whose name appears on the assessment roll. It would be useless to cite any further texts to show that the words "the inhabitants" have not in our Parliamentary language an absolute sense of residence; otherwise the Legislature would never have said, as we have seen, "the said inhabitants being inhabitants *tenant feu et lieu*." These words indicate the universality of the interested parties constituting the municipality with and by its proprietors. In a community calculations are only based on its taxable value. The assessment roll is the sole legal record in which you may read and learn the names of the inhabitants. In the works of the best authors the words inhabitants or proprietors are indifferently held to qualify or designate the interested parties in referring to the properties which they possess. Denisart tells us that "When the inhabitants of a parish are at law in matters of real estate, they comprise the proprietors of lands situated in the parish in such a way that although these proprietors reside elsewhere, they are on such occasions held to form part of the number of the inhabitants." Curasson, in his treatise on possessory actions, expressess himself as follows: "The inhabitants have a right to enjoy all the advantages and conveniences which are bestowed by a street"; and then, refuting Pardessus, adds, "He allows that the proprietor should be indemnified if deprived by the municipality." In a judgment which he quotes, allowing damages for a change in the grade of a street, we find the motive in the following terms: "Seeing that among the charges which each inhabitant has to meet, the damages which a citizen's property may receive cannot be enumerated." So much for the Parliamentary and legal sense of the words. The dictionary says a "rich inhabitant" applies to people generally, and that a well-to-do "inhabitant" indicates a proprietor in easy circumstances, or wealthy farmer; without any reserve as to his special residence. But the Statute even in this case interprets the words in the sense which they should carry. The 34th clause orders that there shall be a meeting of the proprietors of land and of inhabitants *tenant feu et lieu*—"landholders and householders"—for the purpose of electing Commissioners. To be an elector a person must be a proprietor in the Municipality. Residence is not necessary in a municipal election to give the right of voting; it is not required either for the political vote, and it is, doubtless, by reason of the universality of interest which relates to public education that both franchises have been placed on the same footing. The proprietor although he does not reside, forms part of the municipal body to which appertains the administration of the common interest. He is by the law itself held to form part of the number of inhabitants. He has the right to be notified, and of action in the organization of the Executive Council of the community. Thence flows his immunities, which are those of the other rate payers; he cannot form part of the body politic and still only possess the right of paying. It is by reason of his contribution that he forms part of the community, and the least that he can possess is the right to control its use and destination. It is no longer a local, partial and exclusive right, but a public and general one, interesting all society in the same degree. When local improvements of a material nature are in question, this contribution can be laid out in what the majority may deem to be the most advantageous way; for then the non-resident proprietor participates in the improvement. But we cannot reason in this way when conscience is in question, and things relating to morals and religion. There is no longer any confusion between a thing belonging to all and to each, but nothing is settled or determined by the principle of majorities; in a religious point of view a person owns himself entirely: otherwise it is but liberty of thought and education, exercised at the will of the majority. In these divergences of opinion, more or less egotistical, people seem to have lost sight of the object which Parliament had in view by the terms in question. In order that there should be a corporation of dissentients in a municipality, it follows that there should be in the municipality itself a number of inhabitants to organize and carry out the functions of such a corporation. But once such a body is constituted the law makes no further distinction: it declares that the council of dissentients will have the sole right to assess and levy the school rates from the dissentients. Religious faith alone limits and designates those who may belong to such corporation; in fact, it is but logical and impartial that a separation of the majority and minority should take place on the simple demand of the latter. Ere resuming this argument, I believe it my duty to say that if any person does not concur in the opinions which I have just enunciated, they cannot, nevertheless, deny that the language of the law, as to the conditions of the right of dissidence, is at least susceptible of the interpretation which I have given it. This admitted, we revert to the science of law. The general rules which the wisdom of enlightened men of all ages have taught us for the explanation of laws should be studied, in order to guide the opinions of judges. As Dwaris remarks: "The duty of the judges in the interpretation of the law, if difficulties occur, is to look to the spirit and object, and to be guided by rules and examples." Several of these rules have already been elucidated; it will suffice to recall and apply a few others. "It is not the words of the law," says ancient Plowden, "but the internal sense of it, that makes the law. The letter of the law is the body, the sense and reason of the law, is the soul." It is worthy of remark that our legislature, in material points, transcribed these words almost literally by enacting that generally all words, expressions and dispositions should receive as large, as libe-

tinction of *bien propres*. In the article on *donations* it was also proposed to abolish donations after marriage *entre epoux*. They were frequently the cause of fraud, and it was proposed that they should be done away with. What was further proposed was the abrogation of the right of revocation in the case of *survenance d'enfants*, and this was a natural consequence of one of the amendments first alluded to. In regard to wills the *saisine testamentaire* was suggested instead of the *delivrance de legs*, which change would prevent many difficulties. With respect to prescription, the suggested change was the abolition of the prescription of one hundred years and that of twenty years. The former was obsolete, was, in fact, useless, and the prescription of twenty years, as applied to absentees, might well be abrogated in these days of facility of communication, and it was a wise suggestion. These were the principal amendments proposed by the Commissioners; and having thus laid them concisely before the House, he would say to the House that if this code were adopted we should have the advantage of possessing a code equal to any in existence. There had at one time been a difficulty in the way of codification, owing to the different holdings of seigniory lands and lands in free and common soccage. This obstacle had, however, been made to disappear in 1857, and it had produced a most excellent effect. Since that date, the settlement of the townships had progressed at a wonderful rate. Lower Canada had been reproached with being backward in the matter of settlement, but the state of the law as to the holding of land should be borne in mind. A man did not know whether he was leaving a rich heritage of land to his children or whether he was leaving them a mass of law proceedings. He repeated that the removal of the distinction of tenure already referred to had been attended with excellent results. The act of 1854 had not gone as far as was needed. But for the manner in which the work then commenced was completed by the subsequent act of 1857, Seigniorial tenure might still, to some extent, have existed for another century or two. Our position just now was excellent. The Seigniorial Tenure was abolished. There was no distinction between seigniory lands and those held in free and common soccage. And, now, as soon as this project of code became law, we should have the satisfaction of seeing the laws accessible to the people of the country, in both languages. It was an inestimable advantage which permitted the citizen to read the laws in a language which he understood. If there was anything which could tend, in the highest degree, to perpetuate our system of jurisprudence and to elevate and strengthen us as a people it was the act of thus placing the code of laws within reach of the comprehension of all, as it would be placed by the adoption of the project of codification. Persons of English origin and those of French origin would alike be able to consult and appreciate the laws under which they lived—and to understand the nature and extent of obligation which they might contract, as well as the laws which related to it. He was very glad, indeed that the Civil Code came before the House in such an auspicious manner. There was no question of a violent, radical change, or of a great and unexpected transition, but merely the adoption of our laws in a codified form, with such amendments as experience had shewed to be desirable. When the Civil Code in France was being discussed, several distinguished publicists and jurists, Benjamin Constant and others, endeavored to cast ridicule on the work of the eminent gentlemen who were engaged in the work of codification,—finding fault with the code on the ground that it contained nothing new—that it was in fact a mere compilation of the law. The codificators defended their work in the most spirited manner—on the ground that the law of a country was not a thing of caprice—that it was not a thing to be made in a moment; but that, on the contrary, it was the result of experience and wisdom of ages. And the assailants of the code, the innovators, were left without a reply to their wise arguments. We had in our own code the fundamental principles of the Roman Code, which was acknowledged by all to contain so much of wisdom and justice. The Roman was energetic and positive, and in this he differed from the Greek whose genius was of another order. In Greece the publicists acquired perhaps greater eminence, but the Roman law was marked by sounder wisdom—it was in fact "written reason." As Larminière had stated—nothing in the world, after Holy Writ, had been written so just as Roman Law. We had its great principles in the code now before us. We had also a great portion of the Coutume de Paris, and of all the French *coutumes* none was equal in wisdom to that of Paris. Perhaps there might, in some places, be a want of order or some obscurity of language, in this *coutume*; but, taken on the whole, the Coutume de Paris was unexcelled. It was the production of the great legal knowledge of the old Parliament of Paris which comprised the most distinguished jurists of France. We had also incorporated in it our own statutory law, for each country of course required its own particular legislation for its own particular wants. He should here remark that the Commissioners of Codification had, in virtue of the act of 1857, instructions to incorporate the provisions of the civil code and the commercial code—in the same order as in France. It was an error to think, however, apart from a few special cases, that there was any very great difference between the principles which governed civil and commercial matters. The order and division of work, in our own Code, was much the same as in the French Civil code; but they had placed commercial matters apart so that those articles of law which had more particular reference to commerce could be more readily found. He might here mention that, when the laws of Louisiana were codified, it was proposed to compile a separate commercial code. It was found, however, when the civil code was completed, that there was actually no necessity to promulgate a special commercial code.—The hon. gentleman then referred to the number of articles in our civil and commercial code; and then went on to observe that the Commissioners ought to be congratulated for having so ably and closely analyzed their work and reduced to such a comparatively small number the articles of our law having reference to our persons and properties. The dispositions of the law of 1857 established that, as soon as the Commissioners decided to make a report to His Excellency on any important portion of their work, it might be communicated to the Judges. This law had been observed to the letter. Each time Commissioners made a report to His Excellency it was transmitted to the Judges; but he should say the Judges had not thought proper to make any report thereon, with the exception of Judge Winter, who had made two reports. He had, however, heard many judges and many advocates say that the Code had already greatly facilitated the decision of several cases. It was hardly necessary to allude to the proceedings that took place to promulgate the Code Napoleon. We all knew the difficulties which arose, and the fact that the Code was often put in danger. It would be unjust, however, to the memory of Louis XIV and XV, and to the memory of Colbert, Lamoignon and D'Agueseau, not to refer to the efforts towards codification of the laws of France in their times. Lord Brougham had, however, truly said of the First Napoleon, in the House of Commons, that though his memory might live as a general and a statesman, yet that he would be best handed down to posterity by the great code which bore his name. Formerly there were in France, sixty distinct *coutumes*, and such was the sub-division of the *coutumes* that there were in reality three hundred different systems, so that the old adage was justified which said that a traveller came under a new system of laws every time he changed post-horses. (Laughter.) The great Louis XIV understood clearly that while there was so much divergence of law there could be no real stability. A commission was established under the able President Lamoignon, which did not, however, complete its work; but which nevertheless produced a very excellent and profound treatise. The King finding that the object he desired was not attained, formed, with the assistance of Colbert, a sort of code composed of the ordinance of 1667, the ordinance of commerce of 1673, and the ordinance of marine of 1681. During the reign of Louis XV some work of a similar nature was done. The work of codification had therefore been in reality going on very long. The great difficulty of their system arose from the difference between the Provinces ruled by *droit coutumier* and these ruled by *droit écrit*. After the abolition of seigniorial rights in France—brought about as it was by violent means, while similar reform was afterwards effected in our own country without any injustice—the Constituent Assembly determined to have a code, but the work was not followed up by the Legislative Assembly. Next came the Convention. A project was submitted to them and again in the years two and four of the Republic; but it was rejected on the ground that it was not sufficiently revolutionary. The work afterwards presented to the Corps Legislatif was necessarily in a great measure similar with the previous one — that of Cambaceres, but yet years elapsed before it was adopted. He thought it right to make these remarks about the history of codification in other countries, by way of reply to any accusations of delay or slowness in the codification of our own Lower Canadian laws. When the Commission was organized in February, 1859, Judge Day was absent in England, and, he believed, did not return until the summer of the same year. Another cause of delay was the illness of Judge Morin in the end of 1859 and beginning of 1860. There had, in fact, only been a good opportunity for work since the month of July, 1860, or thereabouts. The Commissioners had now submitted their work, and he hoped it would meet with the approval of the House, for it was a work they had performed, not precipitately, but diligently and seriously. But, while they had worked at the civil code, they were also engaged in compiling a code of procedure, which was now in a very advanced state. Having thus laid before the House the matters of fact relative to the code which it was right should be made known; and he would say that, if the inhabitants of Lower Canada wished that their country should increase in strength and power, and that it should maintain its national existence, nothing was better calculated to promote and perpetuate it than a civil code. The adoption of a complete and efficient civil code was the most pregnant source of national greatness. Look, for instance, at the Roman Empire. None of the ancient nations had produced a more complete system of legislation. The conquering empire had passed away, but the code still lived. (Hear, hear.) Not only did it still live, but it had been adopted by nations which, in the days of barbarism, had conquered the Empire. The wisdom of the ancient Romans had, so to speak, civilized their conquerors. (Hear, hear.) Napoleon 1. was that man who, of all others, had realized in modern days the idea of an heroic conqueror of olden times, and he had bestowed upon his country a great and useful code; and his successors were compelled to adopt it, and almost the only change which had since been made in it was to change the name, by calling it the Civil Code of France, instead of the Code Napoleon. Napoleon had passed away, but the code still lived, and it governed the persons, the properties and the everyday actions of the people of France. And if the nephew of that great man were now on the throne of France, perhaps there was no cause had so much to do with it as the promulgation of the great code. If we wished for national greatness we should adopt a code. We should have Confederation he trusted—and if we did not it would not be for want of work on his part—and if we obtained it, our Code, complete in itself, working well for both origins, and containing everything that was good in the Roman, French and statute law, would make its way on its own merits. It was purely civil; it contained no reference to criminal matters. The criminal law of England, surrounded by all the safeguards of liberty, was the best in the world. Governed as we were by this unequalled criminal code, and by our own civil law, we might freely boast that our freedom was protected by the most mighty legal safeguards in the world. While speaking of the criminal law he would not allow the opportunity to pass without paying a deserved compliment to Judge Black, who, in 1841, by the introduction into our own statute book, of the acts embodying the English criminal law, had rendered the greatest service to the French Canadians. He had thus placed the law within the reach of the French Canadian portion of the population, whereas previously it was with difficulty they could find means of obtaining a correct knowledge of it or consulting it. He (Mr. Cartier) appreciated this act of the Hon. Mr. Black, and he had caused his friends to appreciate it. It was therefore with pleasure that he took this opportunity, to-day, of paying a tribute to the talents of that distinguished gentleman. He desired also to pay a tribute of appreciation to Mr. Wicksteed for his able services in connection with the revision and consolidation of our laws, and he was happy indeed to have this opportunity of referring in fitting terms to the modesty and ability of that gentleman. But he (Mr. Cartier) would not, however, continue any longer to trespass on the patience of hon. members. He thought it would be admitted he had entered at sufficient length into the details, and he therefore believed it was time he should move for leave to introduce this bill. (The hon. gentleman then sat down amid loud cheers, and afterwards made a few brief explanatory remarks in English.)

In reply to Hon. Mr. DORION—

Hon. Mr. CARTIER explained the mode proposed to be submitted to the House for the promulgation of the Code. It resembled in a great measure that which had reference to the revised statutes. It was proposed the Governor should sign an original roll of the Code, apart from the amendments suggested, which would also be signed by the Clerks of both Houses, and deposited with the Clerk of the Legislative Council. It was also proposed, in accordance with the act of 1857, to submit for the adoption of the House a resolution or schedule containing the suggested amendments. These amendments, when reported on by a committee, could be discussed by the House and sent up to the Council. Then the Commissioners could add these amendments to their work, as well as anything done this session. Then they would be submitted to the Governor, and when he had sanctioned the roll, he could issue a proclamation determining when the Code should become law.

AN IMPORTANT COMMERCIAL CASE.—Our columns this week contain a brief report of a very important commercial case which particularly affects the millers and produce dealers of Upper Canada. The particulars of the case are briefly these:—Mr. Henry Corby, of this town, makes a contract with a Montreal Commission Merchant to deliver a certain quantity of No. 1 Alma Mills flour, at a certain rate. Before the time for the delivery of the flour, the price suddenly goes down, and the defendant alleges that plaintiff gets the flour rejected, so that the contract would become void. However that may be, the fact is the flour does not pass inspection, and is sold at a loss. But Mr Corby having his suspicion aroused, in order to test the matter, puts another brand upon his flour, which when it reaches Montreal, singularly enough passes inspection, although it is the same quality of flour which was rejected. To fill another contract for "Alma Mills" brand, he goes West and purchases 1,000 barrels of flour of Mr. Merritt, of St. Catharines, brands it "Alma Mills," and ships it to Montreal. This is also rejected. These are sworn as facts, and they certainly present a very singular state of things. Another fact is sworn to which may serve as the key to this very singular conduct. The Flour Inspector of Montreal, Mr. Collis, it seems made the renewal note for his friend, Mr. Wilson, and whatever may be the legal bearings of the case, it certainly reveals a state of things which we venture to say few millers in Upper Canada were prepared for.—*Belleville Intelligencer*

Mr. Daniel Rosa said he looked like a Yankee! The first of these grounds of suspicion was very vague indeed. The gentleman who said Mr. Bettersworth looked like a raider had only seen the raiders a couple of times in the Montreal courthouse, some weeks before, and was not at all positive, but the contrary. In the second place, it was certainly no ground of arrest to have manifested an interest in a conversation about the probability of war; and in the third place, the fact of being "like a Yankee," was certainly not such as to warrant arrest and imprisonment. The defendant held on to his prisoner, although Sergt Harkin, of Montreal, who knew all the real raiders declared that a grand mistake had been made; and he was sent on to Montreal, for examination, although Mr. Payette, the Montreal gaoler, who could not be mistaken as to the identity of the St. Albans' men declared that he was not one of them —The learned counsel went on, in eloquent and forcible language, to comment upon the nature of the great wrong and oppression which, in his estimation, the plaintiff had suffered. The fact that he was a fellow soldier with some of the men who were implicated in the St. Albans' raid, that he had fought for his country side by side with them, that he had suffered captivity with them, and acknowledged them as friends, was no crime. Here on British soil he was entitled to protection, and he (Mr. Irvine) was very much mistaken in the character of the jury if they did not award him damages adequate to the great injury he had suffered.

His Honor Judge STUART then charged the jury, briefly explaining the circumstances of the case and the law as relating thereto.

The jury then retired and after an absence of upwards of an hour came into Court with the following verdict:

In reply to the first question the jury found—That the defendant did arrest and imprison the plaintiff at the town of Levis in December last.

2nd—That the Hon. Justice Smith had issued his warrant for the arrest of certain persons (Bennett Young and others,) and that a proclamation duly issued, offering a reward for the capture of the persons named in the said warrant.

3rdly—That the said warrant was not put into the hands of the defendant as a constable and peace-officer, to be executed.

4th—That the said defendant did arrest and detain the plaintiff without warrant and without reasonable and probable cause.

5th—That the plaintiff suffered damages to the extent of five hundred dollars.

In the answers to the first, second and third questions, the jury were unanimous. On the fourth they stood nine to three, and on the fifth eleven to one.

The Court then, at 6 p.m., adjourned.

THE CIVIL CODE OF LOWER CANADA.

Hon. Mr. CARTIER moved for leave to introduce a bill entitled "An Act concerning the Civil Code of Lower Canada."

Hon. Mr. DORION was understood to ask the hon. Attorney-General for some explanation as to the manner in which he proposed to provide for the adoption of the Code.

Hon. Mr. CARTIER (in French) said—The hon. gentleman was quite correct in putting such a question. He intended to make a few observations on the work and also to state what would be done to have the great work now before the House adopted as law. Since the Union there never has been proposed for adoption a more important measure than that of the codification of the laws of Lower Canada. It was to be hoped hon. members would listen with patience to the observations which it would be his duty to make. It would be necessary to speak in both languages, and he trusted English members would not be impatient if his remarks in French were more lengthy than those in their own language, inasmuch as he trusted his explanations in English would be sufficiently ample. It was right, at the outset, to make some preliminary observations as to the history of the codification of the Lower Canadian laws. In 1857, at the opening of the session, His Excellency, in a paragraph of his opening speech, had expressed his intention of laying before the Legislature measures for effecting the codification of the laws and procedure of this section of the Province. This promise of His Excellency was now in a great measure definitely realized. He (Mr. Cartier) had the honor, during that session, of submitting to the House a measure for the codification of the laws of Lower Canada, and for the preparation of a code of procedure. At the time this first step was taken, there was great clamor, great discussion. Those who opposed the proposition mainly based their objection on what they were pleased to call the impossibility of codification. He had in a great measure foreseen these objections. There were, no doubt, many difficulties then in the way of the great work which required removal. Among the defects of which he might, as a politician, be accused—and he was sensible of these defects—that which had been most commented upon was his obstinacy. Be this as it may, he had persisted in spite of all objection and all opposition; and he now had the satisfaction of presenting to Parliament a project of a civil code which is in no way inferior to the code of any country —either to the French Code or the Justinian Code, which formed the basis of all systems of law adopted up to the present time. One of the great objections made to the law of 1857 was with regard to the clause obliging the commissioners to codify the civil law of Lower Canada. The object of the law of course was—not to allow them to make a code, but, on the contrary, to codify the laws as they existed, and as they proceeded with their work to make such suggestions as they thought were required. They were also instructed to give all the authorities on which the several articles of our law were based. This it was argued, by the opponents of the scheme, would impede the progress of the work, inasmuch as they said it would require too much labor. All these obstacles, real or imagined, had been surmounted, and a gratifying success had been obtained, and he (Mr. Cartier) therefore felt glad that he had persisted. The project of codification which he now had the honor to submit was accompanied by the authorities on which they were based. Thus, the members of this hon. House, and indeed every intelligent person was in a position to see what its several articles were founded upon. The work itself amply attested the great labor which it must have required, and the fact that it ought not and in fact could not have been performed in a hasty manner. The work of codification fully justified the expectations of the public, and the confidence of His Excellency in the ability and skill of the Commissioners appointed for that purpose. Before entering upon the nature of the important amendments suggested by the Commissioners, he would refer to the learned jurists upon whom had devolved the task of preparing this great work There existed in the minds of several persons a false impression as to what had passed between the late lamented Sir Louis H. Lafontaine and himself in reference to the appointment of Commissioners. It was stated by some that the late Chief Justice had not an offer made to him, as should have been made, of forming part of the codification commission, or that if an offer had been made it was made in such a way that the Chief Justice could not but refuse. These impressions were quite erroneous, and he (Mr. Cartier) had, most fortunately, in his possession the letter written to him by the late Sir L. H. Lafontaine in reply to his letter on behalf of His Excellency the Governor-General, making the offer that he should form part of the commission. He owed it as well to the memory of the late Chief Justice as to himself to read the letter in question. He had made it a maxim always to preserve correspondence, inasmuch as he had found it to be very often useful. The letter which he (Mr. Cartier) had written was in the following terms:—

"TORONTO, 28th Nov., 1859.

