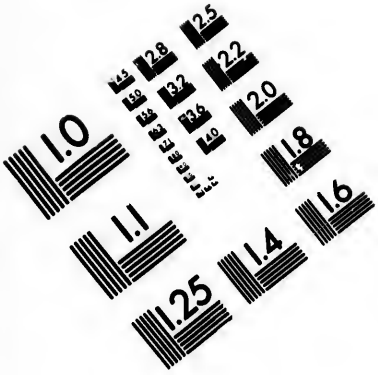

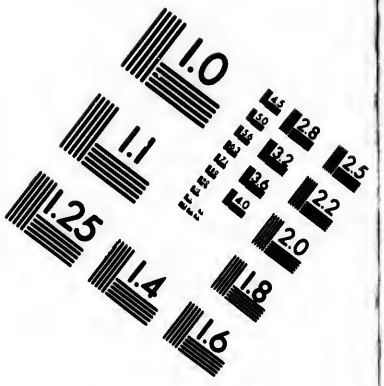

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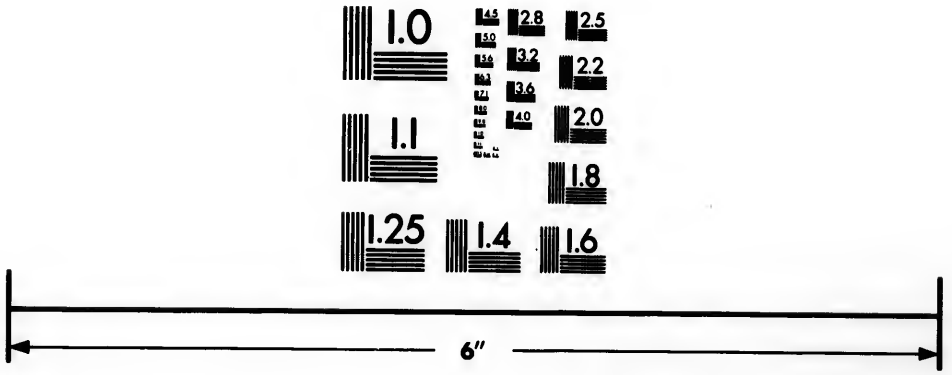

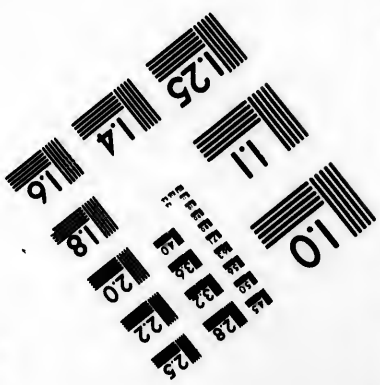

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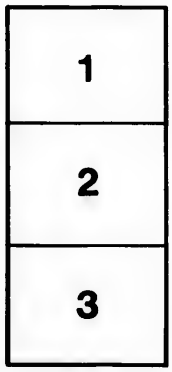

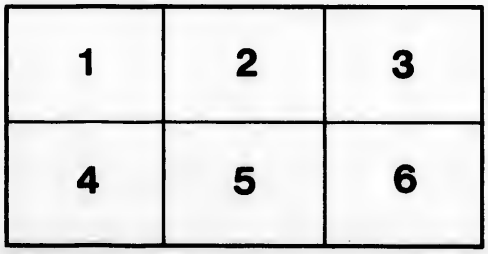

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DIGESTED INDEX

TO THE

REPORTED CASES

IN

LOWER CANADA,

CONTAINED IN THE REPORTS OF PYKE, STUART, REVUE DE LÉGISLATION, LAW REPORTER, LOWER CANADA REPORTS, LOWER CANADA JURIST, STUART'S VICE-ADMIRALTY CASES AND CANADA APPEALS BROUGHT DOWN TO JANUARY, 1864,

TO WHICH IS ADDED AN

APPENDIX

COMPRISING

Ferrault's Précédents de la Prévosté et du Conseil Supérieur,

WITH TABLES OF REFERENCE, NAMES OF CASES AND A CONCORDANCE,

— ALSO —

Numerous Notes, and References including several important cases not yet reported,

BY

T. K. RAMSAY, Advocate.

QUEBEC:
PRINTED BY GEORGE E. DESBARATS,

1865.

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PREFACE.

"I hold every man a debtor to his profession."

—Bacon.

Reporting is perhaps the most valuable portion of legal literature; but its usefulness for all ordinary purposes becomes impaired, if the reports are not carefully indexed and arranged, from time to time, as their bulk increases. Five years ago our reported cases having swelled in the ten preceding years from five to twenty-one volumes, I began to prepare an index for my own use. Since then I have added the contents of the later volumes, as they appeared, down to the end of 1863; and in part liquidation of the debt claimed by the great English Chancellor, I now offer the compilation thus made, to my brethren of the legal profession, in the hope that, amidst the toil of practice, it may relieve them from the necessity of many a weary and often unsuccessful search.

In publishing this Index, I am not blind to the many defects of its classification; but after having re-arranged it four times in manuscript and twice in type, I feel persuaded that it is impossible, within the limits of one volume of a reasonable size and cost, so to dispose the matter as not to give ample room for easy criticism in this respect. However, I have endeavoured as far as possible to obviate any inconvenience which may arise from imperfect classification by adding three tables—one of reference, a second of the names of parties, and a third of the principle words of the Index wherever they occur. The last table, so far as I know, is a novelty in works of this class, but I think it will be found the most useful of the three.

I have also condensed and added in an appendix the cases decided in the old Courts of *Prevosté* and *Conseil Supérieur*, reported in the two small volumes published in 1824, by the late Mr. Perrault, one of the Clerks and Prothonotaries of the Court of Queen's Bench. The judgments in many of these cases will be found to contain very interesting and valuable precedents, and as such, not less binding now

than they were under the old *regime*. Indeed it is to be regretted that, in determining the jurisprudence of the country, recourse had not been oftener had to the records of the older courts, and even now it may not be two late to enquire how our predecessors practised and administered the law. In England the Year Books have never been despised, and in France now studious men are beginning to perceive that wisdom is not of any one age, and that no people can with impunity ignore its history and its traditions. Are our *olim* unworthy of a thought?

I need hardly say that the Index comprises the cases in Pyke's Reports, Stuart's Reports, Stuart's Vice-Admiralty Cases, La Revue de Législation et de Jurisprudence, the Law Reporter, the Lower Canada Reports, and the Lower Canada Jurist. I have, however, omitted the Bankrupt cases, which had only interest under the operation of the old Act. Some cases which are not reported are mentioned in the Index, and I have also added a few notes, the last of which gives the judgments in appeal which affect the cases referred to in the Index, and which are reported in Vol. 8 of the L. C. Jurist, and Vol. 14 of the L. C. Reports.

MONTREAL, May, 1865.

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* NOTE.—In one report written *Gale*.

ABBREVIATIONS.

C. S. C.	stands for	Consolidated Statutes of Canada.
C. S. L. C.	" "	" " for Lower Canada.
P. Pre. du Con. Sup.	stands for	Perrault's Précédents du Conseil Supérieur.
P. Pre. de la Prevosté	" "	" " de la Prevosté.
P. R.	stands for	Pyke's Reports.
S. R.	" "	Stuart's Reports.
Rev. de Lég.,	" "	Revue de Législation.
L. R.	" "	Law Reporter.
L. C. R.	" "	Lower Canada Reports.
L. C. J.	" "	" " Jurist.
C. C.	" "	Circuit Court.
S. C.	" "	Superior "
Q. B.	" "	Queen's Bench.
V. A. C.	" "	Vice-Admiralty Court.
C. Cr. Ap.	" "	Court of Criminal Appeals.
C. C. P.	" "	Court of Common Pleas.
P. C.	" "	Privy Council.
U. C.	" "	Upper Canada.

INDEX

TO

LOWER CANADA LAW REPORTS.

ABSENCE :—*Vide* ABSENTEE.

" :— " PRESCRIPTION.

ABSENTEE :—1. The only* mode of impleading an absentee is by calling him in by advertisement under the provisions of the 94th section of the Judicature Act, 12 Vic. c. 38. [Con. St. L. C. cap. 83, sect. 61.] *Whitney vs. Brewster*, S. C., 3 L. C. R., p. 431.

2. Absent defendants, who have had no domicile in Lower Canada, must possess real or personal property within the district where the suit is instituted to give jurisdiction to the Court; [Con. St. L. C., cap. 83, sect. 61,] and property of the defendants situated in the district of Quebec, and held by A, resident within the district of Montreal, is not property of the defendants within the district of Montreal. *Frothingham et al. vs. The Brockville and Ottawa Railway Company, and Dinkinson et al.*, S. C., 3 L. C. J., p. 252.

3. The curator to the vacant estate of an absentee cannot be impleaded, in his quality of curator for debts due by the absentee. *Whitney vs. Brewster*, S. C., 3 L. C. R., p. 431.

4. But an action to account lies against the curator to an absentee at the instance of any of the creditors, he being the *mandataire* of all the creditors. In such cases it is not necessary to call in the absentee. *Murphy vs. Knapp et al.*, S. C. 4 L. C. R., p. 94. And the curator to the estate of an absentee who contests and defends is *personally* liable for the costs of the plaintiff's action. *Whitney vs. Brewster*, S. C., 4 L. C. J., p. 298.

5. Until recently it was held that where a defendant has left the Province after action brought and has no domicile therein, it is unnecessary to serve him with a Writ of Saisie-Arrêt after judgment. *Mettayer vs. McGarvey*, S. C., 6 L. C. R., p. 148.† Also, *Jones vs. Saumur dit Mars & Leroux*,

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* Unless defendant be in U. C., Con. St. L. C., cap. 83, sect. 63. But this does not exclude service by advertisement as previously. *Ib.* s. s. 4.

† Mr. Justice Mondelet expressed a doubt as to the propriety of the decision, but declined to enter a formal dissent. In the latter case of *Jones vs. Saumur*, he dissented, the Court being composed as in the previous case. And Mr. Berthelot, Asst. Judge, gave the judgment in the last case, coinciding with the opinion of Mr. Justice Mondelet. This latter opinion seems not to have suffered any great difficulty in France, for Guyot, Repertoire, Vbo. Saisie-Arrêt, says :—"*Lorsque la saisie-arrêt est faite, et que le créancier veut en poursuivre l'effet, il doit la faire dénoncer au débiteur.*" In a note he adds the form of such signification. *Vide* also Bioche, Dict. Vbo. *Saisie-Arrêt*, No. 82. The argument which seems to have weighed with the Court, in the first two cases, is that the defendants were absent from the Province. This of course does not alter the question; if the defendant has a right to notification, he has it whether he be absent or present. Again, it is not conclusive to say that it is an execution, and therefore that the defendant has no right to be notified. Still less

ABSENTEE :—

T. S., S. C., 2 L. C. J., p. 60. But in a more recent case, it was held that where a defendant has left the Province after judgment rendered against him, and has no domicile therein, it is necessary that a Writ of *Saisie Arrêt* should be served upon him. [Con. St. L. C. cap. 83, sect. 58.] *Hogan vs. Gordon & The Bank of Montreal*, T. S., S. C., 10 L. C. R., p. 21.

6. Where the defendant has left the district of Montreal since the service of the original process, a Writ of *Saisie-Arrêt* after judgment may be legally served upon a clerk of the Circuit Court at Montreal. *Kearney vs. McHale & Pariseault*, C. C., 7 L. C. J., p. 227.

7. A rule to condemn the Secretary-Treasurer of a Municipality, who has refused to comply with an Interlocutory Judgment, commanding him to render an account, to pay the balance established and interest at the rate of 12 per centum, and this *par corps*, may be served at the Prothonotary's office, if since the rendering of the said interlocutory judgment, defendant have left the Province. *La Corporation de Chambly vs. Loupret*, S. C., 4 L. C. J., p. 125. [Con. St. L. C., cap. 83, sect. 64.]

" :—*Vide* ACTION *en reddition de compte.*

" :— " ASSESSMENTS.

ACCEPTANCE :—1. For the validity of an obligation and *hypothèque* it is not necessary that the creditor should be present; nor that the deed should be accepted by him or by any one in his name. *Ryan and Halpin*, Q. B., 6 L. C. R., p. 61.

2. The signification made by a Notary of a transfer, under the 27th section of chap. 73, C. Sts. L. C. is a sufficient ratification by the assignee who was not present at the passing of the deed of transfer. *Perrault & al. and The Ontario Bank*, Q. B., 7 L. C. J., p. 313.

3. A donation may be legally and rightfully revoked before acceptance. *Lalonde vs. Martin*, S. C., 6 L. C. R., p. 51.

" :—*Vide* ACTION *en reddition de compte.*

ACCESSION :—Accession (by alluvial deposit) to a lot of land situate upon the bank of the river St. Lawrence, belongs to the riparian proprietor. *Newton & al. vs. Roi*, 3 Rev. de Lég., p. 93.

ACCOUNT :—*Vide* ACTION *en reddition de compte.*

" :— " RES JUDICATA.

" :— " SHIP.

" :— " TUTOR.

ACCOUNTANT :—*Vide* EXPERTISE.

ACCROISSEMENT :—1. *Accroissement* takes place in the donation of a *usufruit*, even by *acte entre vifs*, if such deed, by its composition, and by its clear expression, create a substitution *réciproque*; and the substitution created by a donation and

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so is it simply to be told that the Court "*envisage la saisie-arrêt comme une exécution.*" The fact is, it just differs from a *saisie-exécution* in the essential point of being a seizure in the hands of a *third* party, and without a signification to defendant his rights might be compromised without his having an opportunity of defending them. Bioche loc. cit. No. 4. And it is for this reason that he should be summoned, a reason based on broad considerations of equity, entirely foreign to any analogy that may exist between a *saisie-arrêt* and a *saisie-exécution*. The practice of not denouncing the Sa. Ar. to defendant was probably due to the Act 4 Wm. 4, c. 4, sect. 3, which takes no notice of him.

ACCROISSEMENT :—
by a will, are regulated by the same rules of law. *Joseph vs. Castonguay & al.*, 3 L. C. J. p. 141.

2. In a legacy of a universality of goods made in favor of a husband and wife "*pour appartenir (les dits biens) à la communauté de biens qui règne entr'eux et être considérés comme conquets d'icelle,*" *accroissement* takes place in favor of the surviving legatee, for the share of the predeceased, if the predecease of the other legatee has taken place during the life of the testator. *Dupuy vs. Surprenant & al.*, S. C., 4 L. C. J. p. 128.

ACTE D'HÉRITIER: 1. Persons who have made *acte d'héritiers* of their father, cannot afterwards renounce the succession and claim the part of the customary dower created by their father. *Filion & al. vs. DeBeaujeu*, S. C., 5 L. C. J. p. 128.

2. If the heir take a sum of money belonging to the estate laying claim to it in payment of a debt, it is not an *acte d'héritier*. *Dewar vs. Orr and Fisher*, S. C., L. R., p. 87.

3. When option is equivalent to renunciation. *Lefebvre vs. Demers*. S. C., L. R., p. 56.

Vide Bissonnette and Bissonnette, Q. B., L. R., p. 61.

ACTE EN BREVET:—*Vide* HYPOTHÈQUE.

ACTE SOUS SEING PRIVÉ:—An agreement in writing *sous seing privé* is not null because it is not made in duplicate. *Shaw vs. McConnell*, S. C., 4 L. C. R. p. 176.

ACTION:—Cause of action—where arose.

" :—*Vide* JURISDICTION.

" :—*En déclaration de paternité*:—1. Action *en déclaration de paternité* though coupled with a demand for damages is not susceptible of trial by jury. *Clarke vs. McGrath*, S. C., 1 L. C. J. p. 5. [Con. St. L. C. cap. 83, sect. 26.] *Vide McElwee vs. Darling*, S. C., L. R., p. 8.

2. Where the plaintiff's wife was delivered of a child five months after marriage, the husband has no action *en déclaration de paternité* against a defendant to have him declared to be the father of the child. *Lamirande & ux. vs. Dupuis*, S. C., L. R., p. 58.

" :—*En destitution de tutelle*:—A tutor must be superseded in the manner directed in the Statute 41 Geo. III, c. 7 sect. 18, [Con. St. L. C. cap. 86, sect. 4]; and an appeal is the proper remedy if the appointment of the tutor has not been regularly made. The action *en destitution* lies for subsequent misconduct in the tutor. *Darvault vs. Fournier*, 3 Rev. de Lég. p. 365. But the action *en destitution de tutelle* cannot be instituted by one who is no way of kin to the minor. Ex parte *O'Meara vs. McCleverty*, S. C., 1 L. C. J. p. 195. Unless the minor has no kin or relative in Canada. *Dooley vs. Wardley & al.*, S. C., 3 L. C. J. p. 72.

" :—*En garantie*:—1. When an action *en garantie* is the result of an application for ratification of title, and the Writ has been sued out under the same number as the original proceeding, and as it were in that cause, it is not necessary to produce in the action *en garantie*, either a copy of the title deed or copies of any portion of the record in such original procedure. Ex parte *Judah & Judah*, plaintiff *en garantie*, and *Rolland*, defendant *en garantie*, S. C., 1 L. C. J. p. 194.

ACTION :—

2. In the Superior Court it was held, that the action *en garantie* does not lie by vendor against vendee, to compel the latter to pay certain debts which he had undertaken, but neglected to pay, and in consequence whereof the vendor has been sued for the recovery of such debts. *Gauthier et al.*, 1. *Darche*, S. C. 1 L. C. J. p. 42. But this case was reversed in Q. B. ib. p. 291, where it was held that such action does lie.

3. But Corporators sued in respect of their Corporation debts, as if they were co-partners, cannot call in their co-corporators in an action *en garantie*, to indemnify them against their proportionate share of loss. *Howard et al., vs. Childs et al., and Childs et al.*, plaintiffs *en garantie vs. Chapman et al.*, defendants *en garantie*, S. C., 1 L. C. J., p. 160, confirmed in Q. B., (Court equally divided).

4. An Action *en garantie simple* will lie by a proprietor for damages caused to his tenant, by a third party by reason of the demolition of a *mitoyen* wall. *Delvechio vs. Joseph*, S. C. 3 L. C. J. p. 226.

" :—*Vide* RATIFICATION OF TITLE.

" :—*En partage* :—1. In an action by the heirs of the wife *commune en biens* against their father, praying to be declared proprietors of one half of a farm belonging to the *communauté*, it is necessary to specify which half, if a partition has taken place, and if not to pray for such partition by the declaration. *Lalonde vs. Lalonde*, S. C., 5 L. C. R., p. 97.

2. An action by the heirs of a deceased wife against the husband for a specific sum as proceeds of *communauté* will be dismissed on demurrer. The action should be *en partage*. *Dupuis vs. Dupuis*, S. C., 6 L. C. R., p. 475.

3. And a petitory action will not lie at the suit of one proprietor for a portion of the property, the proper proceeding being by *partage*. *McAdam vs. Kingsbury*, S. C., 1 L. C. J., p. 287. Also, *Gauthier v. Glodue*, Q. B., 7 L. C. J., p. 99.

4. The transmission of property bequeathed to two children, subject to a gradual substitution, in favor of their descendants, is divided by line and not by head. *Dumont v. Dumont*, S. C., 7 L. C. J., p. 12.

5. And when the substitution is open in favor of one of those called, before it is open for the others, he may immediately claim his share. *Ib.*

" :—*En reddition de compte* :—1. An action to account will not lie against a Secretary-Treasurer who has rendered an account and received a discharge. If there be error in such account, the remedy is an action *en reformation de compte*. *The School Commissioners of Chambly vs. Hickey*, S. C., 1. L. C. J., p. 189. Also in another case of *The School Commissioners of the Parish of St. Michel de Vaudreuil vs. Bastien*, S. C., 4 L. C. J., p. 123. And so also where any agent has rendered an account to his principal, which account has been received. *Cumming vs. Taylor*, S. C., 4 L. C. J., p. 304.