"SIR,—I have the honor to request you to have the kindness to allow me to submit your name to His Excellency the Governor-General with the object of affording His Excellency the opportunity of naming you one of the Commissioners who are, under the provisions of the Act 20th Vic. chap. 43, to codify the laws of Lower Canada in civil matters While testifying to you my hope that you will be good enough to acquiesce in my request, I may intimate that, should you accede thereto, His Excellency will hear of it with pleasure.

"I remain, etc.,

"GEO. E. CARTIER."

To this letter Sir L. H. Lafontaine replied as follows:—

"MONTREAL, 1st Dec., 1857.

"SIR,—I have the honor to acknowledge the receipt of your letter, in which you ask me to be kind enough to allow you to submit my name to His Excellency the Governor General, with the object of affording His Excellency an opportunity of naming me one of the Commissioners, who are, under the provisions of the Act 90th Vic., cap. 43, to codify the laws of Lower Canada, in civil matters.

"I fully appreciate the assurance which you give me, that, should I accede to your request, His Excellency would learn it with pleasure. Nevertheless, I find myself under the necessity of answering that I cannot accept the offer you make me; very strong reasons oppose it, the first being the only one which I need give—the state of my health, which would not permit me to undertake any task so laborious as that of the codification.

"I have the honor to be, etc.,

"L. H. LA FONTAINE."

Unfortunately the learned Chief Justice felt that his health was failing him, and, sad to say, his belief proved correct. We had lost him, and in losing him we had lost one of the most distinguished jurists and public men that Lower Canada had ever produced. The offer referred to in the foregoing correspondence was made on the 28th November, 1857, and the refusal was dated December 1st, of the same year. Difficulties of various natures having subsequently arisen, there was an interruption of action until the autumn of 1858. He (Mr. Cartier) left Canada for England in September, 1858, and returned about the commencement of December of the same year; and he was happy to be able to state that, on his return he immediately reiterated his offer to Sir Louis H. Lafontaine. The offer was repeated, with an expression of the hope that the year which had elapsed had restored the learned Judge to the full enjoyment of his health. He, however, replied that he was debarred from accepting the proposal made to him on the ground that the reason already alleged still existed, and he again gave utterance to his thanks for the honor done him in mentioning his name to His Excellency. Seeing that the valuable services of Sir L. H. Lafontaine could not be secured, he bethought himself of organizing the codification commission differently, and this organization took place in February 1859, when Judges Caron, Day and Morin, were authorized to act as commissioners under the law. It might not be out of place here to add that there were attached to the commission as *adjoints* or assistants two of the most able and skilful secretaries who could possibly be named,—Messrs. Beaudry and Ramsay. The law of 1857 enunciated the principle of appointing a Secretary of French origin, but thoroughly conversant with the English language, and a Secretary of English origin thoroughly versed in the French language. Both gentlemen named to act in this capacity fulfilled to the letter the requirements of the law in this respect. As to Mr. Beaudry there perhaps was not, in Lower Canada, a man more familiar with the law. As to Mr. Ramsay, he desired also to say that he was a man of distinguished ability, and he regretted deeply his dismissal for political causes. Mr. Ramsay added to the advantages of a highly classical education, a thorough knowledge of English and an equally perfect knowledge of the French language and idiomatic expressions. These qualities were the more valuable inasmuch as he was necessarily placed in a position to watch carefully the correctness of the translations of the great work—to see that everything was properly rendered, and that the real value and acception of the original was faithfully and accurately reproduced. Having thus alluded to Mr. Ramsay's ability and the regret he experienced at that gentleman's dismissal, he thought it right to do justice to his able successor of whom the Commissioners spoke in the highest terms. He came now to the *personnel* of the Commission—Judges Caron, Day and Morin. It was not necessary to speak at great length with regard to the first-named gentleman, Judge Caron, who was a distinguished advocate of Quebec, and during his active professional career had been concerned in the greater number of the most important suits ever tried in the District of Quebec. Possessed of abilities of a high stamp, he had been a member of the Legislature before the Union, and had been a member of the Legislative Council after the Union, having for years presided over that distinguished body. His position and experience formed the best guarantee of his fitness. As regarded Judge Day, everybody —and above all the members of the Montreal bar —knew his thorough legal training, his philisophical spirit and his great power of analysis. He (Mr. Cartier) had occasion, as a young advocate, to practice before Judge Day, and he was therefore personally cognizant of his merits. The learned Judge was also Solicitor-General in 1842, and as such in the discharge of his duties left nothing to be desired, having fulfilled them with an amount of care, attention and skill which was most creditable to him. He was still young when appointed a Judge, and on entering upon his judicial duties he had understood that something was wanting with respect to his knowledge of the French language, and he (Mr. Cartier) had observed with what labor the learned Judge had applied himself to increase his store of legal knowledge and of the French language. When he left the Bench to assume the duties of a Commissioner of Codification he was considered one of the best judges in Montreal. As for the third Commissioner, Judge Morin, his name was historical in Lower Canada. He presided over this House as Speaker for years. He had the habits and experience of legislation. There was no man in Canada who united modesty and ability to such an extent as this learned Judge. Clear-headed and laborious, he was a valuable aid to the other Commissioners. It would, perhaps, be said by some that his professional experience had not been very extended, but those who urged such an objection did not know anything of his natural talents, his extended knowledge and his great energy. His brother-commissioners said that his assistance to them was of such a nature that they did not know who could have replaced him. Such was the *personnel* of the codification commission whose work was now before this House. It would now be his duty to offer some observations on the work of these gentlemen. This project of code contained a few amendments suggested by the Commissioners, as they were authorised to do by the Act of 1857, relating to, but distinct from, the subject-matter of the code which contained the law of the country as it is. He would proceed to point out succinctly the proposed amendments. On the article referring *obligations*, it was suggested to adopt the principle laid down in the Code Napoleon, viz: to give effect to the convention so far as damages were concerned, instead of regarding them simply as *comminatoire*. It was moreover suggested, in the same manner as was done by the compilers of the French civil code, to abolish the distinctions of *fraude*. They also proposed to alter the sum to which the rule relative to the adduction of verbal proof applied, from twenty-five dollars to fifty dollars. Under the *titre de vente* they suggested that the convention of the parties should suffice for delivery, as provided by the Code Napoleon. With regard to the contracting parties themselves the convention itself should have force (*fait foi*), but with regard to third parties their rights would be determined by priority of registration. Under the *titre de louage* another disposition of the Civil Code of France was recommended to be adopted with regard to the *resolution de bail*. The proposed amendment was much needed, inasmuch as there was much abuse arising from nominal sales, and it was therefore suggested there should be no *resolution de bail* in cases of voluntary sale, but that *resolution* should only take place in the case of sale by decrees of justice. Under the *titre de succession* it was proposed to do away with the dis-

to prove this, it was only necessary to hear his own statements. It happened that the plaintiff had been examined as a witness, in the case of the raiders, at Montreal, in the month of December last; and in the course of the evidence he gave on that occasion he confessed his acquaintance with the raiders, saying:—"Upon looking at the prisoners I say that I know them all, I mean the prisoners calling themselves Bennett H. Young, Charles Moore Swager, Marcus Spurr, William H. Hutchinson, and Squire Turner Tevis now before this Court I have known two of them since last August—that is Young and Spurr—and the others I have formed an acquaintance with in gaol here."—Next we h ve the particulars of his communication with these gentlemen n various parts of the country stated thu :—"I think I saw two of them in Canada from the first to the fifth of August last namely, Mr. Young and Mr. Spurr. I saw Mr. Young at Toronto and Mr. Spurr at the Clifton House, Niagara Falls."—It does not appear that Mr. Young, the chief of the raiders, followed any calling, for Mr. Bettersworth tells us:—"I do not know that Bennett H. Young was engaged in any business in Canada, at that time or Mr. Spurr either."—We have been told here in Court that the plaintiff was an escaped prisoner on his way to Wilmington, and anxious to reach his home; but this statement is disposed of by the prisoner's own candid admission that he had been in Canada at the beginning of August last:—"I arrived in Canada for the first time about the 1st August last, and remained here until about the 25th of the same month when I left Canada. During my stay I spent part of my time at Toronto and part at the Niagara Falls Canadian side."—So it seems the plaintiff left Canada and after co-operating with a number of the Confederate soldiers in the Chicago and Camp Douglas plot ran back again to Canada to seek an asylum here once more. While in Chicago, his knowledge of the intentions of the raiders was of the most precise and detailed nature, for he says:—"When I saw Spurr and Young at Chicago during the Convention in August, I understood that they were there for the purpose of releasing the Confederate prisoners at Camp Douglas. There was an organization going on there for that object, at that time. I was told by some of my friends whom I knew to be Confederate soldiers, and also by Young and Spurr that they (Young and Spurr) were in the Confederate army. I was informed, during the time, that I was so in Chicago that a raid or raids were being organized there for the purpose of plundering and burning the Northern towns on the frontier. I am aware that Young and Spurr were then engaged in organizing such raids—that is Young and Spurr were in that organization. I am awa e that large quantities of arms and materials of war were stored in Chicago during the month of August last."—But he even went farther and identified himself with these operations, for in a second deposition made in February he tells us in relation to them: "We intended making them for the purpose of serving our Government, and not ourselves."—And speaking of the arms collected at Chicago, he says they "were for the use of any recruits we might get."—The learned counsel commented at considerable length on these statements and argued that it thus appeared from the plaintiff's own testimony that he was the friend and associate of the raiders and was cognizant of their designs, and that, in the position in which he was, at the time, with the raiders scattered over the country there was reasonable and probable cause of arrest. And when the plaintiff was brought before Judge Maguire, two witnesses—Messrs. Daly and Joseph—said they believed he was a raider, while there was only one witness, Mr. Payette, said he was not.—Mr. Stuart next referred to the great danger of embroilment which had resulted from the acts of the raiders, and the immense cost to which the country had been put; and concluded by claiming a verdict for the defendant.

The following witnesses were called for the defence:—

JOHN MAGUIRE, Judge of the Sessions of Peace, sworn—The first act performed by me in relation to the affair of St. Albans' was after the liberation of the persons named in the warrant of the 15th December last, when I sent a telegram, by the request of the Attorney-General, to Col. Ermatinger, then in command of the police on the forntier and on the various lines of railway, requesting him to communicate the fact to the force under his command that the raiders, as they were then called, had been liberated at Montreal and were then at large; and to enjoin the members of the force under his command to take steps for their re-arrest. This was on or about the 15th December; and on the 16th, the warrant, dated at Montreal on the 15th December, was handed to me by Chief-Constable McLaughlin, of Montreal. After endorsing the warrant I handed it back to Chief-Constable McLaughlin, who proceeded next morning to Riviere du Loup to take charge of the Police Force stationed there, and direct them in their endeavors to arrest the persons named in the said warrant. I sent an order to the police stationed there, composed of a part of the Quebec River Police, telling them to place themselves under Chief-Constable McLaughlin. I was instructed by the Government to communicate with the Police and also with Mr. Hough. Mr. Bureau promised every exertion of vigilance in his power, and in that of the force under his command, to re-arrest the raiders. Before the arrest of the plaintiff by Mr. Hough, I received a telegram stating that some of the raiders were coming down by the north shore, and a party went to meet them. The first intimation I had of the arrest of the plaintiff in this cause was when he was brought to my office by the defendant. This was in the forenoon of the 19th December, about eleven o'clock. I entered into conversation with Mr. Bett rsworth, and told him that the charge against him was that he was one of the parties liberated at Montreal, by Judge Coursol, against whom a new warrant had been issued. I then read from a paper the personal description of a person named Scott, whose name was included in the warrant and with whose description Mr. Hough believed the plaintiff to correspond. This is the description I read, "George Scott, 20 years, 5 ft. 7 in., slender make, "fair complexion, brown hair, boyish appearance, "no beard or whiskers." I read this personal description to the plantiff, and he admitted that it was very good, but persisted in denying that he was the person indicated. He denied that he was Scott or any of the raiders. After remaining some time in my office, I came to the conclusion to send him to Montreal for identification, and told him that the facts would there be ascertained, and that if he were not the person he would be released from any inconvenience. I then put him in charge of Constable Foy, who then left the Court House for the purpose of conveying the plaintiff to Montreal; but on proceeding as far as the ferry they found, as I understood, that it was impossible to cross and returned. The plaintiff remained that night and the next day, 20th, and the night of the 20th at Mr. Hough's. He left on the following day for Montreal with Messrs. Spurr and Swager. On the 21st the plaintiff was brought up to my office when Messrs. Spurr and Swager, whose names appear in the warrant, were in my office. The plaintiff was brought to my office by Mr. Hough, but I immediately placed him under the charge of Constable Foy with strict orders that he should not lose sight of him while he was in custody. It was on the 19th I so placed the plaintiff in Foy's care. Mr. Hough was employed for his intelligence, knowledge of localities, and for the fact that he would be very efficient in assisting and advising the constabulary. I now recollect that it was on the 19th, previous to his departure with Constable Foy, that the defendant was sworn in as a constable. I took the affidavit of Mr. Daly, of Montreal, who was then in Quebec, as also that of Mr. Joseph, a young gentleman who was described as having come down to enter the Military School, as to the identity of the plaintiff. True copies of the depositions of these gentlemen are filed in this case.

Cross-examined—I examined another person as to the identity of the plaintiff, besides two whose names I have already given. If I did not give a copy of the deposition of this witness (Mr. Payette) to the defence, it must be because I was not asked for it. This third witness was Mr. Louis Payette, whose occupation he stated to be that of keeper of Montreal gaol. I had sent a telegram to Mr. Payette for the purpose of having him to identify two other persons whom I expected would be arrested. I did not consider it necessary to have him identify the plaintiff. I had determined to send him to Montreal on the Monday, on the description of his personal appearance, for identification.

[Here the witness produced Louis Payette's deposition. This witness deposed that he was keeper of the Montreal gaol; that the fourteen St. Albans' raiders had been under his care; that he could make no mistake whatever as to their persons; and that Bettersworth was not one of them.]

The WITNESS continued—After taking this deposition, I sent Mr. Bettersworth to Montreal for identification. Two persons said he was one of the raiders—Mr. Payette said he was not. Mr. Daly one of th witnesses, was told that if he did not give his evidence he would be sent to gaol. Mr. Daly did not wish to come forward as a voluntary witness, but I told him he must give his evidence. I do not think I said anything to Mr. Holt further than this—that there was nothing to investigate, that the investigation would take place at Montreal, and that all I had to do with was the identity. I told the plaintiff there was no necessity for a counsel. Spurr and Swager were before me on the last day that Bettersworth was before me. Messrs. Spurr and Swager, on being brought up, immediately stated that they were the persons named in the warrant. I do not remember whether they said that Bettersworth was not one of the raiders. There was a good deal of conversation; they may have said so.

CHARLES E. PANET, Coroner, sworn.—I was in Pointe Levi on a Monday in December last; I think it was the 19th. I was in company with some friends, waiting to start by the River du Loup train. I saw Mr. Hough at the depot. He came to me and mentioned that he was on the "look-out" for the raiders, and asked me if I had seen any strange-looking people around. I remember telling him that I had seen two strange-looking persons. I remember when conversing with Mr. Hough as to the probability of a war between this country and the United States, that these persons appeared to take an interest. I saw one of the parties, and I mentioned the fact and pointed him out to Mr. Hough. I believe this person was the plaintiff in this cause, Mr. Bettersworth, whom I now see in Court. I saw Mr. Hough talking to the plaintiff. He entered into conversation with him. I think I mentioned the circumstance already referred to, to Mr. Hough, because I suspected the person in question might be one of the raiders. This was before the train left—between five and ten minutes before.

A. TASCHEREAU, advocate, sworn.—I was at Pointe Levi on the morning of the 19th December. I remember seeing the plaintiff in this cause on that occasion. I recollect, as we were on the point of departure, Major Panet told me that Mr. Hough was on the look-out for the raiders. I remarked that I had seen the raiders in Court in Montreal fifteen days before, and I thought I could recognize them. Mr. Hough afterwards asked me if I knew Mr. Bettersworth. The latter was then in one of the waiting-rooms with Constable Rosa. I told Mr. Hough I was not certain the plaintiff was one of the raiders: I said I believed he was, but I could not undertake to swear positively that he was. I saw the raiders in Montreal, in the Court-house, about the 10th November. I was there at two sittings of the Court. There were thirteen or fourteen of them present. I had a very full opportunity of seeing them there. It was from these circumstances I stated to Mr. Hough that I believed the plaintiff to be one of the raiders. I said I believed he was, but I did not say I was positive about it.

A. CLARK, Police Magistrate at Sherbrooke, sworn—I was in Quebec on the 20th and 21st December last. I heard some conversation between the plaintiff and the members of Mr. Hough's family. I heard Mr. Bettersworth thanking Mr. and Mrs. Hough for the kind manner in which he was treated by them. He said that Mr. Hough had treated him like a father, and said he hoped he should soon be able to come back and see them again.

Mr. IRVINE—Perhaps he meant to say like a step-father.

The WITNESS—This was on the 21st when the plaintiff was about leaving for Montreal.

Cross-examined—It was to Mrs. Hough that the plaintiff spoke. Mr Hough and other members of the family were present

J. B. BUREAU, Chief of Police, sworn—I was the first to take up the matter of the raiders at Quebec, in my capacity of Chief of Police. I started from this city on hearing that some of the raiders were coming down from Three Rivers to Quebec. I was the person that employed Mr. Hough. I employed him to drive me, when I was going in search of the raiders. Mr. Hough is a livery-stable keeper in Quebec. Daniel Rosa, one of the witnesses in this cause, is one of my men. After returning from Pointe-aux-Trembles, where we had not succeeded in catching the first raiders who passed down, we hunted the hotels throughout the city until three o'clock, a.m. My orders to Rosa, for the next morning, were to watch the ferry, in case any of the raiders should attempt to go across. I did not give any orders to Mr. Hough nor did I order Rosa to place himself in communication with Mr. Hough.

Cross-examined—I had nothing whatever to do with Mr. Hough on the 19th. He was not driving for me then. He had been driving for me on the 17th. I succeeded in arresting two of the raiders Messrs. Spurr and Swager. I did not receive the reward I was entitled to from the Government. Mr. Hough got the whole reward. (Laughter.) I know that he got the money from statements made to me by a Government official and from his own avowal.

Re-examined—On the 20th or 21st, when I went for Spurr and Swager, Mr. Hough was with me.

This closed the case for the defence.

Mr. IRVINE desired to produce the judicial decision of Judge Smith to the effect that no offence had been committed by the raiders.

His HONOR said—we should, by this means, be getting into side-issues.

Mr. IRVINE said the defence was founded in part on the statement that a crime had been committed, and that all persons were obliged to assist in arresting the criminals. Now he maintained that there was no crime, and he desired to file the judgment to that effect.

His HONOR did not see that it had any bearing whatever on this case. It was simply Mr. Justice Smith's opinion.

Mr. STUART said he was quite prepared, if the learned gentleman desired it, to go into the whole merits of Mr. Justice Smith's decision.

Mr. IRVINE—Then, in order to avoid that, I shall not persist. (Laughter.)

Mr. IRVINE addressed the Jury for the plaintiff. He observed, in opening, that the task was much more easy for him now than it had been at the commencement of the evidence. He knew that the defendant's case was of the weakest; but he had not anticipated that it was so very weak as it had been shewn to be during the progress of the affair. The plea which the defendant set up, in justification, was in reality a very great aggravation of the wrongful act he had committed, and in consequence of which the plaintiff had suffered damage. Instead of attempting to shew that there was some justification of the course he had pursued, or instead of confessing that his conduct was unjustifiable and offering an apology and adequate compensation for the very great wrong which Mr. Bettersworth had suffered, he came into Court and attempted to shew that no blame could attach to him, by endeavoring to prove that the plaintiff was a friend to the St. Albans' raiders and had been in frequent communication with them. But this was no reason whatever for his arrest. Mr. Bettersworth was not guilty of any crime, he had not violated any law of the land. There was neither reasonable nor probable cause for his arrest.—The defendant, desirous of earning the reward, undertook to hunt the raiders on his own private account; and, determined that he should arrest somebody, he laid hold of the plaintiff because, forsooth, one gentleman said he looked like a raider, because another gentleman had observed him listening with apparent interest to a conversation which was going on about the probability of war, and finally, because

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Mr. STUART—That's not evidence.

Mr. IRVINE said that what he desired to prove was that Sergeant Harkin told the witness that the man they had arrested in Pointe Levi (Mr. Bettersworth) was not one of the raiders.

The WITNESS resumed—I had never seen the raiders. I do not believe Mr. Hough had any personal acquaintance of the raiders, but he had some description of them. I said to Mr. Hough that Bettersworth was "one of them," because I saw he was a stranger and he looked like a Yankee. (Laughter.)

Mr. IRVINE—Then you infer that all Yankees are raiders. I had always thought the raids were being made against the Yankees.

The WITNESS—You very seldom see Yankees about here at this season of the year but it's some such business. (Laughter.)

THOMAS ROBERTS, an employé of the Grand Trunk, was next sworn—I identify the ticket now shewn me as a Grand Trunk Railway ticket, from Toronto to River du Loup, issued on the 15th December. It has been used through three stages of the journey, that is from Toronto to Point Levi. If it had been used to River du Loup it would have had another stamp upon it. The ticket must have been used on the day on which it is dated—the 15th.

Cross-examined—There is nothing on this ticket to shew the person to whom it belonged. Had the holder gone to River du Loup it would have been taken from him. Any person holding this ticket could have sold it to another when it was obtained, but it is now no longer valuable. This ticket was shewn me by the plaintiff the day before yesterday.

JOHN HARKIN, Sergeant of the Montreal Water Police—On the 16th or 17th December, I was stationed on the frontier. On the 18th, being Sunday, I arrived at Point Levi. I was sent by Col. Ermatinger on duty after the raiders. I was well acquainted with the personal appearance of all the raiders. I was at the Court in Montreal nearly every day, while they were under examination before Judge Coursol. I saw the plaintiff first on the afternoon of the Sunday on which he arrived. I had no suspicion that he was one of the raiders, as I knew them. I did not know who he was when I first saw him; but had he been one of the raiders I would have known him. In the morning I was going to River du Loup. I was seated in the cars, having charge of two assistants who had been placed under my orders. Either Mullins or O'Doud, one of these policemen—I cannot say which—came into the car, and told me that Scott, one of the raiders, had been arrested. I went out of the car and went into the waiting-room of the depot, where I saw Detective Rosa walking with Mr. Bettersworth whom I at once recognized. O'Doud or Mullins said—"Is that Scott?" I said "No." I bowed to Rosa, and said—"You think you have arrested Scott?" He said—"I don't know." I said—"He is not Scott." I returned to the cars. I saw Rosa on the cars again; I think he went down as far as St. Thomas. I said to him I believed he had made a grand mistake.

Mr. STUART objected to any evidence as a statement made to a third party—Mr. Hough not being present.

After some discussion, the witness's statement as to what he had said to Rosa was taken down.

The WITNESS—I was not acquainted with Mr. Hough before this.

Cross-examined—I was sent by Col. Ermatinger after the raiders. I was doing my duty.

Q.—Who was the man Scott to whom you refer?

A.—He was arrested, I think, as one—

Q.—I ask you who he was?

A.—I don't know who he was.

Q.—Whom do you mean by Scott?

The WITNESS—I mean one of the fourteen men that were arrested for committing a raid at St. Albans. I had seen this Scott before, in the Court-house at Montreal, before he was released by Judge Coursol.

JOHN MULLINS, of the Police Force, sworn—During the winter our force was put under the orders of Col. Ermatinger. About the 18th December last, I received a command to place myself under the orders of Sergeant Harkin. Our duty was to endeavor to stop the raiders. I know Mr. Hough. I know Mr. Bettersworth by sight. I saw him in the hotel on the Sunday afternoon, and again on the following morning. Half an hour before the departure of the train I had some conversation with the plaintiff. He asked me how he could get across to Quebec, and I said by canoe. He told me he had come from Toronto, and that he was going to River du Loup. I asked Sergeant Harkin whether plaintiff was one of the raiders, and he replied that he was not. I afterwards saw him going towards the Victoria Hotel with Mr. Hough; and I said to him, "I see you are clear," whereupon Mr. Hough said, "You have nothing to do with it," or something to that effect. O'Doud did not speak to Mr. Hough in my presence.

Cross-examined—I was dressed as a policeman at the time. I had an overcoat on. I was looking after the raiders that time myself.

JOHN MOSELY, of St. Louis, Missouri, sworn—I am a soldier in the army of the Confederate States. I belonged to the 2nd Kentucky Cavalry, in Gen. Morgan's command. I know the plaintiff, Joseph F. Bettersworth. I have known him about a year. I know him to be a Confederate soldier. I was made prisoner by the Northern forces, and he was made a prisoner at the battle of Cynthiana, two days afterwards. I escaped from prison, and he had the good fortune to do so also. The plaintiff's home is at Bowling Green, Kentucky. If he were to attempt to go through the United States to his home, he might be captured, and would probably be hung as a spy. I do not know any way by which he would now be able to get home. In December last he might have got home by running the blockade through to Wilmington, and his only risk then would be to be made a prisoner of war. The railway ticket now produced was shewn me by the plaintiff, Bettersworth.

Q. (by Mr. Stuart)—If the plaintiff had been caught going through the United States you say he would be liable to be hanged as a spy?

A.—Yes.

Q.—It would be much more comfortable for him to remain in Canada then?

A.—I should rather think so.

WITNESS (continued)—If the plaintiff were captured while attempting to run the blockade, I suppose he would be detained as a prisoner of war. I should consider it rather more comfortable to be in Canada than to be detained as a prisoner of war.

Q.—You are not one of the celebrated fourteen?

A.—No,—I wish I had been.

HENRY J. PRATTEN, of the Police Office, sworn—I know Mr. Bettersworth by sight. I first saw him on the morning of the 19th December at the Police Office. Mr. Hough was with him. I was present at the time when Mr. Hough was sworn in as a constable for the district of Quebec. This was on the afternoon of the day on which I saw the plaintiff at the Police Office—to the best of my knowledge. It was certainly after the plaintiff had been brought in.

To Mr. STUART, witness explained—Judge Maguire called me in, and asked me to bring him the roll of the constables. I told him the register was kept in the Quarter Sessions. He then swore in Mr. Hough from the River Police book.

P. A. DOUCET, Clerk of the Crown, sworn.—I produce the register of the Court of Quarter Sessions, and it does not appear that Mr. Hough was sworn in as a constable. All I speak from is this register.

JOHN MAGUIRE, Judge of the Sessions of the Peace, sworn.—A warrant issued for the arrest of Bennett Young and others was dated at Montreal on the 15th, and endorsed by me on the 16th, and was handed by me to Constable McLaughlin. There was another warrant dated the 19th, against the same persons; it was endorsed by me on the 20th, and was entrusted by me to the defendant either on the 20th or 21st, subsequently to the arrest of Bettersworth. At the time of the arrest of the plaintiff, I had not this second warrant. It appears to have been issued at Montreal on the same day. I swore in the defendant as a constable, as well as I can remember, about the time I handed him the warrant, or when he was going to Montreal. It was either the 20th or 21st. I am not positive of the precise time, but it was after the plaintiff was brought in.

MICHAEL FOY, Constable, sworn—I know the prisoner by sight. When I first got him in custody it was in Mr. Maguire's private office. He was detained after that in the defendant's private residence. I had him under my sight during a part of this time. He was afterwards sent to Montreal prison. On the first evening I had him in charge, I asked Mr. Hough if he had been searched; Mr. Hough said "No." I then searched him, but the only thing he had in the way of a weapon was a small penknife, which I allowed him to retain.

Cross-examined—I believe it was on the evening of Monday, 19th December, that the plaintiff was first put under my charge. The way in which he was put under my charge was this: Mr. Maguire, the Judge of the Sessions, rang his bell, and I answered it by going into his private office. Mr. Maguire said, as near as I can recollect, "I want you to put on your coat and go with Mr. Hough, and take this man under your charge and go with him to Montreal." I understood thereby that Mr. Hough was the superior and that I was to obey his orders. This was on the Monday evening. We started together as far as the ferry, but could not cross the river that night. We then went back to the defendant's house. The plaintiff was, I think, brought up to the Police office next morning by order, I believe, of the Judge of the Sessions, after which he was brought back to the defendant's. We started for Montreal on the Wednesday—the plaintiff having been at Mr. Hough's house from the Monday until the Wednesday.

GEO. IRVINE, Advocate, sworn—I was informed by the plaintiff that there was a policeman with the defendant, when he was arrested by the former. I went with the plaintiff to the police-station to identify him. I asked Mr. Bureau if he had any objection to my bringing in Mr. Bettersworth to identify the man. He said he had none. I brought Mr. Bettersworth in. He was received very cordially by the two Bureaus, father and son. He looked around the room, and—seeing the witness Daniel Rosa—immediately said "that's the man." Mr. Bettersworth held out his hand to shake hands with him. Rosa seemed rather sulky, and said "It wasn't me arrested him; it was Hough." Very little conversation took place, and we came away together. I am positive Mr. Bettersworth did not say to Rosa or to any other person in the station that he knew anything about the St. Albans' raid. I may add that he is a person of extreme caution.

The Court then adjourned at half-past five p.m.

The following witness was called by the plaintiff:—

I. B. STANTON, sworn—I am a clerk in the office of the Receiver General.

Q.—(by Mr. Irvine.)—Will you say whether, as such clerk, on or about the 10th March you paid certain moneys as a reward to the defendant.

Mr. STUART, Q. C., objected to the question.

Mr. IRVINE said that his object in putting the question was to prove that over and above any alleged probable and reasonable cause of arrest, there was the inducement of reward, which was in fact the real cause of the arrest of the plaintiff by the defendant.

His HONOR said he did not see that this had anything whatever to do with the issue. Bettersworth's name was not included in the proclamation offering the reward.

Mr. IRVINE put his question in the following form:

Did the defendant in this cause, on or about the 10th day of March last, receive from Her Majesty's Government, through you, the sum of $780—a portion of which was as a reward for the arrest of the plaintiff in this cause? If so produce the warrant for the payment of the said money and the receipt of the defendant for the same.

Mr. STUART objected on the ground that it was not relevant to the issue.

The witness was then allowed to leave.

Mr. IRVINE stated to the Court that he desired to restrict his demand on behalf of the plaintiff, to damages for his wrongful arrest and detention up to the time of the alleged swearing-in of the defendant by Judge Maguire in December last. The learned counsel then made a formal motion, praying *acte* of the declaration of the plaintiff to that effect.

Mr. STUART opposed the motion. To allow it would be to permit the plaintiff to substitute a new cause of action for that which was set forth in this notice and declaration, by selecting a date anterior to that mentioned in such notice and declaration as the time at which the alleged wrongful act took place.

His HONOR.—I do not adjudicate upon the motion. I allow it to be filed, but will make no order upon it.

Mr. IRVINE.—Then I am satisfied.

Mr. STUART presented a motion for non-suit, setting forth a variety of grounds—among others that the defendant was sworn in as a constable on the 20th December last, the day on which the plaintiff alleged that the act complained of was committed; that there was no malice; that there was reasonable and probable cause of arrest. &c.—The learned counsel cited a number of authorities in support of his motion.

His HONOR said the motion would more properly come up after the verdict was taken.

After some discussion—

THE COURT intimated that it would reserve its decision on the motion.

Mr. STUART then addressed the jury on behalf of the defence. He maintained that the plaintiff had not made out a case. No damages were specifically alleged, nor were any specifically proven. The plaintiff did not show what he had been doing in the country, or how he had been living, as he might easily have done. But the fact was that the evidence already adduced on behalf of the plaintiff had shewn his connexion with those parties who were here in this Province for a certain purpose. He (Mr. Stuart) intended further to shew the nature of this connexion, whereby it would be seen that if the plaintiff had been arrested it was altogether the result of his own conduct, and that there was in fact reasonable and probable cause of arrest.—The learned counsel here cited the warrant of the 15th December—issued four days before the arrest of the plaintiff—for the arrest of Bennett Young and others. As a matter of course, it was the duty of all good subjects to aid the peace officers in following up and arresting these men. Mr. Hough provided horses for the constables, and assisted them. He was right in doing so, and in following them up, inasmuch as the proclamation which had been issued authorized and commanded all persons to aid in the arrest of the parties known as raiders. The plaintiff—who, as he would presently show, was involved in the designs of the raiders, knew their projects, sympathized with them, made common cause with them, and had been in their company when they were maturing the plan which resulted in the attack upon St. Albans—arrived at Point Levi just after the release of his friends and companions by Judge Coursol, and the issue of the warrant and proclamation for their re-arrest. He was a stranger, going by a route by which very few strangers travelled at that particular season of the year. Mr. Hough looked upon him, under these circumstances, as a suspicious person, and asked him to come over to the city and give an account of himself. What was his conduct? Did he refer to any responsible person as knowing his identity and his antecedents? Nothing of the kind—he did not even refer the defendant to any person in the hotel at which he had stopped, for the purpose of shewing that he had come down from Toronto, and was going to River du Loup. The fact was that Mr. Bettersworth did not come into Court with clean hands. He did not come as a person who had lived here quietly and peaceably, but, on the contrary, as a person who was the friend and associate of those men whose deeds tended to embroil Canada in a war with the United States. In order

ACTION OF DAMAGES FOR FALSE ARREST AND IMPRISONMENT.

May 1865

SUPERIOR COURT.

BEFORE MR. JUSTICE STUART AND A SPECIAL JURY.

VERDICT FOR $500 DAMAGES.

FRIDAY, April 28th.

The case of Joseph F. Bettersworth *vs* Charles Hough, for damages alleged to have been caused by false arrest and imprisonment suffered at the hands of the defendant in the month of December, was called for trial this morning. Damages were laid at ten thousand dollars.

The following gentlemen were sworn in as jurors :—

Wm. McWilliams,	Hopper Ireland,
George Bissett,	Robert Ross,
Jos. Whitehead,	Ben. Campbell,
David Robertson,	E. G. Humphrey,
Geo. Thomson,	Wm. Campbell.
Saml. Corneil,	John Smith.

There was considerable difficulty in securing the attendance of jurors, and it seemed for some time as if the case was likely to be postponed for want of a jury. The business of the Court was suspended for some time, and it was close to the hour of noon when the jurors were finally sworn in and called over.

There were very few spectators present, and the affair did not seem to create any interest whatever.

Messrs. Holt and Irvine appeared for the plaintiff, and Mr. Stuart, Q. C., for the defence.

Mr. IRVINE opened the case on behalf of the plaintiff. He commenced by commenting upon the nature of the action, which was for damages alleged to have been caused by false arrest and imprisonment at the hands of the defendant. The case, in his opinion, was one of very great hardship indeed, inasmuch as the plaintiff had been stopped on his way to his native country, arrested and held in custody as a malefactor, and by his arrest deprived of the means of returning to his home.—The learned counsel went on at considerable length to state the circumstances. He referred to the St. Albans' raid, which was the remote cause of the arrest of the plaintiff. The latter, however, had nothing whatever to do with that affair itself, and therefore the jurors should dismiss from their minds any opinion they might have formed as to the justifiability or unjustifiability of the St. Albans' business. The defendant did not now attempt to plead that the plaintiff had anything to do with that affair, although he had arrested him as one of the persons who had been called raiders; but he aggravated his own position by pleading that after Mr. Bettersworth had been arrested and sent to Montreal he appeared to be a great friend of Lieut. Young and the other raiders, and was on very intimate terms with them. It was worthy of note that Mr. Bettersworth came down from Montreal to Pointe Levis on the same train with the Montreal constables who were after the raiders; that he was in conversation with them, but that they did not arrest him, knowing the raiders well and knowing that he was not one of them. Mr. Bettersworth arrived at Levis, on Sunday, the 18th December. Mr. Hough, instigated by the hope o obtaining the reward offered by the Government for the apprehension of the raiders, took a constable with him, crossed over to Levis, and arrested Mr. Bettersworth just as he was about to start for River du Loup, whence he intended to proceed overland to Halifax and thence to Wilmington, N.C., in the Confederate States. The Montreal constables told the defendant that the plaintiff was not one of the raiders, but he persisted in detaining him, brought him over to Quebec, kept him in custody—not in prison, but in the defendant's own house—with a guard over him. The plaintiff was refused an opportunity of communicating with counsel, and although Mr. Payette, the Montreal gaoler, who knew the persons of the raiders, stated positively that the plaintiff was not one of them, he was nevertheless sent on to Montreal, not for the purpose of answering any charge, but for the purpose of seeing if some charge could not be got up against him. It should be borne in mind that the defendant, Mr. Hough, was not a constable at the time he arrested the plaintiff; he had merely started out on his own account for the purpose of earning the two hundred dollars offered by the Government for the re-arrest of the raiders, but he had since been made a constable, and paid seven hundred and eighty dollars reward, because he had arrested two right men and one wrong man. Neither was Mr. Hough the bearer of a warrant, inasmuch as Judge Smith had only issued his warrant on the afternoon of the 19th December, and it reached here on the 20th, while Mr. Bettersworth had been arrested on the morning of the 19th. Mr. Irvine concluded by an exceedingly eloquent and able appeal on behalf of his client, urging that, although he was a stranger in a strange land, the jurors would shew that they would not tolerate acts so wrongful, so oppressive, and so hostile to the true spirit of British freedom, as that from which the plaintiff had suffered, but that they would award him such damages as they considered sufficient.

The questions submitted to the consideration of the jury were as follows :

1. Did the said defendant arrest and imprison the said plaintiff in the month of December last, and where?

2. Had the Honorable Jas. Smith, one of the Judges of the Superior Court, for Lower Canada, residing at Montreal, at that time, issued his warrant for the arrest of certain persons, and if so, whom, upon a charge of murder and robbery, committed at the town of St. Albans, in the State of Vermont, one of the United States of America; and was a proclamation duly issued offering a reward for the apprehension of the persons mentioned in the warrant of the said James Smith?

3. Was the said warrant put into the hands of the defendant as a constable, or peace-officer, to be executed?

4. Did the said defendant so arrest the plaintiff and detain him with or without warrant, and with or without reasonable or probable cause?

5. Did the plaintiff suffer any and what damage from his arrest and detention by the defendant?

The following witnesses were then called:

RICHARD KINSLEY, bailiff, sworn—Stated that he had served a copy of the original notice in this case on the defendant.

PATRICK LEESON, sworn—I keep the Victoria Hotel, Pointe Levi. I recollect the plaintiff, Mr. Bettersworth, arriving at my hotel on Sunday, 18th December last, between ten and twelve a.m.

Mr. STUART, Q. C., here took objection to the notice served upon the defendant as being insufficient. It did not state where nor under what circumstances the arrest, for which the plaintiff claimed damages, had been made.—The learned counsel went on, at very great length, to quote precedents in support of his objection.

Mr. IRVINE said that the learned gentleman's objection to the sufficiency of the notice must fall to the ground, inasmuch as no notice whatever was necessary. Had Mr. Hough been a constable or peace officer in the discharge of his duty, notice would have been required; but Mr. Hough was not a constable at the time, and therefore no notice was necessary. The plaintiff might have proceeded without giving any notice at all, and the case could not therefore be prejudiced by any alleged insufficiency of the notice.

HIS HONOR said he would reserve Mr. Stuart's objection until after the questions now before the jury were disposed of.

Mr. STUART then put in a formal motion.

The evidence was resumed.

Mr. LEESON recalled—Mr. Bettersworth arrived by the train from Montreal, and he recorded his name in the book which is kept in my hotel for that purpose. I now produce the entry in the hotel-book made by the plaintiff on his arrival at my house, which is as follows: "Jos. F. Bettersworth, Bowling Green, Kentucky, leaves for "River du Loup, 19th Dec., 1864." Sergeant Harkin, of the Montreal Police, also came by the same train, and stayed at my hotel. They passed the day and night of Sunday, 18th December, at my house. Mr. Hough came to my house. When he came, the plaintiff was sitting on the settee with his valise beside him, waiting to go down to the train. The defendant was accompanied by a Quebec policeman. The next time I saw Mr. Hough and Mr. Bettersworth was when they were going back to Montreal, three or four days afterwards.

Cross-examined by Mr. STUART.—It might be three or four days after his first visit that Mr. Hough returned to my place. He had Mr. Bettersworth and some other raiders with him at the time.

By Mr. IRVINE—Do you know Mr. Bettersworth to be a raider?

Mr. STUART—He is as good a raider as any of them.

The WITNESS—I do not know, but they were all together being brought up to Montreal.

HENRI-ELZEAR TASCHEREAU, Advocate, sworn—I was at Point Levi about the 19th December last, for the purpose of going to River du Loup by the early morning train. I saw Mr. Hough arresting a man on that occasion. I am not very positive as to the date—but I believe it was the Monday before Christmas. The train was to leave between nine and half-past nine. I had some conversation with Mr. Hough. I remarked that Mr. Hough was dressed up in furs, much more than the weather seemed to require. I remarked to him that he seemed tired, and he told me that he had driven from Cap Santé, adding that he had not slept all night. There were some friends present, Major Panet and I believe others, and we made the remark that probably Mr. Hough was looking for the raiders. About three or four minutes before the train started, I saw Mr. Hough arrest the plaintiff, Mr. Bettersworth.

Cross-examined—I saw Rosa, the police constable, with Mr. Hough; but I did not see him when the arrest was made. We all knew that they were acting in concert, at the time; but Rosa was not continually with Mr. Hough.