2. It is otherwise if there be fraud, (*The School Commissioners vs. Bastien*,) for then the account is null. *Motz vs. Moreau*, S. C., 5 L. C. R., p. 433. And this last mentioned

ACTION :—

case having gone to the Q. B., although the judgment was reversed, this portion does not appear to have been disputed. 7 L. C. R., p. 147. The account is also null, *ipso jure*, if it be rendered by a tutor to a minor, on his coming of age, without vouchers, notwithstanding that the account so rendered has been accepted. *Ducondu vs. Bourgeois* S. C., 2 L. C. J., p. 104. But an incorrect account will not be declared null, if it has become the basis of subsequent transactions between the parties, when the minors were of age, and when they were aware of the errors in the inventory or account. *Motz vs. Mgreau*, P. C., 10 L. C. R., p. 84.

3. A tutor sued in an action to account, may plead that he has rendered an account before the bringing of the action, renew this account in Court, and conclude that the said account may be declared good and valid, and that plaintiff may be condemned to costs. *Trudelle vs. Roy*, S. C., 4 L. C. R., p. 222. And in an action to account where defendant pleads that he had previously accounted, and filed with his pleas copies of his accounts alleged to have been previously rendered, and the issues were so joined, the plaintiff cannot file *débats de compte* until the said issues shall have been previously decided, and that the *débats de compte* filed by the plaintiff may be rejected by motion on the part of the defendant to that effect. *Cumming vs. Taylor*, S. C., 4 L. C. J., p. 304.

4. It is not competent for a defendant, in an action to account, to plead that he acknowledges himself bound to render an account, by which he acknowledges to owe a certain balance for which he confesses judgment; but the Court pending the action will not order the defendant to pay to the plaintiff the balance acknowledged to be due to him. *Aubin vs. Lislois*, S. C., 4 L. C. R., p. 225.

5. An interlocutory judgment adopting without opposition the account of a succession prepared by its order, passes *in rem judicatam*, and it is not competent to the representatives of a minor, who was legally a party to the suit, to revise the proceedings, and contest any particular item of the account. The Court may moreover rectify any error of calculation. *Plenderleath et al., vs. Gilliwray*, S. R., p. 470.

6. An action to account lies against a curator to an absentee at the instance of any of the creditors, he being the *mandataire* of all the creditors. In such a case it is not necessary to call in the absentee by advertisement; service on the curator is sufficient. *Murphy vs. Knapp et al.*, S. C., 4 L. C. R., p. 94.

7. One co partner cannot, after the dissolution of the firm, sue another co-partner to render an account without himself offering and tendering an account. *Pepin vs. Christin dit St. Amour*, S. C., 3 L. C. J., p. 119. But when in a declaration in an action *pro socio*, it is alleged that the plaintiffs have rendered an annual account of the portion of the partnership business under their control to the defendants, it is not necessary to offer and file with such declaration, an account of such portion of the partnership business; but it will be necessary to the maintenance of the action, to prove

ACTION :—

the allegation that an account has been rendered by the plaintiffs to the defendants. *McDonald et al., vs. Miller et al.*, S. C., 8 L. C. R. p. 214.

8. An action to account cannot be maintained by a person claiming a right to a share in a partnership business, in virtue of an agreement whereby he was to receive a certain portion of the profits of the concern as a salary for his services, where he has virtually broken the contract by withdrawing himself from the partnership before the expiration of the time stipulated in the agreement, and before the business of the same has been closed. *Miller vs. Smith*, Q. B., 10 L. C. R. p. 304.

9. A party bound to render an account may be forced to do so provisionally or by *contrainte par corps*. *Hayes vs. David*, 3 Rev. de Lég. p. 245.

10 The secretary-treasurer of a municipality, upon his refusal to render an account, should be condemned to pay the amount established by plaintiff with interest at 12 *per centum*, [Con. St. L. C. cap. 24, sect. 20, ss. 13,] and this moreover *par corps*, [Con. St. L. C. cap. 24, sect. 20, s. s. 14.] The rule for such condemnation may be served at the Prothonotary's office, if it appear that defendant have left the province.* *La corporation du comté de Chambly vs. Loupret*, S. C., 4 L. C. J. p. 125.

11. An action to account will not lie by the representatives of the Sheriff against the heirs of his clerk and manager, through whose hands moneys had passed in that capacity. *Ermatinger vs. Gugy*, P. C. 15 Moore's Rep., p. 1. *Vide Johnson vs. Clarke*. S. C., L. R., p. 88.

" :— " SHIP.

" :— " TUTOR.

" :—*En revendication:*—*Vide* JURY TRIAL.

" :—*Hypothécaire:*—In order to support an action *hypothécaire*, the debt set up by the plaintiff must be due and exigible. *Aylwin vs. Judah*, S. C., 7 L. C. R., p. 128.

" :—*Negatoire:*—*Vide* PLEADING AND PRACTICE.

" :— " " SERVITUDE.

" :—*Petitoire:*—1. The purchaser of an immoveable property, who has had neither seizin nor possession, cannot maintain the petitory action. *Brother vs. Fitzback et al.*, S. C., 1 L. C. R., p. 7. But in a more recent case this question was decided in the opposite sense. *Verdon vs. Proulx*, S. C., 1 L. C. J., p. 184.—And in *Bilodeau vs. Lefrançois*, it was held that to enable a purchaser to institute a petitory action it is not necessary that he should have had the possession or actual tradition of the immoveable property claimed, provided the vendor was in possession of such immoveable at the time of sale. Q. B., 12 L. C. R., p. 25.

2. A plaintiff in a petitory action cannot recover under a conveyance, without its being established that the person granting the conveyance had a right in the property conveyed. *Gibson vs. Wear*, 6 L. C. J., p. 78, and 12 L. C. R., p. 98.—And the title of the claimant must be older than the

* Con. St. L. C. cap. 83, if before action brought, sect. 62, if after sect. 64.

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possession of the occupant. *Foisy vs. Demers*, S. C., 12 L. C. R., p. 210.

3. A petitory action does not lie at the suit of one proprietor against his co-proprietor *par indivis*, for the recovery of his portion of the real estate owned by them,—the proper remedy being by an action *en partage*. *McAdam vs. Kingsbury*, S. C., 1 L. C. J., p. 287; also *Gauthier dit St. Germain vs. Glodue*, Q. B., 7 L. C. J., p. 99.—But the heir may proceed by petitory action against a party in possession claiming an undivided portion of the estate *à titre de douaire*. *Cannon vs. O'Neil & al.*, S. C., 1 L. C. R. p. 160.

4. The St. 16 Vic. c. 24, does not vest in the harbour commissioners the proprietorship of the bed of the river, nor entitle them to bring petitory actions against the riverain proprietors who may have encroached upon the bed of the river. And generally, neighbouring proprietors, between whom no boundary has been established, are not entitled to bring a petitory action the one against the other. *The Harbour Commissioners vs. Hall & al.*, S. C., 5 L. C. J. p. 155.

5. The petitory action cannot be joined to an action for trespass; nor can it be used instead of an action *en bornage*. *Robertson vs. Stuart*, 13 L. C. R. p. 462.—And the petitory and the possessory actions cannot be cumulated, and the vice is not cured by consent of the parties. *Trepanier vs. Dupuis*, P. R. p. 24.

6. The declaration in a petitory action which contains a designation of the land by its name, that of the village, borough or hamlet, and of the parish where it is situated, is sufficient, even although the boundaries be incorrectly stated. But if the declaration be so far imperfect, that defendant cannot identify the land, he may plead this fact by an exception *à la forme*. *The Royal Institution vs. Desrivières*, S. R., p. 224.

7. Questions relative to the introduction of English law into Canada since the conquest, and more particularly in relation to the provisions contained: —1. In the Royal Declaration of 1763, which confers upon the Governor of Canada the authority to establish Courts of Justice, with power to adjudicate according to law and equity, in conformity as much as possible with English law;—2. In an Ordinance of the Governor of 1764, establishing Courts of Justice, with direction to adjudicate according to equity, in conformity as much as possible with the Laws of England;—3. In the Imperial Statute of 1774, 14 Geo. III., c. 83, sec. 4, which repeals and abrogates the Proclamation of 1763, and the Ordinances made under the authority of the same, acknowledges the existence of the laws of England since the Proclamation of 1763, and the Ordinances made under the authority of the same, acknowledges the existence of the laws of England since the Proclamation of 1763, re-establishing the existence of the laws of France, save and except as to lands held in free and common soccage;—4. In the Imperial Act of 1791, 31 Geo. III., c. 31, sec. 43, which permits the grant of lands in free and common soccage subject to such restrictions as may be imposed by the

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Colonial Legislature ;—5. In the Imperial Act of 1826, 6 Geo. IV., c. 59, sec. 8, which declares that lands held in free and common soccage, are subject to the laws of England ;—and 6. In the Provincial Act of 1829, 9 and 10 Geo. IV., c. 77, which confirms the rights of proprietors of lands held in free and common soccage, notwithstanding such rights should not have been acquired and exercised in strict conformity with the laws of England, and which modifies the laws of England, in relation to land held in free and common soccage. As to the legality of the last mentioned Act, the same having been reserved for His Majesty's pleasure, and the Royal assent given after the delay prescribed by the 31 Geo. III., c. 31, sec. 32, but under the provisions of the Imperial Act 1 Wm. IV., c. 20, it was held that the title invoked by the appellants, is a good and valid title, whether its validity be tested, by the laws of England or by th se of France. That the laws of France are applicable to the present case ; that actual tradition, according to the old laws of France, is not absolutely necessary to convey to the purchaser the right of property, and that the feigned or symbolical tradition, such as the delivery of titles, letters patent, plans, &c., may be sufficient. That J. R., and his representatives, have in fact had the lands in contestation. That the sale made in 1833, by the widow and children of the said J. R. to B. B., nearly thirty years posterior to the sale made by the said J. R. himself, is null and void, by reason of the absence of property in the vendors, and by reason of the fraud and collusion between the parties to the sale. That the non-registration of the Deed of Sale by J. R., in 1804, and the registration of the Deed of Sale by his widow and children in 1833, (the said deed being declaren null and void,) according to the provisions of the 10 and 11 Geo. IV., c. 8, could not be prejudicial to the right of property of the lawful proprietors (the appellants) in favor of a purchaser in bad faith (the respondents) ; or in other words the registration of a title which is void, will not render it valid as against the rights of the lawful proprietor who has not registered his title. *Stuart & Bowman*, Q. B., 3 L. C. R., p. 309.