DANIEL ROSA, Police Constable, sworn—I went with Mr. Hough on Sunday, 18th December last, to Point Levi and from thence to St. Michel. Mr. Hough's object was to overhaul some of the raiders. I went to help him. We did not arrest anybody at St. Michel. We returned to Pointe Levi on Monday morning, the 19th December. I did not "overhaul" anbody on the 19th; but Mr. Hough did. When we came to the Victoria Hotel, Point Levi, we went in, and when we had been there a few minutes, walked down to the depot wharf, where Mr. Panet, the Coroner, called Mr. Hough and spoke to him. Mr. Hough turned around to me and told me that he thought "there was two raiders down here." We then both looked around pretty sharp. I was standing within five or six yards of Mr. Hough, and I saw Mr. Hough talking to Mr. Bettersworth. I could not hear what he said to him. Mr. Hough called me to him, and told me to "watch this man, as there was another one around the place." I asked Mr. Hough if he had made a prisoner of him. He said he had not, but that he wanted him to come to Quebec and explain himself. The cars were nearly on the go, and Mr. Hough gave me money and told me to go on as far as St. Thomas and see if I could reach the other one. I then went away. When Mr. Hough told me to watch Bettersworth, I remained walking up and down beside him. He asked me who I was, and I replied by raising my coat and shewing my badge telling him that I belonged to the detective police. He said he wanted to go by the train down to River du Loup. He also said—"I know very well what you "are up to: you have arrested me for a raider, "but you are mistaken; I am not." He did not ask me for a warrant; he did not ask me what authority I had, or what authority Mr. Hough had; he only asked me who I was. We were not more than five minutes together, until I went by the train. I cannot tell what warrant I went under. I went by the order of the Chief of Police, who told me I was at Mr. Hough's disposal. Mr. Hough did not shew me any warrant for the arrest of anybody, nor did I ask him for any. Mr. Hough is not in the city police, nor is he a policeman that I am aware of; he keeps a livery stable. When Mr. Hough called me to watch Mr. Bettersworth, he had him in a room in the station and told me to watch him there. Some persons came into the room while I had charge of the plaintiff, but I did not allow them to interfere with him. I know Sergeant Harkin of the Montreal Police. I cannot positively say whether he spoke to me while I was in the room with the plaintiff; but he went down in the train with me. The first time I noticed him, to the best of my recollection, was when we were going down in the cars together. I saw Mullins, the constable, on that occasion. I do not recollect what he said to me. I was present when two raiders were arrested afterwards by Mr. Bureau; and when they were brought to Quebec to Mr. Maguire's office Mr. Bettersworth was there. The two raiders to whom I have referred were Messrs. Spurr and Swager. Mr. Hough was present when Mr. Bureau arrested them. It was on the Wednesday that Spurr and Swager were brought up before Mr. Maguire, two days after the arrest of Mr. Bettersworth.

Cross-examined.—On the Saturday night previous, the Chief of Police, Deputy-Chief, Mr. Hough and myself were engaged looking for the raiders. When we got to St. Augustine, on Saturday, they had gone past. We returned to Quebec on the Saturday night. I was under the orders of the Chief during the whole of the time. We were engaged on the Saturday night, looking about, and continued to be so engaged, until two or three o'clock on Sunday morning. There was some arrangement between the Chief of Police and Mr. Hough to watch the ferry early on Sunday morning—I mean the Point Levi ferry. I told the Chief that I would be in the station-house, and wait for Mr. Hough until four or five o'clock in the morning, when we would go down to the ferry. A short time before this the Chief had placed me under the orders of Mr. Hough. I went down to the Lower Town first in the morning, and was joined in the Lower Town by Mr. Hough, who said that he would go across in the *Arctic*, and try to get some information. He went across between seven and eight o'clock. He returned, and then he and I re-crossed on the Sunday afternoon. We then went down as far as Beaumont and St. Michel. We lay over night at St. Michel. We returned the next morning to Point Levi, reaching between nine and a quarter-past nine. We were not more than ten or twelve minutes arrived, when we saw Bettersworth. The cars were to leave in five or six minutes, so that the occurrence, to which I have already referred, took place in the space of five or six minutes, or immediately previous to the departure of the cars. I recollect saying to Mr. Hough "look after that "fellow—he's sure to be one of them." When I next saw Bettersworth it was as I have already stated, in Judge Maguire's office. I do not know what was going on in the office in relation to him. I have had a conversation with the plaintiff once, since the arrest, in the station. The conversation I had with him was in the latter end of February. Mr. Irvine fetched him to me. I asked him how he was; he said very well, and shook hands with me; and I said "I thought he was in the old country by this time." He said, "Oh, no, they kept me at Montreal as a witness, and I said—"did you know anything about the transaction," and he said "Oh, yes, I knew all about it," and with that Mr. Irvine told him to come away. Going up to Montreal, the plaintiff told me that, if he had been soon enough, he would have been one of the St. Albans' raiders. I went up to Montreal with Mr. Hough, Mr. Foy and Mr. Emile Bureau, the son of the Chief, who is also a detective policeman. The person I principally was with was the plaintiff, Mr. Bettersworth. Messrs. Spurr and Swager were under the charge of the others. It was on Wednesday, the 21st December, we left for Montreal.

Mr. IRVINE objected to any evidence of what had taken place in Montreal.

The WITNESS, in reply to Mr. IRVINE—At the conversation to which I have referred, with Mr. Bettersworth, the two Messrs. Bureau and yourself (Mr. Irvine) were present. When I went down to St. Thomas by the River du Loup train, on the Monday, I had a conversation with Sergeant Harkin.

Over £8-14-2

To W. H. Webb Atty of opposants 2-5-0
To opposants 4.16.3
Nos. To pltffs. for so much as residue
shall suffice to pay £42-3-9
£51-9-2

Ludgt of Distribution 30 June 1858
Bal due pltff £250-19-4.

Report of Distribution Nos. Proceeds of
Sale in the District of Montreal.

Amount from lands sold £329-0-0
Sheriffs Costs 17.14.4
Amt to be distributed £310-1-5

Nos. To Prothonotary 1-7-10
2 To Bonds Caron 2-13-0
3 To pltff privilege for bal of costs 9.8.
4. To Eliza Wyse for 1/8 share of
estate of Webb Robinson for bal
of £95-17-6 the sum of 59-14-6
5 To Pltff for so much as the proceeds
of property shall pay £245-13-5
Bal due pltff £5-6-2 £310-1-5

Ludgt of Distribution 30 June 1858.

District of Quebec. Amount in hands of
Sheriff subject to Distribution as appears
by Certificate of Prothontary dated 5 March
1855. £279-14-5

Retained by
Edwd Jones £36.00
£43.14.5
£15-17-6

District of Montreal. Amount in hands of Sheriff to Distribute as appears by Certificate of Prothonotary dated 30 June 1853

	£250-3-11
Retained by E Jones	59-17-6
	£310-1-5
Amount of E Wiseis claim	59-17-6
	36-0-0
	£95-17-6

30 June 1853. Motion to retain £59-17-6 as collocated in No 4 of Report of Distn No 3.

5 March 1854. Motion to retain £36-0-0 as collocated in No 4 of Judgt of Distribution No 1.

Superior Court, No 237 of 1853

Quebec

Gauthier & Blanchet

From 1849. Jany 1853. Execution issued for Costs in Appeal. £22-4-5.

Jany 27. Report of Distn No 1 - drawn up & filed.

April 5 - Motion by E Jones to pay into hands of Sheriff £300 granted.

April 21 Distn No 2 filed.

May 21 Distn No 3 filed.

June 22 Judgt of Distn No 3.

" 25 - Report of Distn No 4 filed

" 26 Judgt of Distn No 4. Enrolled

Page 231.

Carq was entered into between Jno R—— & ux to
& Jno R. d—— to the effect that Jno R & C——
should preserve his rights upon the property
of said Webb R—— in consideration of the
claim of the said Jno R—— being paid before
the claim of Jno R. H—— in preference to
him.

Jno R—— received amount of his collo
cation from sheriff amounting to £229-10-0

Sarah R—— married George L——— and
Susan R—— Edmund G———

Suzan H——— married Jno R—— who is
dead leaving heirs represented by their mother
said legatees accepted the succession
are in possession.

Refusal to pay ordinary conclusion

Date of Judgt 4 March 1836 Judgt for £237.12.4
with Int on £229.19.8 from 17th Decr 1836.

Cap: £229-19.8

Int on £229-19-8 from 17th Decr 1833 to
27 July 54. 20 yrs 9 months 10 days 328.13.9

Balance of costs (£7.12.8) 3.3.8

Amount of claim £561.14.1

Report of Distribution No 1. Proceeds of sale
of lands in District of Quebec

Amount from lands sold £335 0.0

Sheriffs costs 19.2.7

£315.14.5

1st To the Prothonotary 1.7.10

2d To Jos N Bossé prosecuting Report

	£ 17.10
1o Judgment of Confirmation	2 13 0
3o To Plaintiff for privileged costs	4. 9 0
4o To Eliza Hayes for her share in estate	95 14 6
To Malcarn Attorney	3. 6. 8
5o To Pltff for amt of judgt or so much as residue shall suffice to pay	208. 3. 5
	£315 14 5

Judgt of Distribution - 5th March 1855.

To Prothonotary	1 14 10
To Jos N Bossé	2 13 0
To Pltffs privileged costs	4. 9 0
To E & R Wise & E Jones.	38. 10 10
To Malcarn.	3. 6. 8
Retained by E Jones £36. 0 0 Bal: to be paid to appellants	306. 3. 5
To Plaintiffs	54 16 8
	£316 14 5

Report of Distribution No 2.
Proceeds of sale of lands in the District of Saint Francis

Amount from lands sold.	£103 10 0
Sheriffs' costs	46. 0. 10
	£54 9 2

1o To the Prothonotary	1 £7 10
2o To Bossé & Carron	2 13 0
3o To Pltff for privilege for bal of costs	3 13 4
4o To Municipal Council of Windsor for taxes £4 16 3. for costs £2 15 0	
Court to the Prothonotary	10 0
	£8 £4 2

Titre 23. Des Reproches des Temoins.

Art 1er. Cet art. n'est pas appliqué de cette maniere dans notre droit. Un avocat dans une cause est pas un temoin competent. Une partie ne peut recuser un temoin qu'avec la permission du juge excepté, et après la deposition close ou decouverte la parentage. Tout personne coupable de parjure ou condamné à quelque peine infâme est un competent.

— 6e. N'est pas mise en pratique dans notre droit.

Titre 24. Des Recusations des Juges Tit. Cons. stat. L. 6. Cap 81 sec 3. & Cap 48 sec 20 & Cap 49 sec 19.

Art 1er. Le juge parent du tuteur est incompetent de même que le temoin parent du tuteur. L'inimité reconnu d'un juge avec une partie est un moyen de recusation. Lorsque le juge a un connaissance de l'affaire & qu'il peut servir le temoin la partie doit le recuser d'avance.

Art 2 & 3 Regardés the criminal law.

Art 4 Lois in force.

— 9 without application

— 29 amended by reglement of 1678.

Superior Court.

Quebec Thos Gs. Hamilton & Wife

Grounds of action.

3rd Decr 1830 Will of Webb R—— before Panet & Colery by which he disposes of real & personal property to his nephews & nieces viz: John R—— Sarah R—— Jane R—— Susan R—— Eliza H—— & Susan H—— Fanny L—— & Mary R—— H—— en pleine & entière propriété

That by a particular legacy Webb R—— gave to William H—— a rente viagère & alimentaire of £30 a year payable quarterly.

Testamentary executors John R—— & James R—— Death of Webb R—— at Quebec 4 Dec 1830.

Death of Fanny L—— 8th Decr 30 a minor

Death of Jane R—— in 1831 a minor.

Their shares reverted to their father & mother.

18th Jany 1833 Evanepont deed vests successifs by William B H—— to John R—— by Deed before Pelletier Notary.

That subsequently Louis Panet sued John R—— in his quality of testamentary executor before the Court of King's Bench No 1741 of 1833 & all the lands of Webb R—— were sold at Sheriffs sale & that John R—— having filed an opposition as cessionnaire of William B H—— for a sum of £335 & said opposant having been collocated for capital arrears, an agreement dated 17th Oct 1833 & passed before Panet No

35

by notifying the parties. The taxe of the officers are in the tariff

2 Rapporteurs des procès ne existent pas ici.

3, 4, 5, 6, 7 not in force in Canada.

8 Il n'est pas nécessaire que le nomination du juge commis dans le jugement interlocutoire mais il doit mentionner les faits sur lesquels les experts doivent procéder les exceptés doivent être assermenté.

Titre XXII

Des Enquêtes

Art 1. Ce qui a rapport à la circulation de faits qui n'est autre chose que ce jugement. In civil law one witness sufficient. See 6. Stat L 6 Cap 82 sec 16.

2 amended by ord 1648. changed by awards of judicature

Art 2 & 4.

3 In our law it is with authorization of the judge but by authority of the prothonotary if witnesses live beyond 30 miles they can be examined by a Com: Rogatoire

6 called a subpoena

7 In our law the party in the cause is not summoned

8 amended by ord of 1667 & in our law the penalties is arbitrary they can be condemned to the Contrainte par corps. In this case a personal signification is necessary

9 not in force

10 If the case is prescribed this article is in force

11 See Com: Stat for Lo Chap 82 sec 14 A few exceptions in French law. In Lo de Corps cheldrien are no witnesses. Proof of relation in case of loss of registers.

If a bailiff brings an action or is sued in the name of the minor there [illegible] of the bailiff are competent.

Arch 12. It is not [illegible] to [illegible] the commissaires with the adjoints qui n'existent pas ici.

— 13 La même chose n'existe pas ici. Le greffier a droit de recevoir le serment du témoin. Personne n'a le droit d'admettre le serment sans qu'un loi spécial lui donne ce pouvoir. Par nos statuts le greffier ne peut de même que plusieurs autres personnes.

— 14 admitted under pain of nullity

— 15 "aux enquêtes" "qui ne seront point" "faites à l'audience" cela ne peut s'appliquer dans notre droit que dans l'exécution des lettres Rogatoires.

— 16 in force

— 17

— 18 in force

— 19 in force

— 20 Aux enquêtes ici l'une des parties ne prend pas avantage de la nullité le juge doit l'indiquer pour permettre aux parties d'y suppléer

— 21 amended by ord. of 1667.

— 22 not in force. The only thing which resembles the procès verbal is the entry which the procedo-tary makes in the register.

— 23 to 35. no application in our system of procedure.

— 36 Ce qu'on y appelle juge est exactement ce qu'on appelle ici Commissaire enquêteur et tout y applique

7 Les delais pour l'exception en garantie ne sont suivis en ni pour [illegible] varier suivant les circonstances

8. Ke la loi par. not in force. Amended by Con: Stat. for L. C. Cap 82. sec 31.

9 10. admitted.

11 admitted. Costs in case only of "garantie formelle"

12 admitted

13 Cette art. s'entend en fait de garantie simple

14 is admitted

Titre 18 - De l'Ord. 2 & Cap 83 sec 12 & 13 Vict. 1850] Des Exceptions dilatoires.

Art 1 2. admitted

3 This is done by an acte à la forme.

4 admitted.

5 amended by Con: Stat. L.C. Cap 83 sec 81

Titre 19 - De Stat. L.C. Cap 83 sec 24 1860] Des Interrogatoires sur Faits & articles.

Art 1 admitted

2 The order of the judge is not required

3 Faits & articles are given in the language of him who replies.

Art 4 admitted - but ordered by motion that Art be taken pro confesso.

5 If the deft makes default without excuse on the part of his atty, the proceedings are by default; but he can present himself to reply provided it is before judgt & on paying costs

6 admitted - Judge can go to receive answers, & name a commission if too far. One can also take a commission rogatoire

7 See Con: Stat. L.C. Cap 83 - sec 100.

8 If replies are foreign to questions the deft exposes himself in a manner to warrant the truth of the facts & art

9. Same in our law

Livre XV Totally abolished by ord of 1648.

Livre XVI Totally abolished by ord of 1648.

Livre XVIII Des Complaintes & Reintegrandes.

Art 1 L'action possessoire est fondée sur un délit. L'action possessoire est accordée que sur la possession

— 2 admitted

— 3 Les délits ne sont que subsidiaires en l'action en Complainte.

— 4 & 5 admitted

— 6 & 7 no application

Livre XIX

Des requêtes civiles

Art 1 amended by ord of 1648.

— 2, 3, 4, 5, 6, 7 admitted.

— 9 But one instance is required.

— 10 admitted

— 11 not proclaimed in Canada

— 12, 13, 14, 15 admitted

— 16 The fine is not admitted.

Art 17 See Cons Stat for L. 6 Cap 83 sec 143.

— 18 Relative que font rapport aux requêtes.

Art 19, 20, 21, 22. The same in our law

Livre XX

Des faits qui gisent en preuve au Utrile

Art 1. Art des faits induced by act of 13 & See Cons Stat L 6. Cap 83 sec 7 & 8

— 2 See Cons Stat. L. 6. Cap 82 sec 21.

— 3, 4, 5, 6, 7 admitted

— 8 to 14. The dispositions included in these articles are incorporated in Cons Stat. L. 6. Cap 20 sec 1 seq.

Livre XXI - See Cons Stat. L. 6 Cap 83 sec 80 & seq

Des Descentes sur les lieux, Taxes des Officiers &c.

Art 1. Not absolutely against law that a judge cannot make a descent. That can be done

December The Washington Irvine & Durrant
Master. action of Alexander McDonald - Lake
seamen and board of said vessel. £100 stg
Subtraction of Wages. Alleyn & Alleyn appear
for Alex McDonald. Jones & Deane appear for
Thos R. Eldridge of London sole owner of
Washington Irvine. Lundy Lamer Gillespie
March 20 - 1863. libel dismissed.

For the Year 1863.

June. The Warlock James Lennon Master
Action of William Cox £25.00 stg Collision
Holt & Irvine appear for promoter. Jones
& Deane appear for John Lawson & al in Eng
land owners of Warlock. Lundy & Ga
Knight.

Omitted in the Year 1862.

Sept Cleaner & P. Robin alleged holden. action
& Cite Recondition & al. Cause of possession
Action subducted 16 April 1862. Jones & Deane
appear for Surgeon & Consellet. owners of the
Cleaner.

Ordonnance de 1667

Livre 1er Des Observations des Ordonnances.

Arts 1, 2, 3 & 4 admitted.

— 5 By reglement of 1678 grants a year for remonstrances. 6 of 78 admitted.

Livre II Des Ajournemens

Arts 1, 2, 3 amended by law of 1678.

— 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 not applicable here.

— 16 amended by law of 1678.

Livre III Des delais et assignations

Arts 1, 2, 3, 4, 5 not in force.

— 6 admitted.

— 7 do By rule of practice of 1850 the rule is different.

Livre IV Des Presentations abolished by reglement of 1678.

Livre V Des Congés et defauts

Livre VI Des fins de non procéder.

Art 1.

— 2 amended by reglement of 1678.

— 3.

— 4, 5, 6, 7, 8 abolished by reglement of 1678.

Livre VII Des delais pour deliberer.

— 1, 2, 3, 4, 5 the same in our law

Livre VIII Reg Cons Ste 2 t 6 caps 2 } Des Lamentations sec 31 Art 1 admitted } caps 4

— 2 10 days instead of eight } 83 sec 4

— 3 & 4 admitted.

— 5 Cet art suppose que le defendeur n'a pas proposé l'exception dilatoire mais qu'il a de suite opposé son garantie en cause

— 6 Si un defendeur presente un exception dilatoire le demandeur peut la contester

The Clerk vs John Nickerman Master. Collision of William Layton lake male on board said vessel £50 Stg. Arbitration of Wages. Lee & Dunbar for promoters Lowell & Dunn appear for John Nickerman Master under protest 3 July 1860 protest admitted & libel dismissed.

August. The Anne Johanne L. Akanson Master Action A. Dubois & France owner of Ferdinand £3000 Stg. L. Dubois & Heliere for L. Dubois Lowell & Dunn appear for Jean Abrahamsen of Norway sole owner of Anne Johanne under protest. Judgment 21 Septr 1860 Collision accidental each party paying his own costs Lowely for L. Dubois & Fuches

for the year 1861.

July. The Keptown. Carrignon Master. action of E. Codin dal of three Rivers Trader £125. Collision Andrews & Andrews for promoters E. Codin & Loiselin & M.L. Auger. Lowell & Dunn appear for A.W. Humphry owner of Keptown Lowely John Roche 31st July 1861. Judgment for promoters. Amount of damage £191. 8. 9.

omitted in the year 1860.

August. The Anne Johanne L. Akanson Master, Action of Ferdinand Dubois £3000 Stg. Collision Heliere appears for L. Dubois Lowely Jacques & Fuches. Lowell & Dunn appear for owner of Anne Johanne. Judgment 21st Septr 1860 Collision accidental

in the year 1861.

July. The Rytown barque Master Action of Wasselin of Auckland £600.0.0 Collision Andrews & Andrews - Jones & Hearn for owner.

July The Rytown barque Master - Action of Marie L. Auger of Lablinieu Collision £25-0-0 Andrand - Jones & Hearn for owner.

July The Alma Redic Master - Action of John M. Landon & al owners of Arabian Damage by Collision £500 Stg. Stevenson appears for John M. Landon & al owners of Arabian - Surely Robert Gatt Jones & Hearn appear for owners of Alma. Surely John Edmonds 2 June 1862 libel dismissed with costs.

September. The Marankam Theodemeon Master - Action of Julien Dion pilot on board said vessel. £100 Stg Damage - Bacuet & Langlois for promoter. Jones & Hearn appear for Theos Emerson under protest. Surely William Crawford.

In the year 1862.

September The Jessie Royle v. Rawle Master - Action of George Bloys late seaman on board said vessel Damages £100 Sterstan & Dunbar appear for Rawle Master & Thomas Richard first Mate

August. The Courier Tyatt Master vers
The Snowdon Val of England owners of
John Moore £500 Sta. Damage by Collision
Mc Bl Holt & Irvine appear for Ct Jerome
& al owners of Courier Lundies & Walken
berg & Henry Mc Blain Lundy for Snow
don & al P. K. Smith of Quebec 21 Nov 1862
Judgment for promoters action dis-
missed with costs appeal by Ct Jerome to
Her Majesty in Council Lundies & Walken
berg & Henry Mc Blain

Sept The Royal Middy Dawson Master
action of Wages Roy Otis Kinnear & Ka-
mouraska £200 Sta Salvage & Bl Canon
Holt & Irvine appear for H. R. Blanchet owner
of Royal Middy Lundies Edw Le Maugnen
Wm Kenning Lundy for Roy Isaac Landry
of Quebec, Lundy for Edw Salvage.