" :—*Vide* CUMULATION OF ACTIONS.

" :— " PLEADING & PRACTICE.

" :— " POSSESSION.

" :— " TRADITION.

" :—*Possessoire*—1. The possessory and petitory actions cannot be joined, and the vice is not cured by the consent of parties. *Trepanier vs. Dupuis*, P. R. p. 24.

2. Title deeds of property which do not describe its extent, cannot give or determine limits to acts of possession but place the alleged possessor, in virtue of such title deed, in the same position as if he had no title deed whatever. *Naud dit Labrie & al. vs. Clement dit Labonté*, S. C., 8 L. C. R., p. 140.

3. A *censitaire* who has been in possession of the right of fishing in the River St. Lawrence in front of his property for thirty years and upwards, and whose titles declare that

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he is proprietor of such right, may bring a possessory action, when he is disturbed in his possession, without being obliged to produce a title from the Crown, such title, so far as third parties are concerned, being presumed. *Gagnon and Hudon*, Q. B., 6 L. C. R., p. 242.

" :—*Quanto Minoris* :—1. The sale of an immoveable property by the sheriff, which does not contain the extent of ground described, gives the purchaser the right of demanding a reduction of the price proportionate to the extent of the ground deficient. *Paradis vs. Alain*, S. C., 2 L. C. R. p. 194; *Lussier vs. McVeigh*, S. C., 6 L. C. J. p. 188. But in appeal this case was reversed, and it was held that the reduction should be according to the value of the lot not delivered. Q. B., 13 L. C. R., p. 265, and 7 L. C. J., p. 132.

2. The Want of extent (*défaut de contenance*) does not authorize the purchaser to seek the nullity of the sale. *Grey vs. Todd & al.*, 2 Rev. de Leg. p. 57. But it would be otherwise if the lands were described as having buildings on them, when, in effect, there were none. *Lloyd vs. Clapham*, 2 Rev. de Leg. p. 179.*

3. But an action *quanto minoris*, cannot be brought *de plano* by an *adjudicataire* of real property against a party plaintiff, *poursuivant le décret*, to recover the value of a deficiency in the extent of land sold, until such deficiency shall have been established in an action to reform the sheriff's title granted to the *adjudicataire*, and to correct the description of the quantity of land, to which action the pursuivant and the *saisie* must be parties. And until such deficiency be so established, the title granted by the sheriff is conclusive evidence of the quantity of land sold. *Desjardins vs. La Banque du Peuple*, S. C., 3 L. C. J., p. 75, also 9 L. C. R., p. 108. Reversed in appeal, where it was held that the *saisie* need not be put into the case, and that the creditor who has received the money is obliged to refund the excess. Q. B., 10 L. C. R., p. 325.

" :—*Redhibitoire* :—Where the vice in an article sold is not of such a nature as to be perceived at once, the vendor guarantees that it is fit for the purpose for which it is sold. Plaintiff having paid defendant neither increases nor diminishes the rights of parties. *Footner vs. Heath*, 1 Rev. de Leg., p. 92.

" :—*Résolutoire* :—1. The resolutory action in default of payment of the price of sale may be exercised at any time in the hands of a third party to whom the property sold had passed. *Poirier vs. Tassé & al.*, S. C., 7 L. C. J., p. 226; 13 L. C. R., p. 459.

2. And a vendor who had made his opposition to a ratification of title demanding payment of the *prix de vente*, does not relinquish his action *en resiliation, faute de paiement du prix*. *David vs. Girard & al.*, S. C., 6 L. C. J., p. 122, and 12 L. C. R., p. 79.

* The reporter criticises this decision saying that it is contrary to the jurisprudence of this country. It is in conformity with the Roman Law at all events. V. Savigny, Droit Romain, CXXXVII, III, T. 3, p. 297.

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3. But an action to resiliate a deed of sale will not be maintained against a third party, purchaser of the land in question, if there is no offer by the plaintiff to reimburse to the second purchaser certain sums paid by him on account of a debt indicated in both deeds as due to the seignior, and also a certain sum paid, on account of a joint and several obligation of the vendee and of the plaintiff, for the payment of which the land in question was hypothecated by the first purchaser. *Surprenant vs. Surprenant & al.*, 12 L. C. R., p. 397.

4. In an action to resiliate a verbal sale admitted by plaintiff but with conditions different from those alleged by plaintiff, the latter may obtain judgment according to the admissions of defendant. *Lacroix and Lambert*, Q. B., 12 L. C. R., p. 229. *Vide infra* ADMISSION No. 4.

5. A creditor not a party to a deed, alleged to be made by a debtor *en déconfiture* and in fraud, will not be entitled to have such deed set aside, unless he prove that he has thereby suffered prejudice. *Sharing and Meunier dit Lapierre & al.*, Q. B., 1 L. C. J., p. 142.

6. The action *revocatoire* will lie to have a sale of moveables set aside for fraud, and this though the sale be a judicial one. *Ouimet & al. and Senecal & al.*, Q. B., 3 L. C. J., p. 35. And in such a case, the extreme lowness of the price of the goods sold, though not in itself a sufficient motive to annul the sale, may be an element in appreciating facts and circumstances from which to arrive at the conclusion that the sale was fraudulent. *Ib.*, Q. B., 4 L. C. J., p. 133.

7. An assignment by an insolvent debtor to some of his creditors may be set aside on an opposition. *Cummings & al. vs. Smith & al.*, Q. B., 10 L. C. R., p. 122, also 5 L. C. J., p. 1.

8. Rescission may be demanded by pleas as well as by an action. *The Principal Officers of H. M. Ord. and Taylor & al.*, Q. B., 1 L. C. R., p. 481.

9. All the parties to a deed of donation must be before the court before it will be set aside. *Martin vs. Martin*, S. C., 3 L. C. J., p. 307. And the rescission of deeds alleged in an opposition *afin d'annuller*, cannot be prayed for, unless the parties to such deeds are joined in the proceedings; and in such case recourse must be had to the *actio pauliana*, or revocatory action. *Mignier vs. Mignier*, S. C., 2 L. C. R., p. 251.

10. When in an action *en rescision*, defendant pleads prescription of 10 years, an answer that the *dol* which has given rise to the action was only discovered within the ten years is good in law. *Picault vs. Demers*, S. C., 2 L. C. J., p. 207.

" :—*Vide* EXECUTION.

" :— " HYPOTHEQUE.

" :— " PLEADING AND PRACTICE.

" :— " SCIRE FACIAS.

" :—To condemn Trustees to execute deed of assignment. *Vide Spalding vs. Haskill*, 1 Rev. de Leg., p. 398.

" :—*Vide* COSTS.

ACTION :—*Vide* NOTICE OF ACTION.
" :— " SECURITY FOR COSTS.

ACTIONS :—*Vide* ACTION PETITOIRE.
" :— " CUMULATION OF ACTIONS.

ADJUDICATAIRE :—1. The *adjudicataire* claiming a reduction of the price of his adjudication, by reason of a *défaut de contenance* must proceed by petition, and not by opposition. *Quebec Building Society vs. Jones,* S. C., 11 L. C. R., p. 430.

2. An *adjudicataire* of the undivided half of a property by its nature indivisible, will not be given a writ of possession against the proprietor of the other half who is in possession of the whole. Licitation is the proper proceeding. *McBlain vs. Hall & al., and Boswell & al.,* S. C., 12 L. C. R., p. 102.

3. The sheriff only gives a valid title to an *adjudicataire* if the sale be *super domino,* and if it be not, the property may be seized again and sold even at the suit of the person at whose suit it was formerly sold *super non domino. Doutre vs. Elvidge,* Q. B., 7 L. C. J. p. 257.

" :—*Vide* ACTION.
" :— " DECRET.
" :— " FOLLE ENCHÈRE.
" :— " SHERIFF.

ADMIRALTY :—1. The Court of Admiralty, except in prizes, exercises an original jurisdiction only on the ground of established usage and authority. *The Friends,* p. 112. S. V. A. R.

2. It has no jurisdiction of any contract upon land, and the general rule is, that if a contract be made on land to be executed at sea, or be made at sea to be executed on land, the common law has the preference, and excludes the Admiralty. *Ib.*

3. The cause must arise wholly on the sea, and not within the precincts of any county, to give the Admiralty jurisdiction. *Ib.*

4. The cases where the Admiralty has jurisdiction by reason of the subject matter, and where the proceedings are *in rem,* are a class by themselves. *Ib.*

5. The Admiralty jurisdiction as to torts depends upon the locality, and is limited to torts committed on the high seas. *Ib.*

6. Personal torts committed in the harbour of Quebec are not within the jurisdiction of the Admiralty. *Ib.*

7. The Admiralty entertains jurisdiction of personal torts committed by the master of a vessel on a passenger, if arising on the high seas. *The Toronto,* p. 181, S. V. A. R.

8. The jurisdiction of the Court in cases of pilotage is undoubted. *The Phœbe,* p. 60, S. V. A. R.

9. It has no jurisdiction in cases where there has been a previous judgment of a Court of concurrent jurisdiction upon the same cause of demand. *Ib.*

10. It has jurisdiction in relation to claims for extra-pilotage in the nature of salvage for extraordinary services rendered by pilots. *The Adventure,* p. 101, S. V. A. R.

11. In suits for damage to a ship by collision, notwithstanding the cause of action may have arisen out of the local limits of the Court. *Vide* COLLISION.

ADMIRALTY :—

12. In matters of possession at the suit of the owners or owner of a majority of interests in a ship to obtain possession thereof. *The Mary and Dorothy*, p. 187, S. V. A. R.

13. By 3 & 4 Vic. c. 65, s. 6, the High Court of Admiralty has jurisdiction to decide all claims of salvage, and damage to any sea-going ship or vessel, and to enforce payment thereof, whether such ship or vessel may have been within the body of a county, or on the high seas, at the time when the cause of action accrued. *The Mary Jane*, p. 267, S. V. A. R.

14. Ancient jurisdiction restored, by the same statute, with respect to claims of material men for necessaries furnished to foreign ships. *Ib.*

15. It has no authority to enforce demands for work done or materials furnished in England to ships owned there. *Ib.*

16. Nor has the Vice-Admiralty of Lower Canada jurisdiction with respect to claims of material men for materials furnished to ships owned there. *Ib.*

17. The Court of Vice-Admiralty exercises jurisdiction in the case of a vessel injured by collision in the river St. Lawrence, near the city of Quebec. *The Camillus*, p. 383, S. V. A. R.

18. A prohibition may issue from the Court of King's Bench to stay proceedings in the Court of Vice-Admiralty. So in a suit for salvage of a ship stranded on a sand bank in the St. Lawrence, the *locus in quo* being *infra corpus comitatus*, it was held, that it was not a case of Admiralty jurisdiction, and a prohibition was granted to stay further proceedings. *Hamilton et al., vs. Fraser et al.*, S. R., p. 21.

19. Under the words "Courts of Sessions" having jurisdiction in the port or place at which a ship shall arrive, contained in the 57 Geo. III. c. 10, sec. 8, the Court of Vice-Admiralty claims jurisdiction in proceedings for penalties and forfeitures under that Act. *Wilson vs. Norris*, S. R., p. 163.

20. The Court of Vice-Admiralty has no jurisdiction in an action by a pilot for the moving of a vessel from one point or place in the harbour of Quebec to another. *Mercier vs. The Colina*, V. A. C., 7 L. C. R., p. 427.

21. The Admiralty has jurisdiction in cases of possession to reinstate owners of ships who have been wrongfully displaced from their possession, and where it has cognizance of the principal matter, it has also cognizance of the incidents. *The Haidee*, V. A. C., 10 L. C. R., p. 101. The Court of Admiralty has jurisdiction in cases of collision occurring on the high seas, where both vessels are the property of foreign owners.

22. Questions of collision are questions *communis juris ;* and in cases where both parties are foreigners, the important distinction is whether the case be *communis juris* or not. *The Anne Johanne*, V. A. C., 10 L. C. R., p. 411.

23. The Court of Vice-Admiralty has jurisdiction throughout Lower Canada to attach a sea-going vessel to answer a suit instituted in that Court. Ex parte *Coulon et al.*, S. C., 7 L. C. J., p. 295.

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24. Where a limited authority is given to Justices of the Peace, they cannot extend their jurisdiction to objects not within it, by finding as a fact that which is not a fact ; and their warrant in such a case will be no protection to the officer who acts under it. *The Haidee*, V. A. C., 10 L. C. R., p. 101.

" :—*Vide* CODE MARINE.

" :— " JURISDICTION.

" :— " LIEN.

" :— " WAGES.

ADMISSION :—1. The *aveu* of a party in a suit cannot be divided. *Lefebvre vs. de Montigny*, S. C., 2 L. C. J., p. 279. But an *aveu* on *faits et articles* may be divided so as to furnish a *commencement de preuve par écrit*. *Ford vs. Butler*, S. C., 6 L. C. J., p. 132. And plaintiffs are entitled to have the answers on *faits et articles* divided, and that part in which one of the defendants seeks to explain the character in which he signed a note rejected, the facts not having been pleaded. *Seymour et al. vs. Wright et al.*, S. C., 3 L. C. R., p. 454.

2. The admission of a partner on *faits et articles* binds the firm. *Maguire and Scott*, Q. B., 7 L. C. R., p. 451. And even after the dissolution of the partnership as to events during the partnership, or relative to partnership affairs. *Fisher vs. Russell, et al.*, S. C., 2 L. C. J., p. 191. Confirmed in Q. B., 1st December, 1858. But the existence of a partnership cannot be established by the admission on *faits et articles* of one of the alleged co-partners. *Bowker and Chandler*, S. C., L. R., p. 12. And later in the case of *Chapman vs. Masson*, S. C., 2 L. C. J., p. 216. Confirmed in Q. B., 3 L. C. J., p. 285.

3. An admission in a plea, even where defendant has pleaded the general issue, will be taken as evidence. *Viger and Beliveau*, Q. B., 7 L. C. J., p. 199.

4. An admission by a defendant of a balance due plaintiff, will warrant the Court in giving plaintiff judgment, although there may be some doubt as to the proper action to be brought. *Miller vs. Snell*, S. C., 7 L. C. J., 228.

5. Proof of the value of goods ordered to be restored by a *gardien*, under a rule for *contrainte par corps*, the goods having illegally passed from the hands of the *gardien*, may be established by the verbal admission of the plaintiff, made at the time of the seizure of the goods, and to a person not then interested in the value of the goods. *Leverson et al., and Boston*, Q. B., 3 L. C. J., p. 223.

6. Upon the trial of an indictment for bigamy, the admission of the first marriage by the prisoner, unsupported by other testimony, is sufficient to support a conviction. *R. vs. Creamer*, Q. B., in Appeal, Crown Side, 10 L. C. J., p. 404.

" :—*Vide* PLEADING AND PRACTICE.

ADULTERY :—1. In an action of separation *de corps et de biens* the court may declare that the wife has forfeited her matrimonial rights owing to her adultery. *Cherrier and Bender*, Q. B., 3 L. C. R., p. 418. Also L....*vs.* L....S. C., L. R., p. 71.

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2. The addultery of the wife during marriage is no ground in the mouth of the heir to refuse her the matrimonial rights. This *fin de non-recevoir* can only be pleaded by the husband. And the absence of the wife from the matrimonial domicile, owing to her husband keeping a concubine there, is lawful, and such absence is not a ground for depriving her of her matrimonial rights, and under such circumstances the wife is justifiable if she abandon her husband on his death-bed. *Gadbois vs. Bonnier dit Plante*, S. C., 5 L. C. J., p. 257.

ADVOCATES :—1. The remuneration of Advocates and Attornies is not prescribed by the lapse of two years.* *Andrews vs. Birch*, 1 Rev. de Lég., *p.* 148; also, *Huot, vs. Parent et al.*, *ib.* p. 150. [Con. St. L. C., cap. 82, sect. 34, s. s. 2.]

2. Under the Act 13 and 14 Vic., c. 37, sec. 15, [Con. St. L. C., cap. 93, sect. 24, First,] Advocates, not practising, are not liable to the tax thereby imposed for paying reporters. *Monk et al., vs. Viger*, S. C., 2 L. C. R., p. 13.

3. Advocates may recover, by action on the *quantum meruit*, fees for professional services which are of a nature sufficiently defined to come under the general and regular rule of charges; but not for services of an indefinite kind, such as consultations for which the rate of charge is arbitrary. *Devlin vs. Tumblety*, S. C., 2 L. C. J., p. 182.

" :—*Vide* ATTORNEY.
" :— " CAPIAS AD RESPONDENDUM.
" :— " OPPOSITION.
" :— " PLEADING AND PRACTICE.
" —: " SAISIE ARRÊT.

AGENT :—1. Held, reversing the case of *Beaudry vs. Laflamme and Davis*, 6 L. C. J., p. 134, that an agent in possession of goods gives a good title to a purchaser in good faith as against his principal, under the Consolidated Statutes of Canada, cap. 59. *Davis and Beaudry*, Q. B., 6 L. C. J., p. 163, and 12 L. C. R., p. 18. A clerk cannot accept a composition of 5s. in the £. from his employer's debtor, without special authority so to do. *Seymour vs. Woodbury*, S. C., 11 L. C. R., p. 71.

2. An agent has no authority to bind his principal by signing and discounting a promissory note as agent, although authorized by written Power of Attorney to manage, administer, sell, exchange and concede the real and personal estate of the principal, and to collect, compound and arbitrate all claims and debts, with a general clause empowering him " to do all acts, matters and things whatsoever, in and about the property, estate and affairs of the principal as amply and effectually, to all intents and purposes, as the principal could have done in her own person if the said power of attorney had not been made." An agent with such powers is an administrator *omnium bonorum*, with no power to borrow, except for the purposes within the limits of his administration; and the declarations of the agent to an accommodation endorser, to obtain his endorsation, are not

* Nor by the lapse of seven years, it would seem.

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evidence in a suit against the principal by the party who afterwards discounted the note. *Castle vs. Baby*, S. C., 5 L. C. R., p. 411.

3. A principal is not liable for money paid to his agent by mistake, in excess of an amount actually due, unless it be shewn that the principal has received or otherwise benefited by such payment. *The City Bank vs The Harbour Commissioners of Montreal*, S. C., 1 L. C. J., p. 288.

4. When the power given by one party to another by an instrument in writing, is of such a nature as to require its execution by a deputy, by the law in force in Lower Canada, the party originally authorized as the agent may appoint a deputy.