April The James McKenzie Barge Master
action of Pierre Blanke & the Island adver-
sus owners of Steamer £500 Sta Damage
& Costs Holt & Irvine appear for Steamer
Canada & Pain. Kenniau ex of Jas McKenzie
Lundies. P. K. Irvine of Pain. Kenniau and
Joseph White of Quebec for £500 Sta. Lundies
for Pierre Blanke & Rousseau of Quebec & H
& Rowen. Libel dismissed with costs. 11th
Aug 1862 petn for pronounces appeal to
Holt & Irvine to Her Majesty in Council.
Lundies & Walkenberg and Joseph White

In the year 1863

June 4th Boston Cochran Master
action of Peter Jarvis, of Montreal, Master
Damages £150 & Wages action withdrawn
22 June 1863 (Mathew) Duggan & Duggan
appearance for Cochran & owners of Boston under protest - Lawrence & W.
Wilson of Quebec Merchants

June 4th William Geo Baines Master
action of Nicholson & al owners of Wreck
Wood £1000 & Damage (Mathew) appearance
by Holt & Irvine - Lemoine for Johnston
& Hunt of Quebec

Peter Adrienne Renaud Master action
of Jno Wilson of Montreal Ship owners
Joseph Olivier of Sorel Lemoine for Morgan
£195 Damages & Costs) Lemoine appears for
& Renaud owners of Canadienne Lawrence
Basic Laundry -

References in the year 1860

June 4th Silas Edwd Hexam Master
action of Lake Vale & Owners of Beverley
£300 & Damage by Collision & Pilotage
Brunches Jones & Hexam appears for Mc
Liam Alexander & al owners of Silas
Lemoine & D. Young 13th July 1860 Libel dis
-missed with out costs

in the year 1860

The York R. James Smith Master. October -
action of James Carson of England, £100 Stg
Damage by Collision (Jones) Mr Farnworth.

October The Dandy Jim Bouquet Master -
action of Patrick Donnelly of England £100
Stg Damage (Mr A Hall)

October - The Aurora Morrison Master
action of William B. Bames of Montreal
Merchant, Damage by Collision - (Jones)
Thos Pope appears for Plaintiff Cooper & al
of Aberdeen owners of Aurora

September - The Aurora Morrison Master
action of Rochan Knapp of Conway owner
of same £6500 Stg, Damage by Collision
Jones Thos Pope appears for Plaintiff Cooper & al
of Aberdeen owners of Aurora Saunders
Archdeacon & McKean of Quebec. Sundry
for value arrested E B Symes 30 October -
1860 - Libel dismissed - 13th November 1860 Ap-
peal dismissed in Council by B. Knapp
Saunders & McKean & Archdeacon

June. The Two Brothers Master. action
of William Mc Clelland & al of England owners
of Repsales £250 Stg Damage by Collision
(Jones) Holt & Irvine

in the year 1861.

December 4th The James McKenzie Boyer-
master - Action of Rienne Master of the
Island of Orleans £1250 Stg. Damage by
Collision (Jones) appearance by Holt & Summ

July 4th The Arabian Lunard - master -
action of Charles Dunnet of England,
Ship-Owner £300 Stg - Damage by Collision
(Mail) Lundy Nolimoun & Co Hannovour
appearance owners of Arabian 2 June
1862 libel dismissed with costs.

May 9th The Lotus - Clarke master - action
of Allan Gilmour £250 Stg. Damage by
Collision (Jones) Holt & Summe appear
for Fry & al owners of Lotus - Lundy
Henry Fry, Lud. 19 July 1861

May 9th The Lotus (Clarke Master action of
James Rankin & al of Scotland Damage
by Collision - (Jones) Holt & Summe appear
for Fry & al owners of Lotus Lundy
Henry Fry - 19 July 1861. Lud. for Respon-
dents - libel dismissed without costs

in the year 1862

September - The City - Jacques Savard
Master - Action of Jos Wm of Canada
owner of Countess of Durham £25.0.0
Stg Damage by Collision (Jones)

683. Rafferty & McMullan - appby Holland & Irvine Decr 29. pleas filed issue last entry Defts ans to pltffs art de fact
822. Foulin & Reed (defence) Decr 60. appby 2 pltffs pleas filed issue judgt for cap int & costs Mar 61. fi fa issued Mar 2a - ret issued.
845 Bk N Canada & Neill. defence Decr 60 sum £120.00 appby Pltffs Jany 61 Cert of no plea & not to proceed Exp: Pltffs. judgt for cap int & costs.

1862

289. Partridge & Robitaille June 11 62 judgt for cap int & costs last entry Costs. fi fa issued.
341 Plum Reb & Rickel - appby Pltffs Cert of no plea & foreclosure long last entry
131. White & Regan appby Pltff Dec 61. pleas filed issue Dec 24 judgt for £75 Int & costs last entry Jany 62. fi fa issued by consent.
186. Gillespie & Rickel - sum rec with conft & acceptation - appby Pltff & Irvine April 62 - judgt for cap int & costs May 63 - fi fa issued returned unexecuted
229. Ho & Ne Bonneau May 62 - Def not Pltff May 23rd judgt June 62. fi fa issued -
396. Yule & Macaulay - Holt & Irvine for Pltff appby Pltff - last entry Pltff for cap & costs.

1863.

No 29. Bossack & Nellis Jany - Decr for Pltff & Irvine for judgt Decr 29 judgt for cap int & costs - last entry Jany 62 - Ca fi fa issued
128. defence Murphy & Fahey - appby Pltff. April 16 Cert no plea & foreclosure - May fi fa

issued - Lastenbury March 2 - fiat issued
y/d Riordan & Lamb / Holt & Irvine Agts
by D/C Lastenbury May 22 - 62 - Mot: for decy
for costs.

Cases in the Vice-Admiralty Court.

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in the year 1859 -

November - The Warburton George Davie
val - owners - action of George Lawrence
late Master of said ship £500 stg. sub-
straction of Wages (M. A. C.) Holt & Irvine
appear for Pl. Davie & al of Saint Lewis.
agents of Warburton - surety for George
Lawrence Benyamin Green of Quebec

September The Wm Dee Edward Kempt-
horn - Master - action of Thomas Hobbs of
England, owner of said vessel Cause
of possession Cross / R. Rose appears for
R. Kingsley surety for the Master &c.
Ex Klan & A. Fr Kenberg - 21 January 1860
Judgment for claimant - vessel to be given
to Thomas Hobbs - Appeal to Her Majesty
in Council.

July - The Phoenix McCoddon Master
action of Alfred Charland of Yamaska
Mariner owner of the Lomond £500 stg
Damage by Collision (Mar.) Holt & Irvine
appear for W. Dunning owner of the
Phoenix.

No 1546. La Soc: de St Jons: Dum de Quebec & Ch Aly from 61. Sum £10. 11. 10 Judgt for Plff on Demurr & Pl: fi fa & Pl: fi fa issued last entry Decr 31 Judgt on Interpleader: Discharge of 2 Harbor Commrs w: costs against Defts.

1864. Jas Mill & Co & R Avery Greene Sum Solt & Irving for Plff. Foreclosure. Last entry Decr 31. Nothing by Plff for Deft to proceed with his Engagement.

1879. Exp: Mc Flanagan. Rep: Ins Co by Mary O'Connor widow & Admx. Last entry April 4 63. Stat motion granted.

2124. (Sp) Christopher Sheridan & Kennedy Campbell for Deft. from 861. 1863. Nov 2 Last entry 1st May 64 on Mot: for Judgt for costs.

2251. Jan Finch & Wm Cumming Sum & Capias & Wm Austin substituted for C Jones. April 1 1863. & July 8 1863. Judgt for £87. 15. 0 with costs & Interest in favor of Plaintiff.

Circuit Court
Cases.
1860.

234. Hall vs Beaufield - Cert def: & mot to proceed Exp: judgt. 22 may 60 - last entry fi fa issued not returned

240 - (defence) Laperriere vs H. Cullen & Apl. by def'ts. pleas filed issue April 30-60 adjd: w. costs Dickaits - Expir 62 - fi fa returned see last entry.

332. J. D McRae vs A Lint & (defence) Apl. by Jones. last entry Expir 61. Cert no plea & mot to proceed Exp:

393. St Amand vs Louin Apl by def'ts. Exception filed - Expir 25th Adjd: w costs

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in 1861

No 90. R R an pet. vs L A Runnico from 1859 Adv sum 240.00 Apl by Runnico May 23 61. judgt Aug 22. fi fa issued.

112. Lovejoy vs O'Neill Apl by Beaven last entry Mot for cert for costs.

197. McNamara vs Lemesurier Apl by Irvine Cert: no plea & for decree Entry for decree set aside Nov 30 last entry Dem'd & plea filed

293. Anderson vs Lowe - Apl by Jones & Beaven last entry Defts ans to pltffs art: of attack.

348. O Donovan vs Doyle Apl by Jones & Beaven judgt for pltff Rep: of Dist'rs filed & homologated

435 Nolan vs Klein Apl by Park & Bent. Nov 20 Conf'n of judgt & plea to part of demand last entry Pltff's statement filed.

1862

No 151 - George & Gallagher - Debt £10. judgt for £10. 10 int & costs - March 11 fi fa issued returned unexecuted - May 62 fi fa issued & returned unexecuted Langl: & Rozer for Plff

No 235 Shaw & Jeffery Joined - Judgt for Plff last entry not by Plff Bailiff pay over granted Dr Irvine 190 y. 2d. Comm^rs & Hoe Evans Sum^s from 61. $25.00 Def: Entry

2185 Exp: Donnelly Rebn for Costs Capt Wright issued. last entry not by Rebn for Costs par corps ag^t L. Dr Audette Dun: & Lash:

2166. Alex Roy & R. O Connor from 61 sum^s £52-10-0 Prom Note - last entry Sept 62 - Struck from Special Roll at instance of Plff.

1863

299. Chapman & Macnider Sum^s £90. June 24 not by Plff Bailiff pay over

205 - P. Stafford & Francis Quinn sum^s £9. 9 & Action in 1863 - Debt Judgt as demanded

315 Hoe Evans & Denning Sum^s £382.12.11 from 1858 - judgt - Hoe & Baldwin's Appeal Dismissed 2 Nov^r 10 Oct 1860. Hall & Irvine & Jones.

378 Edw^d Quinn Appellant. Appeal from award of Arbitrators June 6 - 1863 Judgt of Arbitrators confirmed - and Costs for Crown

408. Cook & Angers. April 1 - judgt for Plff. fi fa issued - 4th Cook adjudicataire Oct 17 - Distn not - Nov^r -

497. Alex R. McDonald & Bro Holsted. Campbell Sum^s $750.00 - Sept 11 - 63 Rebn for Subst^n of Affy - Dec^r 5 - 63 - Action dis: no Costs & motion by Learn for dis Depens

535 - The Bank of Montreal vs Jas Tremain
sums $840.00 from Hoke - 1861. J. S. Tremain
dies - that opposn dismissed with costs - N. Y. Decr
opposn 1862 - May 63 Distr not Homologated
Reentry since Decr 1862.
695 - Benson vs Denistown from 1862 - sums
$3.500 last entry Decr 63 Parties heard on
demurrer of Defendts to Pltffs plea. Holt
& Irvine for Pltff
to 938. E. G. Hunt vs W Dunning and Parkin
sums 6. Dem to plea maintained & Exception
dismissed with costs July 25 Judgt that Defts give up
premises & pay costs.
No 942. The Can: Inland Steam Nav: Co vs
Rottenstein - Septr 63 Jas Land Sang: for Pltff
Petn for subsd regularly by Maclean & Co's
Reduction dismissed with costs & notice by Maclean
for dismissal. Octr 64 Writ of appeal
lodged by Pltff record sent up
No 885. McDonnell (all & all) Jos Campbell.
Sums as Revenue $1533 Septr 25 - Notice for subsd
of Reg by Maclean & Co last entry Decr Reentry
Dem of plea filed.
903. Benson vs Dennistown from 62 - last
entry Judgt on Demr of Defts to Pltffs
plea - Holt & Irvine for Pltffs.
1413. The City Bank & Cox & Kilvert vs Ed Daly
from 61. Judgt for Pltff March 1863. Jo Jas Reid
for £206. 9. 9. last entry July 63 M. O'Brien
All & all: oppos: afsd & dismd.
No 1529. Robt Kennaban & Mo Fitzpatrick
from 62 - March 64 - 63 - last entry Pltffs & Defts
to Art 18 of facts & Pltff.

with costs. Execn £756. 11. 0 issued returned no levy
La Cocworthy & al dfts: af:d Dunn Camp & Herr & con-
tested by pltff & issue marsh: with costs.
1168. The Quebec Bank & Hackam. June 1860.
Verdict for $1530. & applicable to the payment
of the note adverted to hers. Judgt for $1530
1195. W Brown & A Clarke. Jn. Power appeal & Dun
13-60 Dist Ct has filed. Callaghan & Bendizamberl
counsel by Power. Heal cons & dis: with costs a-
gainst Power.
1249. Jackson & Fraser. Defts. Mot for recy for
costs. last entry Bond put in for £30 Cy.
1343. Eakenly & Lemieux May. Exception to
judgt filed. June 6. Delib on Mot to review taxa
tion.
1374. Power & Kelly. Rep of Referee Homologated.
June 28. appl: by Pltff July 25. Rep: Dis Mot. Homo-
logated Oct 17 Distr Ct 2. Homologated.
1420. 1869. Neill & Bowman. Appl by Pltff.
Rec't for costs put in Defts Foreclosure filed. Last
entry Dec 4. Rule for Judgt & Sher.
1528. Talbot & Cocworthy - La Rue & Lauder. & Jones
for La Cocworthy & al Pactons Defts. Act: dis. as to 1st
Second Counts.
1629 Link & Kilderclene - Def Recy for costs put in
Nov 5. Cert no plea Foreclosure Mot 19. Last entry
Rule filed.
1742. Stafford & McKay. Pleas filed & issue Delib
ver: & delib: discharged. Last entry Nov 2 Mot & Pro
ceedings & Eng.
1814 English & Dr Rinson 1862 Same fi fa issued
July 4 - fi fa returned unexecuted. Holt and
Irving for Pltff

~~277~~ Dugal & Shelyn 1861. Taylor & Ryan. appl by Duggan & Duggan pleas filed. witnesses examined - Mot to reject Defts ans & defaito. decd q - last entry - Take nothing on the mot. 1934 Irvine & Mackenburg. Sept - appl by Defts Mot: for recy for costs absolute.
2054 Plaxton & Brown - Judgt for Plff on verdict issued - writ returned. Decbo La Arrest issued - not returned.

1861.

17. Vezina & Kelyndico &c. Edmonds for Defts last entry May 2 - 61. Def: endrsit of Defts dis: w costs.
68. Kennedy & MacKay - Judgt for Plff Sept 11 - fi fa issued. returned unexecuted. Galt & Irvine for Plff.
418. Bonaker & Clancy - Except from. 6 & 7 Aug 2 - 61 Feb for subsn of Atty for Plff appl: filed & last entry Sept 17. & Issue Exp: rec'd & recorded.
1196 Munro & Rourke & Shaley [illegible] Nov 61 - foreclosure and Def Rockwell going on.
1200 Rec'd Las Remainder of July's Foreclosure as Defts Shaw & Anderson last entry Nov 19 61 Causeing for Plff Rec'd and Cond for Plff.
1242. The Quebec Bank & Mackay Verdict for Defts Ca Rendo appeal judgt confirmed with costs agt Plffs
1748. Las Mitchell & Dorwin Cassidy & Rae for Plff Pleas filed last entry Plffs reply to Defts Ans. of facts.

May 5 q Excr returned no levy. R. Cr ms. Cornelius Corbett
1160 Lodwick & Corbett. spk: by Ch. Vanbokkelen for
Pltff. Last endsy England Levy 59.
1316. McKenzie & Lake Stuart & Lane for Pltff. Sum 55
Ludgt 17 May 56. Last endsy May 4 5th Execution
returned no levy.
1596. Riddell & Paterson - spk by Ch. Lackenby Nov
20 - 1858. Notice amr by Pltff Pendleton Court Pltff
1691 - Jordan & Henderson - spk by Ch Lackenby
Demd & Plea by Pltff.
2159 - Lewis & Baldwin Sam. Paul: certfd copy
by Edwd Jones - Dec. Cer. Nopica Force Levy
Nov 6 - 58. Judgt. Lackenby Dec 60. Exc returned
no levy

1859

Hon. McKay & Brown Ex. a la Corne Practice
Lackenby. Surrebuck from Role & Croch
~~1859~~ 1859 Stevenson & Baldwin Exr issued
Feby 59 Last. Execution No levy
231 Ch Holland & Coker Made Ch by Sums Rem
Role of 225 15 Holland & Coker Mary 7 Judgt
as demanded that writ for his fees
415 Croch & Ch Pl Crown and Camp and Costs
Ld for Crown. Fee Domus Fee 45 9 Crown Rec Costs
delivered Ch Pltffs Indorsr.
42 Jones & Medley. Jany 17 1859 Judgt Court Pltff -
328 Fuches & Remington - spk by Flamel & C. p Cas
Dec - Last endsy Dec 6 - to Jan 60 on Role d'Eng.
1016. Sales 15 Execution by Sheriff Jordan for Debt Costs & Re
Crown for Attachon Mary 4 59 Jud. for Pltff on Interpleader Issues
Marcs taken to appeal Judgt. Informed Jany 60
Execution issued & going on
1722. Hawkins & Murphy from 54 £22 - 3 - 11 1/2

1005 Judgt for £20-15-0 with costs Holt & Irvine
for Defft

1860

22 Hart & Moore Sheriffs - Certificate no plea & Execution
vs Rose & Eng & Exch: Holt & Irvine for Defft
22. Hart & Moore Sheriffs Certificate no plea & Execution
for Irvine for Defft
69. Rusee & Boxworthy last entry 1860 Execution
returned by Sheriffs unexecuted -
145 Yates vs Anderson & Com. to pleas Affidavits
Special to be filed new cause shown & Rule
last entry May 2 - 60 Exception to pleading
pleas & Affidavits filed Defts motion for Defft
182. Finch & Sorrowman Summons. Oct 15 Demurrer
& pleas Nov 6 - Certificate no plea Execution &c
12 - & Engagement Exch
443 Sackville Sheriffs & Russell April pleas filed
with a deposit of £34/1. 24. being last entry
483. Kaignon & Hawkins pleas filed & Enquiries
last entry May 5 Notice by Defts to plead de novo
on paying costs
508. Lash & Forsyth & H. & Forrest. Oct La Sagerie
£225 - Appearance by Pltfs. Jamvoice. Comptroller judgment for
£1-5-0 Costs & Rule Absolute for Levy Levy Warrant Return
for delivery of Goods as seized on giving security
last entry Delivery entered.
706 & Lucas & Copeland - Jones & Mcauley for Defts.
last entry bond given Goods seized delivered to
Pltff.
1040. Cashen & Boxworthy - 1858. Execution issued
returned executed. Execution issued & Goods
& Foreman - returned no levy. & Accounts
Appearance & Com: Entered by Pltff 1860 Dec.

of making a survey in the Port of Quebec
have now established a base line on the
River St Lawrence & River St Charles for
the government of future grants.

Superior Court. Cases.

in year 1858.

No 45 Jas Dean & al v Lincoln from 36. E Jones
Reg & Mal: for Deft. 2a Record £500. Def: en fait &
issue last entry Eng on that issue
No 132. Henderson v Arnoldi Ex a la forme filed
Mar 30 Exon dis: w. costs: no other entry.
219. The Bank of England vs Ritchie Def: en fait.
issue: last entry struck from special Roll 2d Eng
254 E. Poulton & Thos Hassett from 5 y Prom: note
£15. 8. 10. default of deft y pds 5-38 and costs for cap
and costs. Must be issued return'd no levy
283. Nelson & Pemberton v Hennessy Contd for judt
& many pledges but Pltf in confn
301. Costin
305 Arnoldi v Ryan (Agnes) Appl by Deft
Def: en fait issue May 31- Exon dis w. costs
subject to Exon for his de Expenses
315 Brown v Ld London Exp £12 5 3
Ld. Mar Pleas filed & issue last entry Dec 31
Eng & Delt.
327 Nelson Esq. des Perriers & Lucas mutuelle
fonse Land appl by Deft. Pleas filed issue entry
Q. Judgt.
336 Anderson v Fellon Pleas filed issue Pltf
Extra Deft. last entry Dellon part.
355 441 Dr es v Boyce Last entry Dec 28. Exon
issued returned no levy
440 Fuches v Hamondon Land by Pltf issued
returned unexecuted
488 Robicheau v Le last entry May 1-58. Pltf
by Patt Dr. Def say now
483. Wenner & Wilson v Rennie Pleas

ings in this cause until he shall have been heard upon his said opposition according to law justice. with costs.

(with usual notice)

Plea ares judicata 3

That the said Plff heretofore to wit in the term of which was in the year of Our Lord — in this honourable Court impleaded him the said deft of the same matters & things of the same demand & for the same cause and causes of action as are set forth in the declaration of him the said Plff in this cause & issue was regularly joined between the said parties & evidence adduced thereupon in due course of law & the parties having been finally heard upon the merits this Hon Court did order — day of — in the year of Our Lord — adjudge the first mentioned action of him the said Plff to be dismissed with costs which said judgment still remains in full force & virtue unreversed & unrevoked and the said defendant saith that the same was & is a res adjudicata between the said parties & that the said Plff cannot now lawfully implead him for the same cause hath attempted to do by his present action.

Petition for a grant of ~~a tract~~ a deep water lot.

To his Excellency &c.

The petition of — &c by his their petition do respectfully shew:- That your petitioners are the legal owners & proprietors of a certain Cove & ship-yard Commonly Known &c (insert discription of property) as well more fully appear

upon reference to the figurated plan made by the said —— Land Surveyor, a copy whereof is herewith enclosed together with the deeds of acquisition of the said property by your petitioners.

That your Petitioners are desirous of improving the said property in a manner which will tend materially to benefit the Harbour of Quebec & for this purpose it is necessary that your Petitioners should obtain a grant of the deep water immediately in front of the same upon the usual conditions

Wherefore your Petitioners humbly prays that your Excellency will be pleased to grant to your Petitioners the right to the deep water immediately in front of the said property extending from the low water mark of the River St Lawrence & further that a patent do issue in favour of your Petitioners for the same, upon such terms as to your Excellency may seem meet, & as in duty bound your Petitioners will ever pray

That the said deep water lot is not included in any former grant nor is the same within any portion of the Beach set apart for public use but is the identical lot in point of locality to which the appended report of the Corporation of the Trinity House refers as by the accompanying plans will more fully appear.

That the Commissioners appointed by Your Excellency's Predecessors for the purpose

aforesaid, and falsely & maliciously in the presence & hearing of divers persons residing & being in this city, allege publickly & say that he the said Plff was &c (mention expressions or words complained of)

That in consequence of the premises the Plff hath suffered damage to the extent of £ — for which the said Deft refuses to pay

All which (ordinary conclusions)

Petition for a writ of seizure & sale of L.C.P.Q.

To the Hon: &c.

H. P. &c by this his Petition doth humbly represent:-

That by and in virtue of a certain writ of execution issued in the above cause certain immovable property has been seized & taken in execution as belonging to the said defendant which said property is now advertized to be sold at the Sheriff's office at Quebec on the four — day of — inst.

That your Petitioner has a claim or charge in & upon the said property founded upon a notarial instrument made & executed at Quebec before — & Co. N. P. bearing date the — of — one thousand —

That your Petitioner in order to preserve & maintain his said rights lodged with the said Sheriff on the — day of — an opposition afin de charge founded on the deed aforesaid.

That the plaintiff hath tendered on

bond of indemnity to the said Sheriff with a view of procuring a judicial sale of the said property on the ____ to the prejudice of the just rights of your Petitioner without any regard to the opposition or discharge of the said W. Pickels said opposition is not contended to nor has any judgment of this Honorable Court been had thereon.

That the said Sheriff hath declared to the said W. P. that upon receiving the said bond of indemnity from the said plaintiff he would adjudge the said property on the ____ without any reference or notice of the opposition afin discharge of the said W. P.

And your Petitioner doth further represent that the parties Plaintiff & Deft well knowing the premises but contriving fraudulently intending to injure the said W. P. & to deprive him of his just rights to a hearing thereon before this Hon. Court hath tendered the bond of indemnity as aforesaid.

Your Petitioner respectfully submits that he cannot be deprived of his claim or charge on the said property without a hearing before this Hon. Court & until his said claims shall have been adjudged upon according to law.

Wherefore your Petitioner humbly prays that your Honor will be pleased to order & direct that a writ of supersedeas do forthwith issue commanding the Sheriff of this District to suspend all further proceed-

Pas debouter avec depens mant a present
incidentes procedures inclusivement presente
cause sont suspendues jusques ce que
Ingenient soit intervenu sur la dite de-
mande du dit Pff sur ladite action en
garantie et quil soit dit droit sur
icelles sauf au dit present deffr a plaider et
prendre des conclusions ulterieurs qui
vont quil sera pronce et determine dans
les dites deux demandes originaire et en
garantie condamne et plus le dit deffr aux
depens des deux presente defense

Action of damages for
calling pltff rogue liar &c Solicitor:

Pff complains &c &c &c

That where as the said pltff is a true
good honest just faithful subject of the K, in this pro-
vince has ever hath always behaved & conducted
himself, until the committing of the several
grievances by the said Deft as hereinafter
mentioned was always reputed esteemed &
accepted by & amongst all his neighbours
other good & worthy subjects of this province to
whom he was in any way known to be a
person of good name fame credit & reputation
& such at the city of Quebec aforesaid.

And whereas also the said Pltff hath
never been guilty, nor until the time of the com-
mitting of the said several grievances by the said
Deft as hereinafter mentioned, ~~hath he been~~ sus-
pected to have ~~been~~ been guilty of robbery or of
swindling or of cheating or of villainy or of being

a rogue, a robber, a swindler a cheat a villain or of any other such crimes. By means of which said premises he the said Plaintiff before the committing of the said several grievances by the said Defendant as hereinafter mentioned had deservedly obtained the good opinion & credit of all his neighbours & other good & worthy subjects of this Province & to whom he was in any wise known to wit at Quebec aforesaid

Yet the said Deft well knowing the premises but envying the state & condition of the said Plff & contriving & wickedly & maliciously intending to injure the said Plff in his said good name fame credit & reputation & more particularly to injure & ruin the credit of the said Plff in his business as a Merchant & to prevent him from obtaining goods wares & merchandize on credit & for the purpose of causing the Plff to abandon his mercantile pursuits & of driving the said Plff out of his business & to bring him into public scandal infamy with & amongst his neighbours & other good & worthy subjects of this Province & to cause it to be suspected & believed by those neighbours & subjects that he the said Plff had been & was guilty of robbery, swindling cheating & villainy & was a rogue a robber a swindler a cheat & a villain & to vex harass oppress impoverish & ruin the said Plff heretofore to wit, on the ——— (date) at the ——— (place) aforesaid & at divers times between that day & this at the city of Quebec

dem^rs en la dite cause decrivent dans leur dit exploit d'assignation comme suit (insert des. cription of lands as in action)

Que les dits dem^rs dans la dite cause allequent de plus dans leur dit exploit "Leur cy devant avoirs &c (insert grounds of action with the conclusions) ainsi que le tout appert plus amplement par la copie dudit exploit produit avec la presente exception.

Que le dit immeuble mentionné & decrit dans le dit exploit d'assignation est le meme que celui requis par lui dit def^r dudit dem^r en vertu du dit acheminement

Et le dit def^r represente de plus qu'il a sans delai poursuivre la dite dem^de en la presente cause par une action en garantie laquelle est appellée devant la Cour Supérieure dans laquelle lui le dit present def^r declare a la dite dem^de en la presente cause aussi dem^de en la dite instance originaire qu'il prend pour trouble la demande dudit Walker & la dite presente dem^de def^de en la dite action en garantie de lui dit Inquire et telle dite presente dem^de & def^de en telle dite action en garantie. Et que lui le dit present def^r conclud par sa dite action en garantie ce que telle dite presente dem^de def^de en la dite action en garantie, soit tenue pour bien & duement informée de la demande dudit W. & soit condamnée à intervenir sur icelle dite demande dudit W. la faire cesser ou prendre le fait & cause de lui dit Ex def^r originaire

en celle dite instance soit condamné à lui rembourser le montant de la dite demande en première instance, dudit jugement frais interêts & dépens comme aussi de l'acquitter garantir & indemniser de toutes les condamnations qui pourraient être prononcées contre lui dit Seigneur au profit desdits demandeurs en la dite instance originaire & aux dépens tant en demandant défendant que les dénonciations & sommations ainsi que le tout appert plus amplement par une copie du dit exploit d'assignation dans la dite demande originaire & aussi copie de la dite demande en garantie lesquelles copies desdites deux demandes sont produites avec les présentes.

Et le dit Def^r représente depuis : que d'après les allégués de la dite demande originaire, celle paraît bien fondée que le dit présent Def^r est en conséquence d'icelle exposé à être dépouillé des parts de la dite propriété par lui revendiquée comme susdit & dont la dite Dem^esse a été faussement donné connaissance. Et que depuis elle la dite présente Dem^esse est insolvable n'ayant aucun bien quelconque & que le seul bien à elle appartenant est la dite somme mentionné en la dite action en cette cause.

C'est pourquoi le dit Def^r demande le renvoi de l'action en cette cause & que dans le cas où la dite action ne paraîtrait pas

Deponent believes that the said WH is immediately about to leave the Province of Canada with the fraudulent intent aforesaid deponent states & alleges the following facts:- That the said WH is a resident of St John in the Province of —— That has no domicile in the said Province of Canada to the Knowledge of this deponent nor has the said WH & W. or either of them any chattels or effects or any real & immoveable estate within the said Province of Canada out of which deponent might or could expect to realize the said sum of money That the said W.S. who was master of the said vessel —— has since the arrival of the said vessel at the said port of —— left the said vessel & returned to —— aforesaid & that the said WH refuses to account to this deponent in any way whatever for the said chattels & although frequently required by this deponent refuses to make any settlement with this deponent therefor, & is now immediately about to leave the said Province of Canada without making any provision for the payment of the said sum of money.

And deponent further saith that without the benefit of a writ of attachment or capias ad Respondendum against the body of the said WH this deponent may be deprived of his remedy against the said WH & this deponent hath signed

A R G

Sworn at the city of Quebec
this 1st day of —— 18——
before me

Le Consolidated L.C. Cap 83
sec 53 & schedule A

Rea of warranty
by pltff [illegible]

Et le dit defr a par ce que dit le
Le prix de vente dont le demr reclame
une partie fut convenu de deux — et sur le
quels le dit Pltf et son epouse declarent avoir lous
de la passation dudit acte £ — et, quant a
la balance elle fut stipulee etre payable par
divers termes mais que les dits vendeurs se
reservent tous droits de pouvoir au defr les quittances
recus des hypoth que qui pouvaient affec
ter la dite propriete vendue par le dit acte
avant de pouvoir forcer le dit defr a payer celle
dite balance Et le dit defr met en fait que non
seulement la dite propriete est hypothequé
mais meme que la plus grande partie d'icelle
est reclamée par diverses personnes lesquelles
reclament actuellement leurs droits sur le
dit present defr par une action en justice
ainsi que cela ci après dit, tandis tant
la dite demanderesse ne peut maintenir
sadite presente action quant a present
contre le dit defr

2. Parce que par exploit de cessigne
tion rapp' dans la cs pour le 3 dec — ce jourd'hui
— jour de — a la poursuite de Pltf et dem'le
present dit defr est defr en la dite instance est poursuivi
assigné en justice pour a ce que les dits deman
deurs en la dite instance pretendent declarés
les proprietaires vrais et legitimes de deux
tiers de la moitié indivise 1/2 d'un 1/6 indi
vis 1/6 de l'autre moitié indivise du dit im
meuble vendu a sus dit defr que cette dite

sum of £ —— for the work & labour care & diligence of the said A B done performed & bestowed by him & his servants with a certain steamboat of him the said A B called the —— of which the said H R was & still is the master & in & about the towing of the said ship or vessel during the months of —— of last year from the place called —— to Three Rivers in the River St Lawrence for the said H R & at his special instance & request & for services rendered to the said ship or vessel by the said A B & his servants while the said ship or vessel was being lightened for the said H R at his special instance & request & and in the sum of £ —— for money by the said A B paid laid out & expended for the said H R at his special instance & request.

And this deponent further saith that the said H R hath reason to believe & doth verily believe that the said H R is immediately about to leave the Province of Canada with intent to defraud the said A B this deponent. And in grounds of his belief that the said H R is immediately about to leave the Province of Canada with the fraudulent intent aforesaid deponent states & alleges the following facts. That the said H R is a resident of —— in the province of —— & hath no domicile in the said Province & to the knowledge of this deponent. That the said H R is master of the said ship or vessel called the —— & that the said H R as such master is about to sail & depart of this Province on board of his said ship or vessel without making any provision for the payment of the said sum of money. And deponent further saith that without the benefit of a writ

of Attachment or Capias ad Respondendum against the body of the said H K the said A B deponent may be deprived of his remedy against the said H K, unless his said debt & this deponent hath signed.

A B

Sworn at the city of
this — day of — 18 —
before me

Affidavit for Capias refusal by master to deliver goods shipped on board of his vessel

Const. & C. Cap. & sec. 1 neg

Book B p. 114 & 33 p. this

A B of &c. being duly sworn doth depose & say that W D of &c. & now at the city of Quebec W. C. of the same place ship owner the owners of the ship or vessel called the — are jointly & severally personally indebted to this deponent in the sum of £— lawful current money of the Province of Canada being the value of — (goods shipped) belonging to this deponent & on his account shipped & loaded on board of the said ship or vessel — whereof the said W D & C. were then & are the owners in the port of — in — bound for Quebec to be delivered by them at the said port of Q — in this province unto this deponent or certain freight & reward in that behalf which said — the said W D & C. have neglected & refused to deliver to this deponent at the port of Q — aforesaid although her voyage to Q — where she was bound as aforesaid was is completed & the said — has been & is lost to this deponent. And this deponent further saith that the said W D is immediately about to leave the Province of Canada with intent to defraud this deponent — and as grounds of be-

should be thereunto afterwards requested Yet the said Defdt although required by the said Oppots to pay the said sum of money has hitherto failed & made default so to do.

And the opposants say that the said Defdt has been for the last six years & upwards notoriously insolvent & in decomfiture & unable to pay his just debts

And the opposants do further allege & say that under & in virtue of the writ or writs of execution in this cause issued certain real & immoveable property of the said Defdt hath been seized & taken in execution & that the same hath been sold & the proceeds arising from such sale are now before this Court subject to distribution

And the said Oppots do further allege & say that the said Defdt hath been insolvent as aforesaid & in decomfiture for the last six years & upwards & that he is not now possessed of any real or immoveable estate out of which the said Oppots can expect to be paid their said debt other than the proceeds arising from the lot of land & premises sold in this cause by reason whereof the said Oppots are entitled to be collocated & paid concurrently with all creditors of the said Defdt en masse & pari passu out of the said proceeds the said sum of £ ——— (due & owing by the said Defdt to said Oppots)

All which &c

Election of domicile

Conclusions en marche pour

Action for freight &c. Lotbinière &c. to Book A page 32.
p 5 of this book. W.R. &c complains of P. L. &c & by this &c

That the said Deft heretofore to wit on the — day of — in the year of Our Lord — at the city of Quebec aforesaid was indebted to the said Pltff in the sum of £ — cy for certain freight pri mage & average before that time & then due & payable from the sd Deft to the sd Pltff upon for & in respect of the carriage & conveyance of divers goods wares mer chandize & chattels by the sd Pltff before that time carried & conveyed in & on board the ship or vessel called the — belonging to the pltff from the port of — in — to the port of Quebec & there to wit at the said port of Quebec delivered by the said Pltff for the said Deft & to them & at their special in stance & request, & for the care & attendance of the sd Pltff & his servants in & about the loading & un loading of the said goods wares merchandize & chattels & the delivery thereof as aforesaid and in the further sum of £ — lawful current money of this Province of Canada &c (common counts, for goods sold & delivered &c &c)

(Ordinary conclusions)

Affidavit for Ca: ad Res: } See Book A page 119. (Cap 87 sec 1 Reg debt. towage by Steamer } see next form Cons Stat L C &
p5 of this book & 35 A.B. of &c being duly sworn upon the Holy Evangelists doth depose & say:- that H.R of parts unknown now at the city of Quebec Master Mariner Master of the ship or vessel called the — is personally indebted to the sd — in a sum exceeding £ — of lawful current money of this Province, to wit, in the sum

Change in addition to the sums therein mentioned which said sums together amount to a large sum of money to the sum of £ —— Sterling money of Great Britain equal at par to £ —— Cy

Wherefore the Pltffs pray that for the Causes aforesaid by the judgment of this Honble Court the Defft may be adjudged & condemned to pay them the said Pltffs the said sum of £ —— Cy with int at 6 p cent from the —— day of —— last past & on amt of full from the day of amt of Decision from this day & Costs of suit

Oppos. &c. Defendeurs
for mercantile services £ Sterls &c. for £

G. & E. &c. by this their opposition & moyens d'opposition afin de conserver do humbly represent that the said Defft heretofore & viz. at the city of on the —— day of —— one thousand —— was well & truly indebted to the said opposants in the sum of £ —— of lawful money of this province for divers goods wares & merchandize by the said opposants before that time sold & delivered to the said Defft at his special instance & request & also in the further sum of £ —— of like lawful current money for work & labour by the said opposants before that time done & performed & divers materials & other necessary things by the said opposants found & provided used & applied in & about the same for the said Defendant at his special instance & request also in the further sum of £ —— of like current money for money due & payable from the said Defft to the said Oppos. for interest upon & for the forbearance of divers large sums of money due & payable from the said Defft to the said Oppos. by the

and appts forborne for divers long spaces of time then elapsed at the special instance & request of the said deft & also in the further sum of £ — of like lawful current money for money lent & advanced to & laid out & expended for the said deft at his special instance & request by the said appts & also in the further sum of £ — for the work & labour care diligence journies & attendance of the said appts before that time done performed & bestowed as the agent of & for the said deft & on his retainer & for certain commission & reward due & of right payable from the said deft & the said appts in respect thereof & in the further sum of £ — for the work & labour care & diligence journies & attendance of the said appts by them the said appts before that time done performed & bestowed as the factors & agents of the said deft in & about the selling & disposing of divers goods merchandize & chattels in & about other the business of the said deft at his special instance & request & for certain commission & reward due & of right payable from the said deft & the said appts for & in respect thereof & also in the further sum of £ — for a like sum found to be due & owing by the said deft to the said appts upon an account stated & settled between them: and being so indebted in consideration thereof afterwards to wit on the same day & year aforesaid at the city aforesaid, undertook & to the said appts then & there faithfully promised to pay them the said sum of money when they should be

to the said P. B situate with the said city of Q— & bounded as follows, to wit (the description) from the — day of — 18— to the — day of — 18— by the said M.D. had held occupied & enjoyed by him at his special instance & request & by the sufferance & permission of this deponent which said sum of £— although well & duly due & owing to this deponent by the said M.D. he hath hitherto neglected to pay to this deponent.

And deponent further saith that without the benefit of a writ of Saisie Gagerie to seize and attach all & every the goods chattels effects of and belonging to the said M.D. which may be found in upon the said above described lot of land & premises this deponent may be deprived of his remedy against the said M.D. to sustain damage & further deponent saith not & hath signed.

Sworn before me at
Quebec this day of
— 18—

Action on a Bill of Exchange endorsee against maker

The Declaration of the Plaintiffs

Whereas heretofore to wit on the — day of — 18— at Quebec the said Defendant under the said name of — made his certain bill of exchange in writing thereby then & there directed the same to — (name — (trade) of (place) & requested the said — at — months sight of the first of the said Bill of Exchange (second of the same tenor & date unpaid to pay unto P. M & Co or — or order £— Sterg Brit. Currency of Great Britain for value received & to place the same with or without further advice Account of Woo

Goods as advised & then & there delivered the said Bill of Exchange to the said R M & Co who afterwards to wit on the day & year aforesaid indorsed & delivered the said bill of Exchange to —— who afterwards endorsed & delivered the said Bill of Exchange for value received to the Pltffs.

And the said Pltffs say that afterwards to wit on the —— day of —— in the year aforesaid at —— the said Bill of Exchange was duly accepted by R & Co according to the tenor & effect thereof & was made payable at —— Bankers London.

And the said Pltffs say that afterwards to wit when the said Bill of Exchange became due & payable according to the tenor & effect thereof that is to say on the —— day of —— the said Bill of Exchange was duly presented whereupon & the house of Messrs R M & Co Bankers in the City of —— & payment thereof was then & there duly demanded of the said R M & Co but the said R M & Co did not nor did the Deft or any person on his behalf then & there pay the sum of money in the said Bill of Exchange specified according to its tenor & effect but wholly neglected & refused so to do, whereupon the said Bill of Exchange was afterwards to wit on the day & year aforesaid at the City of aforesaid duly protested for non-payment & of such protest the Deft hath had due notice

By reason & by law the Defendant hath become & now is liable to pay to the Pltffs 10 per Ct damages on the amount of the said Bill of Exchange & the sum of —— shillings expenses incurred in protesting the said Bill of Ex

dans dépendances (?) de la grange ci dessus sur le terrein du dit Dem.r labourés et emblavés susdits Def.rs que sans le benefice d'un mandement de saisie-gagerie aux fins de saisir-gager iceux dits fruits grains et produits avec aussi tous les instruments d'agriculture qui se trouvent sur ladite terre, lui ledit Dem.r perdra sa creance ou souffrira des dommages

Tous lesquels allegués

Pourquoi ledit Dem.r demande qu'il soit fait un Mand.t de sa Dag.e à l'effet de faire saisir gager les fruits grains et produits de ladite terre mentionnée et decrite dans la presente declaration ~~qui seront trouvés avec aussi~~ (tous les 2.nds instruments d'agriculture qui se trouvent sur lesdites terre) (qui 1.ers seront trouvés dans des caves creusées sur la dite terre ci haut decrite avec aussi tous ceux qui seront trouvés dans dépendances (?) de la grange ci dessus sur le terrein du dit Dem.r labourés et emblavés au dit Def.r tel que ci haut dit aussi de faire saisir gager) aussi un ordre de cette Hon.ble Cour pour obliger ledit Def.r d'être et de comparaître devant cette Hon.ble Cour le 4.e pour répondre à la demande du dit Dem.r et que pour les causes susdites par le jugement de cette Hon.ble Cour ledit def.r soit condamné à payer au dit Dem.r ladite somme de £ 0 — avec interêts et dépens et pour en faciliter le payement voir dire le dit Def.r declarer la dite saisie bonne et valable dire et ordonner sur icelle ce que de raison et faisant que les dits fruits grains et produits de ladite terre mentionnée et decrite dans la presente declaration avec aussi tous les instruments d'agriculture que se

trouvent sur ladite terre, dans ses gages, seront vendus adjugés au plus offrant & dernier encherisseur, en la maniere accoutumée et les deniers en provenants baillés audit Dem^r^ sur tant moins qui sera suffisance de son dû, en principal interêt frais & mises de execution, les frais de Vente & ceux qui seront faits pour y parvenir prelevés & le surplus ce surplus s'il y a tenu en Justice à la conservation des Droits de qui il appartiendra.