By an Act of the Canadian Legislature, 13 and 14 Vic., c. 116, a company was incorporated for the purpose of making a railway, with power to purchase and take land required for the railway, either by agreeing with the owners of the land for the price and compensation, to be given, or if the matter could not be settled, by referring to arbitration. A contract was afterwards entered into between the company and certain contractors for completion of the railroad; by this contract it was agreed that the contractors were to complete the railroad at their own expense and charges, and pay any claims which might be made against the company, including the purchase of lands required, and the company were to exercise, or permit the contractors to exercise, as the case might be, any of the powers vested in them by the Act of Incorporation, as fully, amply and effectually as if the company itself had exercised such powers and performed the works; and, in the exercise of such powers, the contractors were to use the name of the company, if deemed necessary. The contractors who resided in England, afterwards, by a power of attorney, which recited the above contract, deputed R. as their agent, with full power on their behalf, to construct the railway, enter into contracts for the purchase of land, and to settle any claim for land or other damages, and generally to execute and perform all such acts and things in reference to the purchase of land as fully and effectually as the contractors might do. The company required part of Q's. land, and before the contract for the completion of the railroad had been in treaty with him for taking such land, but could not agree upon terms. Q. had, in consideration of the company's compulsory power of purchase under the act, let them into possession. An agreement or bond of arbitration, was afterwards entered into by R. and Q., to refer the matter to arbitrators, *amiables compositeurs*, to ascertain the amount the company should pay to Q. for his land. In this agreement R. was described as the agent and attorney of the contractors for the works upon the railroad, "acting in this behalf in the name of the company under authority to that effect contained in the contract between the company and the contractors." The arbitrators awarded a certain sum for land and for damages sustained by Q., to be paid by the contractors. Q. applied to the company for payment, who

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referred him to the contractors, who refused to pay the amount. Q. then brought an action against the company in the Superior Court in Lower Canada, to recover such amount. The company pleaded in defence, that the contractors, by the contract, were alone liable, and that R. had no authority, either from them or the contractors, to refer the matter to the arbitration of *amiables compositeurs*.

Upon appeal held (affirming the judgments of the Courts below), First, that the contractors, both by the express language and the necessary effect of the contract with the company, were to be considered as agents of the company, with authority to exercise the powers vested in the company by the Act of Incorporation, in the name of the company, and to buy lands, and to make the company liable to third parties with whom they had contracted in the name of the company, to the performance of any engagement entered into on their behalf, although, as between the contractors and the company, the former were bound to supply the necessary funds.

Second, that the contractors, under the contract, had power to delegate to an agent, powers similar to those vested in them by the company, and that under the power of attorney executed by the contractors, R. possessed the same powers of acting and rendering the company liable, as the contractors themselves had under the contract.

Third, that the company had no power to transfer their rights created by the Canadian Act, 13 and 14 Vic., c. 116, to the contractors, so as to relieve themselves from the responsibility which the Legislature had attached to the exercise of their powers.

Fourth, that the action was properly brought against the company, upon the award, as the contract with the contractors in no degree altered the position of the company with third parties, and that the agreement with R. was made on the company's behalf, for although the company had a right, as between themselves and the contractors, to require the contractors to make payment, yet, as the contractor's agent, R. had entered into no personal engagement with Q., the contract with the company was *res inter alios acta*, with which the company had nothing to do.

Fifth, that the submission to arbitration of *amiables compositeurs* was the proper course to pursue. *The Quebec and Richmond Railway Company and Quinn*, P. C., 12 Moore's Rep., p. 232.

" :—*Vide* CARRIERS.
" :— " CONTRACT.
" :— " ELECTION AGENT.
" :— " PROMISSORY NOTE.

AGREEMENT :—*Vidé* CONSIDERATION.
" :— " OFFICE.

AGRICULTURAL ACT :—Penalties under this Act are recoverable in the Circuit Court. *Garneau vs. Garneau*, C. C., 13 L. C. R., p. 437.

AMIABLES COMPOSITEURS :—*Vide* PRINCIPAL AND AGENT.
AINESSE :—*Vide* DROIT D'AINESSE.

ALIEN:—1. Previous to the 12 Vic. c. 197, an alien domiciled in Canada, but not naturalized, was incapable of taking real property by devise. *Paquet vs. Gaspard*, S. R., p. 143. He could not inherit the personal estate of a British subject. *Sarony vs. Bell*, S. R., p. 345; nor could he devise by last will and testament. *Donegani vs. Donegani*, S. R., p. 460; also 3 Knapp's Rep., p. 63. The succession of an alien devolved to his grand-children, natural born subjects, to the exclusion of his own children who were aliens. *Ib.*, S. R. But if an alien died without issue, his lands belonged to the Crown; and if he left some children born in Canada, and others born abroad, the former excluded the Crown, and all took alike as though they were natural born subjects. But if an alien had a son, who was also an alien, the children of the latter inherit from the grandfather to the exclusion of their father. *Ib.*, 605. The question as to who is an alien is to be decided by the laws of England; but when the condition of the party is once established, the consequences which result therefrom are to be determined by the laws of Canada. *Ib.*, 605.

2. In the case of *Corse & al. vs. Corse*, S. C., 4 L. C. R., p. 310, it was held: That under the Act of 12 Vic. c. 197, sect. 12, [Con. St. C. cap. 8, sect. 9,] which enacts that every alien shall have the same capacity to take, recover and transmit "real estate" in all parts of this Province, as natural born or naturalized subjects, the alien is placed in the same position as the natural born subject, and can claim conjointly with a naturalized heir, both real and personal property. And that moveable property although not mentioned in the 12th section of the Act, must be taken to be included in the larger term real estate.

ALIENATION:—*Vide* DOWER.

ALIMENTARY ALLOWANCE:—1. By will a father left certain property to his son *grevé de substitution*, in which will was the following clause: "*Je défends expressément que ces biens soient en aucune manière engagés, aliénés, hypothéqués, non plus que la jouissance, intérêt ou usufruit d'iceux qu'ils (les grevés) retireront pour leur pension et subsistence et pour la subsistence et l'éducation de leur famille, sous peine de nullité de tous actes qu'ils feront contraires à mon intention, pour que ces biens retournent à leurs enfants, etc.*" The son was separated *de corps* from his wife, and she obtained judgment against him for an allowance of £50 a year as sustenance. In execution of this judgment she seized the property in question; and it was held, that the property was only protected to the extent necessary to provide aliments for the defendant and his children. *Dame M. L. E. F. dite M. vs. L. E. C. dit C.*, 1 Rev. de Lég. p. 81.

2. The offer of a son to take his father to live with him will not defeat an action for an alimentary pension. *Allo vs. Allo & al.*, S. C., 1 L. R., p. 11. Unless the son is in indigent circumstances. *Vallières vs. Vallières*, 3 Rev. de Lég. p. 83.*

* There was also a case of *Gobeille vs. Gobeille & al.*, S. C. M. 27th September, 1853, decided in the same sense; and in giving judgment Mr. Justice Vanfelson remarked that the admission or rejection of this condition was discretionary with the Court.

ALIMENTARY ALLOWANCE:—

3. Where a petition for an alimentary allowance is presented during the pendency of an action to account, against an executor, the Court will grant a certain moderate sum for the relief of the immediate wants of the legatees, if in indigent circumstances, in consideration that a great space of time has elapsed since the death of the testator, for instance ten years, and moreover that the legacies were for aliments. *Hart & al. vs. Molson & al.*, S. C., 4 L. C. R., p. 127.

4. The children bound to furnish an alimentary pension to their parents are bound jointly and severally, and the parents may sue any of them or any one of them they choose. *Lauzon vs. Connoissant & al.*, C. C., 5 L. C. J., p. 99.

5. An alimentary pension created as consideration of a deed of donation in the following terms—"*de nourrir le donateur à son pot et feu, de le chauffer et eclairer*," does not run in arrears. *Chenier vs. Coutlée & al.*, S. C., 7 L. C. J., p. 291.

" :—*Vide* CAPIAS AD RESPONDENDUM.

ALLUVION:—*Vide* ACCESSION.

AMELIORATIONS:—*Vide* IMPROVEMENTS.

AMENDMENT:—*Vide* PLEADING AND PRACTICE.

AMEUBLISSEMENT:—1. The donation by an ascendant of one of the *conjoints*, by marriage contract, of an immoveable property, destined to enter into the community, is an *ameublissement* within the meaning of the law. Such an *ameublissement* has no effect except as regards the community and between the *conjoints* themselves. The immoveable property so given preserves its quality of *propre* up to the time of *partage*. So the other *conjoint* being dead, and the children born of the marriage afterwards dying without issue and before *partage*, the *ameublissement* has no longer any effect, and the collateral heirs of the *conjoint*, in whose favor it was stipulated, can claim no rights in such immoveable property. *Charlebois and Headley*, Q. B., 2 L. C. R., p. 213.

2. A covenant in a marriage contract that "the parties take one another with the property and rights to each of them respectively belonging, and such as may thereafter accrue, of what nature soever, which said property, moveable or immoveable, shall enter into the community" is a covenant of *ameublissement* of all the property belonging to the parties, notwithstanding a subsequent clause of *réalisation*; and consequently the customary dower cannot be claimed out of the husband's *propres*. *Moreau vs. Mathews*, S. C., 5 L. C. R., p. 325. And in *Toussaint et al., vs. Leblanc*, S. C., 1 L. C. R., p. 25, it was also held, that the stipulation of *ameublissement*, in a contract of marriage, excludes the customary dower on the *immeubles ameublis*.

3. In the case of a marriage contract with a covenant of *ameublissement*, and a clause of *réalisation* in the event of renunciation of the community by the wife, the wife *séparée de biens*, by judgment, cannot claim by way of *reprise* the enjoyment of the proceeds of the sale of an immoveable property given by the mother to her adopted daughter and her husband during the community, under the condition that such property shall not be subject to seizure, but should be

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reserved to supply aliments. And the property so given does not become a *propre* of the wife. And the report of a *praticien* awarding the same to the wife, and the judgment homologating the same, are not binding against those not parties to the proceedings. *Jarry and The Trust and Loan Company*, Q. B., 11 L. C. R., p. 7.

" :—*Vide* DOUAIRE.

APPEAL:—To Superior Court. *Bond.*—1. Under the 12 Vic., c. 38, sec. 54, [Rep. 20 Vic. c. 44, sect. 59.] the real estate of the surety, in an appeal from the Circuit Court, must be described. *Hitchcock and Monnette*, S. C., 6 L. C. R., p. 150; and so in *Hilaire dit Bonaventure and Lizotte*, S. C. 6 L. C. R., p. 150. But security in such cases is validly given by two sureties justifying on real estate, without describing it. *Lynch and Blanchet*, S. C., 6 L. C. R., p. 149.