Praecipe for a Gagerie

I appear for the said Pltff & demand for him a writ of Sa Fag: to seize & attach in the hands of the said Dft. (Deft) all & every the moveable effects household goods & furniture which are to be found in upon and furnishing the house & premises belonging to the sd Dft. (Pltff) situate lying being &c (description) & also to seize & attach par droit de suite all & every the moveable effects household & furniture which lately furnished the said house of the said Dft (Pltff) & which have within the last 8 days been removed therefrom & are now in a certain &c (description) & to summon the said Def^t^ to a demand for £ — in action of debt for rent. Ret: —

(affidavit for Sa Fag

Def^t^ S. C. & R. of the city of Q — Esq — & (trades) being duly sworn upon the Holy Evangelists doth depose & say: That M. D of the city of Q — (trades) is personally indebted to this deponent in the sum of £ — as for the use & occupation of certain house & premises of & belonging

of Canada
Province of Quebec

Circuit Court
Quebec Circuit

Edward Jones
vs Pltff
John Smith
Defdt.

To any one of the Honorable the Justices of the Superior Court for Lower Canada.

Edward Jones of the city of Quebec Esquire Advocate, complaining of John Smith of the same place Landing Waiter in Her Majesty's Customs and by this his declaration doth humbly represent:-

That heretofore, to wit, at the city of Quebec on the twentieth day of February in the year of Our Lord one thousand eight hundred and sixty, the said Plaintiff did lease and demise for the space and term of three years to commence and be computed from the first day of May then next fully to be complete and ended on the like day of May one thousand eight hundred and sixty three, that certain house of him the said Plaintiff situate in the Saint Louis Suburbs to wit the Saint Louis Suburbs in the said city of Quebec forming the corner of D'Artigny

D'Arbigny and N. Orleans Streets which
said lease was so made among other
things for and in consideration of the
annual rents or sum of twenty eight
pounds Currency which said sum the
said Defendant promised and bound
himself to pay to the said Plaintiff in
monthly payments to wit two
pounds ten shillings and eight pence
currency on the first day of each month
during the term of the said lease.
That on the said first day of May
one thousand eight hundred and
sixty, the said Defendant entered into
the occupation and enjoyment of the
said demised house and premises
and hath thence hitherto occupied and
enjoyed the same and is still in the oc-
cupation thereof.
And the said Plaintiff saith
that on the first day of March last past
there was due and owing from the De-
fendant to the said Plaintiff the sum of
seven pounds one shilling and eight
pence currency as and for the rents of the
said house and premises which had
accrued and become due on that day
under the said lease and was then in
arrear and unpaid and which said sum
the said Defendant hath frequently ad-
mitted to owe and promised to pay to the
said Plaintiff

d the said Plaintiff doth further
present that the said Defendant on
the first day of March instant was well
and truly indebted to the said Plain-
tiff in another sum of seven pounds
one shilling and eight pence currency
for the use and occupation of a certain
other house and premises belonging
to him the said Plaintiff situate in
St Louis Suburbs in the said city of
Quebec, corner of ~~Nauvelle~~ D'Artigny
and Nauvelle Streets by the said Defen
dant had held used occupied & enjoyed
from the eighteenth day of November last
past, until the first day of March in-
stant by the permission and sufferance
of the said Plaintiff at the special in-
stance and request of the said Defen-
dant which last mentioned sum the
said Defendant hath admitted to owe
and promised to pay to the said Plaintiff
Yet the said Defendant hath not paid
the said several sums of money or any
part thereof to the said Plaintiff although
thereunto duly required

Wherefore the said Plaintiff brings
suit and prays the process of this Hono
rable Court, and that a writ of Saisie
Gagerie may issue in order to seize
and attach all and every the move-
ble effects and household furniture

and

and other things whatsoever of and belonging to the Defendant which may be found in and upon and garnishing the said demised house and premises and that the said Defendant may be summoned to appear in this Court on the
day of April next then and there to hear the said seizure declared good and valid, to answer the demand of the said Plaintiff and that for the causes aforesaid by the Judgment of the Court here the said Defendant be condemned to pay and satisfy to the said Plaintiff the said sum of seven pounds one shilling and eight pence currency, with legal interest and costs & that the seizure and attachment in this cause be declared good and valid with costs

Cuba 3 March 1864.

Keys for Plff

94.

Pltff the said sum of £ —— cy with interest & costs & further that he be condemned to quit abandon & deliver up to the said Pltff possession of the said hereinabove described lot of land & premises & that he be ordered to remove all such houses stores or buildings as he may have during the said term built & erected or caused to be built & erected & that in default of his so delivering up possession of the said hereinbefore described lot of land & premises & removing all such houses stores or buildings by him as aforesaid built & erected or caused to be built & erected then & in that case that a writ of possession may issue to dispossess the said Deft & place the said Pltff in possession of the said lot of land & premises & that the said houses stores or buildings may be removed by the said Pltff at the cost of the said Deft the said Pltff reserving their recourse for damages against the said Deft. with costs.

Declaration for rent of farm for with a clause of "fruits & revenus" farm utensils &c of farm leased

Bon R B page 1. 45 & 41, 44. B 484. Canada enbloc 93, 190. Ibid. de se plaint de J.R. de

Que par un certain bail fait a Quebec sous seing privé, le —— signé par les parties en cette cause le dit Dem. a baillé le present Dem. bail loué affermé audit Deft. un certain terrein en culture lequel dit terrein est decrit en le dit bail comme suit savoir:- (description)

Que entre autres charges & conditions mentionnées au dit bail le dit Deft s'obligerent de payer au dit Dem. une somme de £ —— par année payable en —— termes dont le pre-

[illegible] chain the second, le premier jour de Mai de la presente année-

Que le dit bail fut ainsi fait pour une ou trois années à l'option dudit Defr ainsi qu'il est exprimé au dit bail)

Que la dite premiere année de bail & fermage a commencer a courir le — jour de — dernier & que ledit Defr a pris possession du dit immeuble ledit premier jour de Mai & en a joui jusqu'à ce jour et en jouissent encore actuellement.

Qu'il est maintenant dû un semestre ou terme de fermage pour le lot de terre cy bas mentionnée lequel dit terme est echu le premier jour de — dernier & forme une somme de £ — courant

Et le dit Demr représente de plus que depuis le — jour de — dernier avenir au premier jour de — aussi dernier le dit Defr a eu l'usage & a occupé le lot de terre suivant savoir (description same as the last)

Que l'usage & occupation du dit terrein cy bas mentionnée à compter du — jour de Mai dernier à venir au — jour de — aussi dernier vaut bien la somme de — Ch.

Que le dit Defr enleve les fruits grains & produits de la dite (dudit) lot de terre baillé comme cy bas dit lesquels sont logés dans des eaves creusées sur la terre cy bas decrite & aussi les fruits grains & produits trouvés

Pltff the said sum of £ —— cy with interest & costs &
further that he be condemned to quit abandon
& deliver up to the said Pltff possession of the said
hereinabove described lot of land & premises & that
he be ordered to remove all such houses stores
or buildings as he may have during the said
term built & erected or caused to be built & erected
& that in default of his so delivering up possess
ion of the said hereinbefore described lot of land
& premises & removing all such houses stores
or buildings by him as aforesaid built & erected
or caused to be built & erected then & in that
case that a writ of possession may issue to
dispossess the said Deft & place the said Pltff in
possession of the said lot of land & premises &
that the said houses stores or buildings may
be removed by the said Pltff at the cost & of the sa
Deft the said Pltff reserving their recourse for
damages against the said Deft. with costs.

Declaration for rent of farm — Book B page 1, 45 & 41; 44. B
for with a tag of "fruits & revenus" — Cause ordinaire de 3 & 90
farm utensils &c of farm leased — Elle se plaint de J.B.

Que par un certain bail fait a Quebec
sous seing privé, le —— signé par les parties en cet
cause le vingt huit dit mois le present Dem. bail
lait affirma audit Deft. un certain terrein en
culture lequel dit terrein est decrit en le dit bail
comme suit savoir:- (description)

Que entre autres charges & conditions
mentionnées au dit bail le dit Deft s'obli
gerait de payer au dit Dem. une somme de £
ct. par année payable en —— termes dont le pre-

IN THE SUPERIOR COURT.

No.

Plaintiff.

Vs.

Defendant.

DECLARATION of a *Demande* for £ cy., in an action of Debt for rent.

To the Defendant,

SIR,

YOU are served with this Process, to the intent that you may appear either in person or by Attorney in Her Majesty's Superior Court for the District of Quebec, at the return thereof, being the

day of

Au Defendeur,

MR.

Le service de ce Writ est afin que vous paraissiez soit en personne ou par procureur devant la Cour Supérieure de Sa Majesté pour le District de Québec, au jour du retour d'icelui, savoir le

jour

d

AND inasmuch as the said last mentioned sum is due and owing for the use, occupation and rent of the said

a right hath also accrued to the said Plaintiff to have and obtain process of attachment or *Saisie Gagerie* upon or against the goods and chattles, moveable effects and furniture of the said Defendant,

for securing the payment of the said last mentioned sum of money.

ALL which Allegations the said Plaintiff do hereby aver to be true, and well founded in fact and in law, and the same will verify, prove and maintain when and as this Honourable Court shall direct.

WHEREFORE, the said Plaintiff pray the Process of this Honorable Court, and that a Writ of *Saisie Gagerie* may issue in due course of Law for the attachment, by seizure and arrest, in the hand of the said

of all and every good and chattels, moveable effects and furniture

and that the said Defendant

may be summoned to be and appear in this Honourable Court, on the day of to answer unto the said Plaintiff of the *Demande* contained in this Declaration, and then and there hear the said attachment declared good and valid, and that for the causes aforesaid, by the Judgment of this Honorable Court, the said Defendant may be then and there adjudged and condemned to pay and satisfy to the said Plaintiff the said Sum of

f lawful current money aforesaid, with legal interest and costs of suit.

AND also that for and towards the payment and satisfaction of the said sum of money, said goods and chattles, moveable effects and furniture, so to be attached and seized as said, may be sold in the usual and accustomed manner, and the proceeds thereof be d to such payment and satisfaction in the whole or in part, according to their ency.

ce the said Defft in consideration thereof afterwards to wit on the day & year aforesaid at Quebec aforesaid undertook & faithfully promised the said Pltff to pay him the said sum of money when he the said Defft should be thereunto afterwards requested.

Yet the said Defft not regarding his said promise undertaking &c but part to the said Pltff the said several sums of money or any part thereof although frequently requested so to do, but hath hitherto wholly refused & still doth refuse & neglect so to do, by reason whereof a right hath accrued to the Pltff to demand & have of the said Defft the said sums of £ — with intce.

Pltff. which allegations

Wherefore &c ordinary conclusion.

Declaration on Ejectment for refusal to deliver up premises after separation &c.

To the Honble &c

A B &c complains of C Dby this his Declaration &c. see Form Book B page 1.45, 70, 77. Ex. Dp 468 493

For that whereas heretofore to wit 490 at — on the — day of — to by deed of lease made & passed before — & another N.P. bearing date the — aforesaid the day & year aforesaid the said Pltff let leased & demised unto the said Defft therein & present & accepting thereof from the — day of — then instant to the — day of the like months of — 18— making a period of — years the following property to wit:- (property)

Which said lease was made amongst other clauses & conditions for the consideration of the yearly rent of £ — by to be paid by even & equarterly instalments of £ — each payable

& the expiration of every three months, which said rent the said Deft in & by the said deed of lease bound himself to pay to the said Plff or his lawful representative during the said term

That on or about the —— day of 18— the said Deft under & by virtue of the said lease & the conditions thereof took possession of the said lot of land & premises.

(And the said Plff further alleges that he the said Deft built & erected divers houses stores & other buildings on the said lot of land during the pendency of the said lease)

That on the first day of February last past there became due & owing to the said Plff by the said Deft the sum of —— & being the quarters rent due on that day that on the —— day of —— last past there became due & owing to the said Plff by the said Deft another sum of —— being the quarters rent of said lot of land due on that day making in all the sum of —— & due to the said Plff under & in virtue of the said lease.

And the said Plff further declares that the said Deft in lieu of delivering over the said lot of land to him the said Plff on the —— day of —— last past or on or before the fourth day of the said month of —— last past, continued to keep possession of the same & still holds the same & refuses & neglects to deliver the same up to the said Plff although thereunto often requested

All which allegations &c

Whereforeto the said Deft may be adjudged & condemned to pay & satisfy to the said

né ce qui est du audit Dem^r sur ledit immeuble pour droits de lods & ventes & autres quelconques & adhérité telles inductions formelles demandes qui lui appartiendra; que ledit déf^r soit condamné à payer au dit demandeur une amande d'un écu le quart d'un écu faisant ensemble 3/5 argent courant de cette Province pour ne pas avoir, lui ledit déf^r exhibé son dit titre d'acquisition concernant ledit Dem^r qui faute de connoître ledit titre de reconnaissance & faire la dite exhibition dans ledit délai aux fins susdites, le dit déf^r soit condamné à payer audit Dem^r la somme de —— Etant pour dommages & intérêts résultants au dit Dem^r des refus susdits audit déf^r, que pour tenir lieu des lods & ventes cens & rentes amendes & autres droits généralement quelconques qui sont dus ou peuvent être dus sur la dite propriété dans le cas où le dit titre seroit connu & la dite exhibition de titre faite dans le dit délai le dit dem^r se réserve le dit droit de prendre en la présente cause telles conclusions qui seront nécessaires pour le recouvrement de ce qui sera constaté être dû en moyen desdits titres concluant enfin le dit dem^r aux frais & dépens de la présente action en tous cas.

Action for professional services by atty against client

Dist. Quebec
Notre Dame No 464

H. B. &c complains of C. W. &c by this his &c

That heretofore to wit at the city of Quebec aforesaid on the —— day of —— in the year of Our

Lord 18— he the said Deft was well & truly indebted to the said Pltff in the sum of £— for the work labor care & diligence of the said Pltff before that time done performed & bestowed by him the said Pltff as the Atty & solicitor of the said Deft in & about the defending a certain cause for the said Deft in the S.C. for L.C. sitting in & for the D. of Q. under the number —— of the records of the said Court wherein D.M. was Pltff & the said Deft was Deft in & about the defending for the said Deft the said cause in the Court of Queen's Bench Appeal side by the said D.M. Pltff in the said S.C. and also for other the work labour care diligence & attendance of him the said Pltff before that time done performed & bestowed in and about the drawing copying engrossing of divers writings & other instruments for the said Deft in & about the business of the said Deft for the said Deft & at his special instance & request & also for divers journies by the said Pltff from this City to Montreal from Montreal to the said City of Quebec & other attendances by the said Pltff before that time made performed & given in & about the said business of the said Deft more particularly in & about the said cause in the said Court of Queen's Bench Appeal side wherein the said D.M. was Appellt & the said Deft was Respt & for the said Deft & at his like special instance & request & and for money paid laid out & expended by the said Pltff for the said Deft in that particular & at his special instance & request & being so indebted

acquereur proprietaire & possesseur actuel de la dite terre est tenu en loi de reconnoitre & de clarer que ledit immeuble relevé dudit B.C actuellement representé par le present Demandr comme seigneur de la dite partie de fief et seigneurie est sujet envers lui a divers droits & redevances seigneuriales ries & imposées sur ledit immeuble tant par les titres seigneuries que par la loi commune du pays & ici à cet effet ledit Defr est tenu & obligé de passer & consentir en forme probante & authentique nouvel reconnaissance censuel & aprés la loi des titres seigneuries

Que ledit Defr est en outre tenu comme nouvel acquereur & possesseur du susdit immeuble de exhiber & presenter au dit demr en la dite qualité tant le titre en vertu duquel il a lui même acquis ledit immeuble que ceux en vertu duquel ses auteurs l'ont acquis & possedé afin que ledit demr puisse connoitre et établir les divers lods & ventes & autres droits & redevances qu'il peut reclamer sur ledit immeuble lesquels lods ventes & autres droits & redevances sus audit demr sur la cause du susdit immeuble en sa dite qualité de representant ledit seigneur de la cy devant dit a eleventé une somme de moins trente livres courant.

Que cependant ledit Defr sachant tout ce que dessus a toujours jusqu'ici refusé & negligé & refuse & neglige encore de reconnoitre le droits dudit demr sur le susdit immeuble par lui possedé, de consentir

un libre nouvelaux reconnaissance censuel
suivant la loi, de lui eschiter produire & pre
senter ses libres ou lettres d'acquisition & autres
libres anciens qui peut avoir relatif à la
dite propriété & non déja eschibés & aussi bien
que de payer audit dem^r les susdits lods
& ventes & autres droits & redevances qui peuvent
luy être dus sur le dit immeuble quoique
le dit def^r ait souvent & duement été requis
de satisfaire aux susdits obligations
Conclusions pour avoir & voir dire & decla
rer le dit def^r que le dit immeuble par lui ac
quis en vertu du dit acte cy dessus & cy
dessus decrit & relaté dans la censive &
mouvance de la dite partie du fief de l'Ile
Verte mouvant le dit dem^r & en possession
de laquelle cy devant dit & avec consequence le
dit def^r comme nouvel acquereur & de-
tenteur & dud^t dit immeuble sera ad
jugé & condamné à passer libre nouvel
ou reconnaissance censuel d'après les
libres anciens & la loi en faveur du dem^r
& ce sous & soumis après la signification de
la sentence à intervenir, & que sous le mê^e
delai & peine parvenir à la confection du
dit libre le dit def^r sera condamné à ex
hiber offrir & presenter au dit demandeur
le libre en vertu duquel le dit def^r a ac
quis & possedé le dit immeuble & tous autres
relatifs à la dite propriété qui n'auraient
pas été legalement eschibé enfin d'avan
mayen de l'inspection des dits libres papiers
& instruments & pieces être établi & determi
-né

16

Replication to demurrer &

and the said Defft W.B. by this his replication to the Demurrer pleaded by the said L.B. to the ~~Exa~~ exception of him the said W.B. in this cause filed saith that the allegations of the said W.B. and the matters & things in the said plea set forth & contained & each & every of them is & are wholly & altogether well founded in law & sufficient therein for the said W.B. to have & maintain against the said L.B. the conclusions in his said plea taken.

Wherefore the said W.B. persists in the conclusions of his said plea & further prays as therein & truly he hath already prayed & that the demurrer of the said L.B. be overruled & dismissed with costs.

Declaration en passation de bail nouvel par devant les honorables & L.B. & ce plaintde W.B. & ce & par & ce

See form Book A page 40.

Que par un certain acte authentique fait & passé au dit lieu de — le — pardevant le B. C. Ecr. Seigneur d'une partie du fief & seigneurie de — dans la paroisse — fit bail & ferme emphyteotique pour le terme & espace de — années finies & revolues qui avaient commencé d'avoir cours le — & promit faire voir paisiblement au present demandeur Cedit acte present & acceptant pour lui ses hoirs & ayans cause à avenir savoir "Goods & (description of property)

Que Cedit demandeur a été mis en possession de ladite seigneurie à lui louée

avril en a joui ainsi que de tous les droits attachés à icelle depuis le dit ——— sans interruption dauril en jouit actuellement en conformité au dit bail et ce au vu au et sou connaissance du dit défendeur.

Que subsequemment à la passation du dit bail le vingt deuxieme jour de fevrier ——— lui le dit defr est devenu nouvel acquereur et est depuis le dit temps, et actuellement encore possesseur et detenteur a titre de propriétaire d'un certain immeuble en propriété fonciere situé dans l'enclave ou mouvance de la dite partie des dits fief et seigneurie de ——— (appartenant au dit B.C. et par lui loué au demandeur tel que cy devant dit) relevant icelui dit immeuble en propriété fonciere du domaine d'icelle dite partie de seigneurie de ——— relevant du domaine d'icelle dite partie des dits fief et seigneurie de ——— dit immeuble acquis par le dit defr a titre de cens sujet a divers droits et redevances seigneuriaux envers le dit demandeur en sa qualité de premier mesnier de la dite partie des dits fief et seigneurie de ——— tel que cy devant dit: lequel dit immeuble acquis par lui dit defr dans l'enclave de la dite partie du seigneurie de ——— etait lors de la dite acquisition par le dit defr au tems cy devant dit de la contenance situation et description suivantes, c'est à savoir (description)

Que le dit defendeur comme nouvel

Copartnership whereof the sd C.D. hath had the sole
ad& management and that the sd C.D. be held
with such case to give to the sd A.B. Communication
& such manner as may be required by law
and by the practice of the Court of all books &c
&c papers and vouchers wherein there to. and
in default of a Compliance with the premises or any
part thereof, that the sd C.D. be adjudged and
condemned to pay and satisfy to the sd A.B.
the afs& sum of £ for & as his share
of profits, balance, sum and sums of money
goods effects, chattels & property which upon the
rendering of such &c would be Comg and due
to the sd A.B. And further that upon the rendering
of such &c as afs& by the sd C.D. (if he do render
the same) he be adjudged and condemned
to pay and satisfy and deliver to the sd A.B.
one half or just moiety of the profits which
have arisen or been made during the Continuance
of the sd Copartnership, and of all goods, effects
chattels and property which at the time of the
dissolution of the sd Copartnership in anywise
belonged or appertained thereto, the whole with
Costs —

Decree —

Action Trover &c

A.B. Complains of C.D &c for that whereas the sd A.B on &c at St Johns in the district of was possessed of six chest of tea of the value of £150 Current Money of the province &c and his own proper goods and Chattels and being so possessed thereof, he the sd A.B afterwards, to wit, on the same day and year afsd casually lost the same six chests of tea out of his hands and possession, which said six chest of tea, afterwards, to wit, on the day and year afsd at afsd came into the hands and possession of the said C.D who found the same Yet the said C.D well knowing the said six chest of tea to be the goods and Chattels of the said A.B and of right to belong and appertain to him, but Contriving to deceive and defraud the said A.B in this behalf hath not as yet delivered the said six chests of tea, or any of them or any part thereof to the sd A.B although often requested so to do but on the Contrary thereof he the sd C.D afterwards, to wit, on the day and year afsd at afsd converted and disposed of the said six chests of tea to his own use, to the damage of the sd A.B by reason &c

Wherefore the said C.D may in this and there adjudged and Condemned to pay and satisfy to the sd A.B the sum of £150 with interest and Costs of Suit — &c

the sd Copartners each to the other, and in case of the death of either of them, the surviving party to the Executors or Administrators of the party deceased within two years from and after such decease should and would make a just, true and final a/c of all things as aforesd & divide the profits as aforesd and in all things well and truly adjust the same. And also that upon the making of such final a/c all and every the Stock & Stocks as well as the gains and increase thereof which should appear to be remaining whether consisting of money, debts, wares, goods, commodities or merchandizes should be equally parted and divided between them the sd Copartners, their Executors, or Administrators share and share alike, all which by the said deed or Instrument of Copartnership of which the sd A.B. brings here into Court a Note and Copy, reference being thereto had will more fully and at large appear —

That by means and in pursuance of the said deed or Instrument of Copartnership to the intents and purposes set forth therein, was formed by and subsisted between the sd A B & C — from the 1st day of — in the year of our Lord to the day of — in the year of our Lord — when the same expired and ceased, during which time extensive trade and dealings were carried on by the sd Copartnership and great profits were made and accrued to the same, and the sd A B expended and paid divers large sums of money

for

for the benefit & behoof of the sd Copartnership and during which time the sd CD. had the care ordering and direction of the business and concerns of the sd Copartnership and kept the books relating thereto and received the profits arising from the business of the sd Copartnership and held and possessed the goods wares and merchandizes, chattels, money &, effects & property belonging to the sd Copartnership for the common benefit of the sd AB and CD. and to render his reasonable account thereof to the sd AB. when he should be thereunto afterwards requested. Yet the sd CD. although often requested hath not rendered to the sd AB. a reasonable acct of the premises or any part thereof, but hitherto hath refused and still doth refuse to render the same to the sd AB. whereby he saith that he is injured and hath sustained damage to the value of £ Wherefore the sd AB. brings suit &c and that he may be then and there adjudged and condemned to make and render to the sd AB a true & faithful acct of all and every the monies, goods wares merchandizes, chattels, effects & property which have come into his possession, custody or power by reason of the sd Copartnership and of his care and management thereof, and of all and every the debts, sums of money, claims and demands which have been or are due, or which have been or are owing to the sd Copartnership and generally of all and singular the concerns of the sd Copartnership

Notaries Public, and bearing date the day and year afsd, it was amongst other things declared, covenanted and agreed by and between the sd parties, that the sd C D & A B had joined and by the sd deed or Instrument did join themselves to be Copartners together in the trade or business of Merchants, and all things thereunto belonging and also in buying, selling and vending of all sorts of wares, goods and commodities belonging to the said trade or business of merchants -, which sd Copartnership should Commence and be computed from the — & Continue till the — which was in the year of Our Lord And in and by the sd deed or instrument it was amongst other things agreed by and between them the sd A B and C D - that the sd trade or business should during the sd term be carried on at the sd City of Quebec - under the firm and in the name of C D and A B - & all such gain, profit or increase as should come grow or arise for or by reason of the sd trade or business should be from time to time during the sd term equally and proportionably divided between them the sd Copartners, share and share alike and also that all such loss as should happen in the sd joint trade by bad debts, &c Commodities or otherwise without fraud or should be paid & borne equally & proportionably between them and that there should be had and kept from time to time and at all times during the sd term perfect just & true books of A/c wherein each of the sd Copartners should duly enter and set down as well all money by them received, paid expended and laid out in and about the

management of the said trade or business as also all wares, goods Commodities & merchandizes by them or either of them bought and sold by reason or means or upon a/c of the sd Copartnership and all the matters and things whatsoever to the sd joint trade or business and the management thereof in any wise belonging or appertaining, which sd books should be used in Common between the sd Copartners, so that either of them might have free access to them without any interruption of the other, and also that they the sd Copartners doe at twelve months or oftener if need should require, upon the reasonable request of one of them should make and render each to the other or to the Executors of each other, a true just and perfect a/c of all profits and increase by them or either of them made and of all loses by them or either of them sustained and also of all payments, receipts, disbursements and all other things whatsoever by them made, received, disbursed, acted, done or suffered in their sd Copartnership and the sd a/c so made, should and would clear, adjust, pay and deliver each unto the other at the time of making such a/c their equal shares of the profits so made as aforesd and at the end of the said term or sooner determination of the sd Copartnership (by the death of one of the sd Copartners or otherwise) they

River) to contain booms or large pieces of timber for
this purpose and lying and being upon the said
quay that the sd C.D & E.H. on the same day and
year afsd were possessed of a certain — then
floating & lying in the River at L'Anse des Mers
afsd whereof sd — the sd C.D and E.H.
then and there by themselves & their servants
had the government navigation direction &
care to wit at L'Anse des Mers afsd And the
sd C.D and E.H having the sd government
navigation direction and care of the sd last
mentioned — and being desirous of bringing
the sd — alongside of the sd Quay did
by their unskilfulness carelessness and
negligence in effecting this purpose by themselves
or their servants cause to go adrift and at
large in the River a large portion of the sd timber
to wit — pieces containing cubic feet which
was thereby wholly and entirely lost by the sd A.B.
who was unable to get back the same and was
thereby greatly injured in his fortune and
livelihood
And the sd A.B further represents that
afterwards to wit on the day and year afsd
the sd A.B was possessed of and in a certain
other large quantity of timber, to wit, pieces containg
about — cubic feet of his own goods and chattels,
which sd last mentioned timber was then floating
and lying at the place called L'Anse des Mers
near the quay — and was there and there fastened
and bound with a rope or ropes in order to prevent
the same from going adrift and at large

in the River, to certain booms or large peices of timber for the purpose used & lying and being upon the sd quay —

That the sd C D and E F afterwards, to wit on the day and year last afsd at the Cause & Mes afsd did by themselves or their servants loosen the Rope or Ropes which so as afsd fastened and bound the sd timber of the sd A B to the booms and large peices used and lying and being as afsd and afterwards did wholly and altogether neglect and omit to fasten again the Rope or Ropes which bound the sd timber to the booms or large peices of timber afsd by reason whereof a great portion of the sd timber to wit peices containing Cubic feet afterwards on the day and year last afsd went adrift and at large in the River, and was thereby wholly and entirely lost to the sd A B who was unable to Recover & get back and who was thereby greatly injured in his fortune & means of livelyhood — to the damage of the damage of the sd A B &—

Pro Socio see book D page 316 & page 106

The sd A B. Complaining of the sd C D. Representeth that heretofore to wit on &— by a certain Deed or Instrument of Copartnership duly made and executed at the sd City of in by and between the sd C D by the name and description of — of the one part and the sd A B by the name and description of A B of the same place gentleman, of the other part before

Quasi delit or Tort for having loosened Plff's fastenings by which his timber went adrift and was lost -

The Ptf A-B - Complaining of the Dfts C.D. & E.F. do humbly represent -

That before and after the time of the injury and grievance next hereinafter mentioned, to wit on the - - the the Ptf A-B - was possessed of and in a certain large quantity of timber, to wit 169 pieces containing 6760 Cubic feet, as of his own goods and chattels and which said timber was then floating or lying at the place called L'Anse des Mers aforesd near the City of Quebec aforesd between the two wharves there being, and was then and there prevented from going adrift and at large in the River by certain booms or large pieces of timber placed on the outside of the Ptf timber towards the Channel of the River & fastened with ropes to one end of the said wharves or quays and at the other end to the timber heads of the Port part of a big called the Governor Wolfe then and there being, to wit alongside of the said wharves or quays -

That the Dfts C.D. & E.F. on the day and year aforesd were possessed of a certain vessel then floating or lying in the River at L'Anse des Mers aforesd of which bateau or vessel the Dfts C.D. & E.F. then and there by themselves or their servants had the government navigation & care, to wit, at L'Anse des Mers aforesd And the Dfts C.D. & E.F. having the government navigation & care of the said last mentioned bateau or vessel and being desirous of bringing the said bateau or vessel alongside of the aforesd big called the Governor Wolfe, as aforesd being alongside one of the

said Whanes or quays, aftewards to wit, on the
second day of the month of — did for the
effecting of this purpose, by themselves or their
servants employed by them in the government
navigation & Care of the sd batteau or vessel,
loose the rope or ropes which so as aforesd fastened
or bound one end of the sd boom or large peices
of wood to the timber heads or other part of the
said brig called the Iverna Lassie, and did
aftewards wholly and altogether neglect and
omit to fasten again the said rope or ropes by
reason whereof the sd boom or large peices
of wood no longer prevented the sd timber
from going adrift and at large in the River & a
large portion of the said timber aftewards, to wit,
on the day and year last aforesd went adrift and
at large in the River & was thereby wholly &
intirely lost by the sd A B. who was unable
to recover said & get back the same, and
who was thereby greatly injured in his fortune
and means of livelihood — And the sd A B.
further complaining of the sd C. D. & E. F. saith
he saith, that aftewards, to wit, on the day
and year aforesd the sd A B was possessed of and
in a certain other large quantity of timber,
to wit — peices containing — Cubic feet as
of his own timber and which said last mentioned
timber was then floating or lying at the
place called L'Anse des Mers aforesd near the
quay and was then and there bound and
fastened with a Rope or Ropes (in order to prevent
the same from going adrift & at large in the
River)

In Appeal - Rule Nisi alleging a diminution of the Record -

The Sd J.P. one of the Respondents in this Cause doth hereby allege and Complain of a diminution of the Record in the Sd Cause, to wit, that a certain paper writing, purporting to be the original holographic Will of the late P. Fx Cyr deceased, in question in the Sd Cause, produced in the Court below by L. G. Cyr on his Examination as a witness in the Sd Cause, and which became and was a part of the documentary or written evidence relied upon by the Sd J. P. in the Sd Cause & which in the Sd Court below became and was and of right ought to be part of the Record in the Sd Cause, hath not been transmitted to this Court, & does not now make part of the Record in the Sd Cause for the want of which paper writing the said Record is imperfect and the return in the said Cause insufficient - Whereupon in Consideration of the premises, it is ordered on motion of the Atty Genl on behalf of the Sd J. P. that Her Majesty's writ of Certiorari to be directed to the Chief Justice and Justices of Her Majesty's Court of QB - for the district of Quebec, do issue Commanding them to Certify and return to this Court the said paper writing which, so as aforesaid made and now ought to make part of the Record in the said Cause, unless Cause to the Contrary be shewn on — next the — instant

Quebec

see Book RA page 55

In Appeal — Rule for writ of Certiorari
There is required from the Clerk of the Provincial
Court of Appeals a writ of Certiorari to be
directed to the C. J. — and Justices of the Majesty's
Court of Q. B. for the district of Montreal in
pursuance of the rule in the sd Cause this day
Made — Returnable within one month —

Quebec — — —

Affidavit to hold to bail Cap ad Resp.
D. P. of the City of Quebec &c Merchant being
duly sworn doth depose and say that C. H. of the
said City of Quebec Merchant is personally
indebted to him the sd D. P. in a sum of one hundred
ten pounds Sterling, to wit, in the sum of £ Current
Money of the province of Lower Canada for
Money by this deponent laid out and expended
and paid for the sd C. H. for the Money by this
deponent lent and advanced to the sd C. H. at
his request and for other Money by the sd C. H.
had and received to the use of him this deponent
and the deponent further saith that the sd C. H.
is immediately about to leave this province of L. C.
whereby he will lose the benefit of a Capias ad Respondendum
or attachment against the body of the sd C. H.
he this deponent may be deprived of his remedy
against the sd C. H.

Sworn before me this
A. B. — J. P. —

In Consideration of the foregoing affidavit let a
writ of Capias ad Respondendum issue against the body
of the sd C. H. — at the suit of the sd D. P. in an action
of Ejectment Returnable on the first juridical
day of — June next —

Quebec

and obtain the Conclusions of his said Declaration —
Thirdly. Because the Demurrer, Plea or Defence of the Sd. A.H. in the Sd. Cause made and filed in the Court below, was unfounded in law and ought to have been overruled with Costs.
Fourthly — Because the Sd. Declaration of the Dr. J.C. in the Sd. Cause filed, and the allegations, Matters, and things therein Contained were well and sufficiently proved and established by the Evidence in the Dr. Cause adduced and of record, and by reason thereof the Sd. J.C. was and is entitled to have and obtain the Conclusions of his Sd. declaration —
Fifthly. Because the Sd. Court below by their Judgment have illegally and unjustly dismissed the Sd. action of the Sd. J.C. with Costs.
Sixthly. Because the said Judgment hath been rendered contrary to law, evidence & Justice —
All which allegations, matters & things the Sd. J.C. the appellant, will be ready to establish, prove and maintain when and as the Court here may direct
Wherefore the Sd. appellant prays that by the Sentence and decree of the Court here, the said Judgment of the Court below, rendered on the may be reversed with Costs, and thereupon that the Court will render such judgment in the premises as the Court below ought to have rendered and that the appellant may be thereby restored to all which he has lost, and suffered by reason of the errors and injustice thereof, with Costs as well in the Court below as in this Court —

Quebec —

Answer to Reasons of Appeal

Book A page 11

The Sd Dd the respondent in the above cause, saving and reserving to himself at all times hereafter the right of alleging a diminution of the record in the Sd Cause and the imperfection and insufficiency of the return to the writ of appeal therein, and the right of making all such motions and using all such lawful ways and means as may be expedient or necessary touching such diminution of the record and imperfection and insufficiency of the return, and in the premises and by protestation, not confessing or acknowledging all or any of the allegations, matters and things in the reasons of Appeal of the Sd —— the Appellant in the Sd cause styled contained, for answer thereunto, so far as it may be needful or necessary to answer the same, doth, that the writ Rules, orders, and proceedings made and had and the Judgment (interlocutory or final) rendered in and by her majesty's Court of Q B for the district of —— in the cause between the above named parties, from which the present appeal hath been brt and which have been and are complained by and on the part of the Sd the Sd Appellant were and are in all things regular and agreeable to Law & Justice and ought to be held and considered by the judgment of the Court here and therefore the Sd Respondent prays that the Sd (interlocutory or final) judgment of the Court below complained of by the Sd the Sd Appellant, may be in all things affirmed with costs—

Form Book

Notice on writ of Appeal See Book A pages 89

To A B Esq.r Attorney ad litem for the in the Court Below.

Sir. Take notice that you are served with the within writ of Appeal to the end that the Sd — the — in the Court below do appear in Her Majesty's Court of Appeals for that part of this Province according to the exigence of the Sd writ; and you are further notified that J C the appellant in the Sd writ named, on — the day of at the hour of ten in the forenoon, at the Judges' Chambers in the Court house in the City of Quebec, before one of Honorable the Justices of Her Majesty's Court of Q.B. for the district of Quebec will offer good and sufficient security as required by law to be given on his Appeal by virtue of the Sd writ instituted, and the persons to be offered are — who will then and there justify if required

Quebec —

Reasons of Appeal.

The said J C the appellant in the said cause saving and reserving to himself at all times hereafter the right of alleging a diminution of the Record &c

Firstly. Because the Sd Judgment of the Court below rendered on the Sd (date) hath been rendered against the Sd J C. and in favor of the Sd H H whereas by the law of the land, Judgment in the premises ought to have been rendered against the Sd H H and in favor of the Sd J C.

Secondly. Because the declaration of the Sd J C in the said cause fyled, in the Court Below, and the allegations, matters and things therein contained were in all things sufficient in law, and true in fact and by reason thereof the Sd J C was entitled to have

POST OFFICE.

QUEBEC, 30th October, 1863.

Arrival and Departure of the Mails at Quebec.

DUE.	MAILS.	CLOSES.
Dependant on the Arrival of Mail Steamers.	England, via River St Lawrence, per Canadian Line	7.10 A.M. Saturday.
	England, via New York, per Cunard Line	7.00 P.M. every alternate Monday.
	England, Halifax, N.S., Newfoundland, and West India Islands, via Boston per Cunard Line	7.30 P.M. do do do
	Tasse, Bay of Chaleurs and Dalhousie, Campbeltown, Bathurst, Miramichi, Shediac & Pictou, per Steamer	Dependent on departure of Mail Steamers.
	Gaspé, Bay of Chaleurs and Dalhousie, Campbeltown, &c., overland	11.30 A.M. Wednesday and Saturday.
	Woodstock and Edmundston, per rail to Riviere du Loup, and on overland	11.30 A.M. Tuesday, Thursday and Saturday.
	New Brunswick, Nova Scotia and Prince Edward Island, per rail to Portland, and Steamer to St. John, N.B.	7.00 A.M. Wednesday and Saturday.
	South Shore (East) to River du Loup, per Rail, and east to Cacouna, Rimouski, Métis, Matane, &c.	11.30 A.M. Daily.
	South Shore (East) Point Levy East, Beaumont and St. Michel	2.30 P.M. Daily.
	Montreal City	7.00 A.M. and 3.00 P.M. Daily.
	Canada West and Western United States	7.00 A.M. and 3.00 P.M. Daily.
	New York	3.00 P.M. Daily.
	Boston	3.00 P.M. Daily.
	Post Offices on the Line of Railway between Quebec and Richmond	7.00 A.M. Daily.
	Do do do Richmond and Montreal	7.00 A.M. and 3.00 P.M. Daily.
	Do do do Richmond and Island Pond	7.00 A.M. Daily.
	Three Rivers, Sorel, Batiscan, Labaie, Nicolet, &c.	3.00 P.M. Daily.
	North Shore (West) St. Foy, Point aux Trembles, Cap Sante, Portneuf, &c.	4.00 P.M. Daily.
	North Shore (East) Chateau Richer, St. Paul's Bay Les Eboulements, Murray Bay, &c.	9.00 A.M. Monday, Wednesday, and Friday.
	Saguenay, District, Tadousac, Bajotville, Grand Baie, Chicoutimi, &c.	9.00 A.M. do do do.
	Megantic, Leeds, New Ireland, Lower Ireland, Broughton, Buckingham, &c.	7.00 A.M. Daily.
	St. Giles, St. Sylvester, &c.	7.00 A.M. Tuesday, Thursday and Saturday.
	Black River Station	7.00 A.M. do do do.
	South Shore (West) Gentilly, Becancour, Platon, Ste. Croix, St. Pierre les Becquets, &c.	2.30 P.M. Monday, Wednesday and Friday.
	Frampton East, Frampton West, St. Anselme, St. Henry, Ste. Claire, St. Heneidine, Ste. Marguerite, &c.	10.30 A.M. Daily.
	Ste. Marie, St. Isidore, St. Joseph and St. Francois	11.30 A.M. Daily.
	Cranbourne	1.30 A.M. Saturday.
	Valcartier, Indian Forette, Bourg Louis, St. Catherine, St. Raymond &c.	10.00 A.M. Wednesday and Saturday.
	Island of Orleans, Ste. Famille, St. François, St. Pierre, St. Laurent and St. Jean	2.30 P.M. Monday and Thursday.
	Spencer Cove, Lower New Liverpool and St. Jean Chrysostome	9.00 A.M. and 2.30 P.M. Daily.
	Charlesbourg, Lake and Lake Beauport	2.00 P.M. Tuesday and Friday.
	Stoneham	2.00 P.M. Saturday.
	Cap-Rouge	4.00 P.M. Daily.
	Ste Anne des Monts	11.30 A.M. Tuesday, Thursday and Saturday.
	South Quebec	7.15 P.M. Daily.
2.00 P.M. Tuesday and Saturday		
2.00 P.M. Monday, Thursday and Saturday		
11.30 A.M. Wednesday and Saturday		
2.01 P.M. Daily		
9.00 A.M. do		
7.00 A.M. & 7.15 P.M. do		
7.15 P.M. do		
7.15 P.M. do		
11.01 A.M. do		
7.15 P.M. do		
7.15 P.M. do		
11.01 A.M. do		
7.00 A.M. do		
8.00 A.M. do		
8.00 A.M. Monday, Thursday and Saturday		
8.00 A.M. do do do		
7.15 P.M. Daily		
7.15 P.M. Monday, Wednesday and Friday		
7.15 P.M. do do do		
3.00 P.M. Tuesdays, Thursdays and Saturdays		
2.00 P.M. Daily		
7.00 A.M. do		
2.00 P.M. Friday		
4.00 P.M. Tuesday and Friday		
8.00 A.M. Wednesday and Saturday		
9.00 A.M. and 3.00 P.M. Daily		
10.00 A.M. Tuesday and Friday		
10.00 A.M. Saturday		
9.01 A.M. Daily		
2.00 P.M. Tuesday, Thursday and Saturday		
7.15 P.M. Daily		

* A supplementary bag will be closed at 12.30, P.M.

† A supplementary bag will be closed 4.15, P.M.

RATES OF POSTAGE UNDER ½ OZ.

CANADA.—If pre-paid by Stamps 5 cts.—if sent unpaid 7 cts.

UNITED STATES.—If pre-paid by Stamps 10 cts.—pre-payment optional.

GREAT BRITAIN.—Canadian Line,—pre-paid by Stamps 14 cts.—if sent unpaid 25 cts.

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Book Postage must be pre-paid—under ¼ lb., 7 cts., over ¼ lb. and under ½ lb. 12½ c

FRANCE—Must be pre-paid in full; by Canadian Line 17 cts. under ½ ounce; by C Line, 21 cts. under ½ ounce.

British Colonies and Foreign Countries must be pre-paid.

☞ Registered Letters must be posted 15 minutes before the closing of each Mail.

Quebec October 31, 1863.

JOHN SEWELL,
POSTMASTE