2. An appeal bond is insufficient if the surety has not sworn that the immoveable property which he has mortgaged belongs to him. *Stuart and Scott & al.*, S. C., 1 L. C. R., p. 218.*

3. The omission by an appellant to annex copy of an appeal bond, certified by the officer in whose custody it is kept of record, to his petition in appeal, in compliance with the provisions of the 12 Vic. c. 38, sect. 55, [Rep. by 20 Vic. c. 44, sect. 59,] is fatal. The Court will not permit such appellant to supply the deficiency by filing a copy of the bail bond. *Germain and Vezina*, S. C. 2 L. C. R., p. 299.

4. In an action against sureties on a bail bond in appeal, the question as to the necessity of discussing the property of the principal debtor ought not to be raised by a *défense au fonds en droit*, but must be so raised by an exception *de discussion*. *Thorn vs. McLennan et al.*, S. C., 9 L. C. R., p. 403.

5. The sureties in an appeal are liable for the costs of an appeal where the judgment of the Court below rendered in an hypothecary action is affirmed, although a *délaissement* was made by the defendants before signification of the judgment rendered in the Court below, and although no absolute judgment was given in the Court below for costs, but only a judgment condemning the defendants to pay the debt and costs, unless they preferred to quit and abandon the lot hypothecated. *Fisher vs. Provencher et al.*, C. C., 13, L. C. R., p. 160.

" :—*Petition*:—1. An Appeal from the Circuit Court will be dismissed, when the petition in appeal contains no special reasons. [Con. St. L. C., cap. 77, sect. 44.] *Maillé and Chapleau*, S. C., 6 L. C. R., p. 476.

2. The transmission of the record from the Circuit Court to the Superior Court, at a period subsequent to the day when the allowing of the appeal should be prayed for, is no reason for dismissing the appeal. [Con. St. L. C., cap. 77, sect. 45.] *Hilaire dit Bonaventure and Lisotte*, S. C., 6 L. C. R., p. 150. Failing to proceed. *Imbault & Bourque*, S. C., L. R., p. 75.

* Rep. But see for formalities of giving security in Appeal, Con. St. L. C. cap. 77, sects. 40 and 41.

APPEAL:—*Evidence:*—If on an appeal from the Circuit Court the evidence appear doubtful, the Superior Court will not disturb the judgment. *Poutré and Chapdelaine*, S. C., 6 L. C. R., p. 488.

" :—*Interlocutory Judgment:*—1. An appeal will lie from a judgment of the Circuit Court dismissing a *défense en droit McGinn and Brawders*, S. C., 1 L. C. J., p. 176.*

2. A judgment which decides all the matters in litigation between the parties, with the exception of what is claimed under a plea of compensation, and orders, *avant faire droit* on such plea, that the amount of compensation be established by *experts*, and reserves the question of costs, is not a definitive judgment entitling the party to sue out a writ of appeal *de plano*, and such writ will be dismissed on motion. *Wardle and Bethune*, Q. B., 6 L. C. J., p. 220. And in the same case it was held that where an appeal had been sued out *de plano* by error, and had been dismissed on motion for that reason, a motion for leave to appeal will not be too late although not made at the next term after the rendering of the judgment appealed from. Q. B., 6 L. C. J., p. 221.

3. When application has been made for a Writ of Appeal, from an interlocutory judgment, and, in consequence of an equal division of the Court as to whether or not there was a *quorum*, the motion has been lodged (as directed by the Judicature Act of 1857), [Con. St. L. C., cap. 77, sect. 20, s. s. 3,] with the clerk of the Court, proceedings in the Court below will be suspended until judgment on such motion can be pronounced. *Scott et al, vs. Scott et al.*, S. C., 3 L. C. J., p. 132. But this was revised in term and overruled. *Ib.*, p. 134.

" :—*Jurisdiction:*—In a case wherein the judgment rendered in the Court below exceeded £15 currency, the plantiff sued out a Writ of *Saisie-Arrêt en main tierce*, and the appellants intervened, claiming to be collocated for a sum of £4 13s. 6d., and being dissatisfied with the judgment rendered on the proceedings in the *saisie-arrêt*, they appealed therefrom, and it was held that in such a case the demand of the appelant, not exceeding £15, they had no right to appeal. *Russell et al., and Gravely*, S. C., 2 L. C. R., p. 494.†

" —To the Queen's Bench. *Writ.*—The 7th Rule of Practice of the Court of Queen's Bench, which prescribes that all writs shall be signed by the attorney suing out the appeal is directory, and on motion the attorney will be permitted to amend, even though the respondent have moved to dismiss the appeal, owing to the neglect of this formality. *Ross and Scott*, Q. B., 9 L. C. R., p. 270. *V. infra* MISCELLANEOUS, No. 2.

" :—*Bond.*—1. In appeals from the Circuit Court, the copy of the appeal bond to be served must be certified by the clerk of the court in whose office the bond is filed under the provisions of the 20th Vic., c. 44, s. 65, [Con. St. L. C., cap. 77, s. 44,] and not by the attorney of the appellant, otherwise

* In the case of *Simard and Townsend*, Q. B., 6 L. C. R., p. 147, (*v. infrà*) it was held that there was no appeal from the Q. B. to the Privy Council, the Statute regulating the appeal being silent as to such appeal. The same argument would hold good as to appeals from Circuit Court formerly to Superior Court and now to the Q. B.

† But see *Gugy and Gugy*, Infra p. 25. Also, *Macfarlane et al. and Leclaire et al.*, p. 25.

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the appeal will be dismissed. *Pentland et al. and Drolet*, Q. B., 9 L. C. R., p. 42.

2. The filing of a copy, certified by the prothonotary, of a bond given before a judge, previous to the allowance of a writ of appeal, is sufficient proof of the execution of the bond and of the liability incurred by the sureties, without further evidence. *Gosselin vs. Chapman*, S. C., 6 L. C. R., p. 35.

3. A bond in appeal by Indians is valid, where it is established by affidavit, that they are in possession, according to the Indian customary law, of certain real estate situated and lying within the tract of land appropriated to the uses of the tribe to which they belong. *Nianentsiasa and Akwirente et al.*, Q. B., 3 L. C. J., p. 316.

4. In appeal to the Q. B. from the Circuit Court, where the sureties sign the appeal bond, it is not necessary that either should be declared to be a proprietor of real property of the value of £50, over and above all incumbrances, and this is only necessary where but one surety signs the bond under the 20 Vic. c. 44, ss. 61 and 62, [Con. St. L. C., c. 77, ss. 40 and 41.] *Hearn and Lampson*, Q. B., 10 L. C. R., p. 400.

5. But where in such appeals the bond is only given by one surety, who declares he is the proprietor of real estate of the value of £50, over and above all incumbrances, the appeal will be rejected under the 20 Vic. c. 44, ss. 61 and 62, [Con. St. L. C., c. 77, ss. 40 and 41,] unless the bond contains a description of the property. *Charest and Rompré*, Q. B., 10 L. C. R., p. 431.

6. An appeal from a judgment of the Superior Court will be set aside for want of security, if the bond has been executed before the issue of the writ. *Burroughs and Simpson*, 5 L. C. J. p. 20, and 11 L. C. R. p. 72.

7. A motion to reject an appeal from the Circuit Court for insufficient security, made on the first day of the term is too late, if the appeal have been returned on the 1st day of the previous term. *Mackay vs. Simpson*, 5 L. C. J. p. 20.

8. In appeals from Circuit Court, affidavits setting forth that the property described in the appeal bond is not of the value of £50, will be received in support of a motion to dismiss the appeal for want of sufficient security, and the appeal will be dismissed on such motion, unless the appellant deposit the sum of £50, together with the sum of £5 to cover the costs of such motion. *Bédard and The Corporation of the Parish of St. Charles Borromée*, Q. B., 10 L. C. R. p. 429.

9. A bail bond on an appeal from Circuit Court is bad if it be signed by only one surety and does not contain any description of real estate. And the motion is not too late although a term had elapsed since the appearance of respondent, if the return of the Clerk of Circuit Court be irregular. *Beaudet and Proctor*, Q. B., 13 L. C. R. p. 450.

10. If the defendant becomes appelant, he is obliged to give security for the debt as well as the costs. *Lampson vs. Wurtele*, 3 Rev. de Lég., p. 107. And in an hypothecary

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action, security in appeal given merely for costs and damages, is insufficient, and will be rejected. *Metrissé dit Sansfaçon et al. and Brault*, Q. B., 2 L. C. J., p. 303.

" :—*Jurisdiction.*—1. A judgment of the Superior Court refusing to grant a writ of *mandamus*, upon a petition complaining that the Bishop of Quebec has refused to read the funeral service over the dead body of an individual, is a final judgment, and may be appealed from, according to the provisions of the 12 Vic. c. 41, s. 20, [Con. St. L. C. c. 88, s. 17.] *Wurtele and The Lord Bishop of Quebec*, Q. B., 2 L. C. R. p. 65.

2. An appeal will lie from an interlocutory judgment of the judge of the Superior Court, rejecting the summary petition of a defendant, arrested by *capias*, to be discharged in the terms of the 12 Vic. c. 42, s. 2, [Con. St. L. C. c. 83, s. 53.] *Blankensee and Sharpley*, Q. B., 3 L. C. J., p. 292.

3. And an appeal will be allowed from an interlocutor rejecting the motion of the defendant to quash a *capias* under which he has been arrested and is out on bail. *Hoffnung and Porter*, Q. B., 7 L. C. J. p. 301. And so also from a judgment ordering the discharge of the prisoner. *Gugy and Fargusson*, Q. B., 12 L. C. R. p. 254.

4. A judgment quashing a writ of *capias* is an interlocutory judgment which cannot be appealed from *de plano*. *Berry and May*, Q. B., 10 L. C. R. p. 195.

5. The transcript is conclusive evidence of the nature of the proceedings and the Court will not go beyond to consider the effects of a subsequent judgment not comprised or referred to therein. *Ib.*

6. An appeal lies from an order of the Superior Court discharging an inscription for hearing in vacation, on the merits of an exception *à la forme*, without the consent in writing of the parties for such hearing out of term. *Dease and Taylor*, Q. B., 2. L. C. R. p. 227.

7. A judgment of the Superior Court determining and defining the facts to be inquired into by the jury, is a judgment from which an appeal will lie to the Court of Queen's Bench. *Arthur and The Montreal Assurance Company*, Q. B., 6 L. C. R. p. 99.

8. A writ of appeal, and not a writ of error, will lie in the case of a jury trial when the grievance is not merely an error in a matter of law, and if there is no plea determined by the verdict of the jury, but a final adjudication upon law and fact. [Con. St. L. C. c. 77, s. 24.] *Casey and Goldsmith et al*, Q. B., 2 L. C. R. p. 212.

9. The Court of Appeals may hear an objection not argued in the Court of original jurisdiction. *Scott and Phœnix Assurance Company*, S. R. p. 354.

10. An action in the Circuit Court for less than £25 becomes appealable if defendant sets up title to real estate in his pleas.

11. An appeal lies to the Queen's Bench from judgments in Circuit Court rendered in vacation under the Lessor and Lessees Act of 1855. [Con. St. L. C. c. 40, s. 15.] *Gould and Sweet*, Q. B., 4 L. C. J. p. 18.

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12. No appeal lies to the Queen's Bench under the 12 Vic. c. 38, ss. 53 [Rep. 20 Vic. c. 44, s. 59] and 95, ; 18 Vic. c. 108, s. 15; and the 20 Vic. c. 44, s. 60, in an action of ejectment instituted in the Circuit Court, whereof the annual rent is under £25. [Con. St. L. C. c. 40, s. 15, and c. 77, s. 39,] *Hearn and Lampson*, Q. B., 10 L. C. R., p. 400.*

13. There is no appeal from a judgment on an exception, tending to obtain the suspension of proceedings until a decision is rendered in another cause between the same parties on similar matters. *Donegani and Quesnel*, Q. B., 1 L. C. R. p. 411.

14. A party is not entitled to an appeal from an interlocutory judgment rejecting an *exception à la forme*, upon the ground of its having been filed too late, if the grounds of such *exception à la forme* might have been made the grounds of a demurrer, filed in the same cause, and if copy of the demurrer be not produced; and this because the Court of Appeals cannot determine if the grievance complained of be irremediable or not, the demurrer not being before the Court. [Con. St. L. C. c. 77, s. 26.] *Moreau and Motz*, Q. B., 3 L. C. R. p. 53.

15. No appeal from the Superior Court lies on a demand not exceeding £20 sterling, or £24 6s. 8d. currency. [Con. St. L. C. c. 77, s. 23.] *Rhéaume and Fortier*, Q. B., 6 L. C. R., p. 184.

16. There is no appeal from a judgment rendered on a writ of *certiorari*. [Con. St. L. C. c. 88, s. 17.] *Bazin et al. vs. Crevier et al.*, 3 Rev. de Lég. p. 401. And so also it was held in the Q. B., in *Boston et al. and Lelièvre et al.* Seig. Commrs. and *The Atty. Genl.* 6 Sept. 1864, that there was no appeal to the Q. B. from a judgment on a writ of *certiorari*, and on motion the appeal was rejected.

17. An appeal does not lie to the Queen's Bench from a judgment of the Superior Court exercising the jurisdiction conferred upon the latter by 12 Vic. c. 41.† *Bristow and Rolland*, Q. B., 4 L. C. J., p. 283.

" :—*Petition.*—1. In cases of appeal from the Circuit Court the original petition in appeal, notice, &c., must be filed in the office of the clerk of the Circuit Court within twenty-five days of the rendering of the judgment appealed from, otherwise the appeal will be dismissed on motion, under the provisions of the 20 Vic. c. 44, s. 66, [Con. St. L. C., c. 77, s. 45.] *McGillis & al. and Pearce & al.*, Q. B., 9 L. C. R., p. 114.

2. In appeals from the Circuit Court, the service of a copy of the petition, notice and bond in appeal, at the domicile of the attorney *ad litem*, is sufficient, under the 20 Vic. c. 44, s. 65, [Con. St. L. C., c. 77, s. 44.] *Bedard and The Parish of St. Charles Borromée*, Q. B., 10 L. C. R., p. 429.

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* In the case of *Gould and Sweet*, it would seem that the appeal was allowed because the action related to title to real estate; but from both cases it appears that in cases under the Lessor and Lessees Act in the Circuit Court, under £25, there is no appeal to the Queen's Bench.

† Con. St. L. C., c. 88, s. 17. But the exception, with regard to City and Municipal Corporations and their officers, (which would probably have included this case), must not be lost sight of.

APPEAL:—*Miscellaneous.*—1. Although an Act of the Legislature, passed after the judgment rendered in a Court of original jurisdiction, may affect the rights of a party as they existed at the institution of a suit, this circumstance cannot be taken advantage of in an appeal from the judgment. *Donegani and Donegani*, S. R., p. 605.

2. The writ of appeal which does not bear the signature of the attorney suing it out will be quashed and annulled. But the omission is not an absolute nullity and may be remedied on application to the Court. *Viger and Beliveau*, Q. B., 6 L. C. J., p. 177; also 12 L. C. R., p. 405. *Vide infra*, Q. B. *Writ.*

3. A respondent who has not proceeded in appeal is supposed to have renounced all formal objections. The return to a writ of appeal may be signed by one judge. *Heney and Holland*, Q. B., 1 L. C. R., p. 401.

4. On motion a party will be ordered to pay the costs on an appeal abandoned before proceeding further, and if not done within a certain delay the new appeal will be dismissed. *Bourier and Reeves*, Q. B., 13 L. C. R., p. 479.

5. The party who appeals from a judgment dismissing his opposition must give security to the plaintiff to answer the condemnation. *Lampson and Wurtele*, 3 Rev. de Lég., p. 107; *Coutlée vs. Rose*, Q. B., 6 L. C. J., p. 186.

6. The sufficiency of security in appeal cannot be questioned by a preliminary exception. *Knowlton & al. and Clarke & al.*, Q. B., 13 L. C. R., p. 500.

7. On cause shewn the Court will give delay to furnish security on an appeal from Circuit Court. *Berriau and McCorkill*, Q. B., 13 L. C. R., p. 480.

8. Where the parties to a suit have treated it as not appealable although appealable, the Court will not disturb the judgment. *Osgood and Cullen*, Q. B., 11 L. C. R., p. 282. And so where no evidence is taken in writing in the Court below, no appeal can be instituted. *The Corporation of St. Philippe and Lussier*, Q. B., 13 L. C. R., p. 499.

9. There is no appeal from a judgment of the Circuit Court, on an appeal from the judgment of Justices of the Peace homologating report of *experts* as to a *cours d'eau*, and under the 24 Vic. c. 30, there is no appeal to the Queen's Bench. *Bruneau and Prevost & al.*, Q. B., 13 L. C. R., p. 498.

10. Execution cannot be issued upon a judgment rendered against four defendants, if one of them has instituted an appeal, and if such appeal be still pending. *Brush vs. Wilson*, S. C., 6 L. C. R., p. 39.

11. A *factum* in appeal may be filed after the prescribed delay, when tendered at the time opposite party moves to dismiss appeal for want of it. *Dawson and Belle*, Q. B., 3 L. C. J., p. 256.

12. One appeal may be instituted from a judgment rendered by default by the prothonotary and from two oppositions to such judgment. *Waggoner and Ricker & al.*, Q. B., 13 L. C. R., p. 102.

" :—To the Privy Council. *Bond.*—1. The respondents served a notice upon the attorney of the appellants, that they would put in security in appeal to the Privy Council, on Saturday,

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the 18th of August, in the Judges' Chambers, in the Court House, security was not put in on this day, but notice was given later on the Saturday, that security would be given in Chambers on the Monday. Security was put in on this day, not in Chambers, but at the Judge's house; one of the sureties signed the bond in the forenoon, the other in the afternoon; and it was held, on motion to set aside the bond for irregularity and want of sufficient notice, that the bond must remain, but allowing the parties moving to make such objections to the sufficiency of the security, as they might legally have made when such security was put in. *Gibb et al., and the Beacon Fire and Life Assurance Company*, Q. B., 10 L. C. R., p. 402.

2. And when notice was given on the 15th, that security in appeal would be put in on the 17th, and another notice was given that the same security would be put in on the 15th, nevertheless security was given under the first notice, and the security put in in pursuance thereof, it was found irregular and insufficient, the first notice having been rendered of no effect by means of the second, and it was held that an action will not lie against the sureties on a bail-bond set aside in appeal for the causes above-mentioned. *Smith vs. Egan & al.*, S. C., 10 L. C. R., p. 238.

3. An Act of the Parliament of Great Britain declared that all laws passed by the Legislature of a Colony, should be valid and binding within the colony, and directed that the Colonial Court of Appeal should be subject to such appeal as it was previously to the passing of the Act, and also to such further and other provisions as might be made in that behalf, by any Act of the Colonial Legislature; held, than an Act having been passed by the Colonial Legislature, limiting the right of appeal to causes in which the sum in dispute was not less than £500 sterling, a petition for leave to appeal, in a cause where the sum was of less amount, could not be received by the King in Council, although there was a special clause in the Colonial Act reserving the rights and prerogatives of the Crown. *Cuvillier and Aylwin*, S. R., p. 527; also, 2 Knapp's Rep., p. 72. But this decision was over-ruled in a case of *Marois and Allaire*, P. C., 6 L. C. J., p. 85, in which it was held that the Privy Council could, in its discretion, allow an appeal in a case excluded by the statutes 34 Geo. III., cap. 6, s. 30, [C. Sts. L. C., c. 77, s. 52,] and 12 Vic., cap. 37, s. 19, [C. Sts. L. C., c. 77, s. 52. Also, *Boswell and Kilborn & al.*, 12 Moore's P. C. Cases, p. 467. And the principal was also admitted in *The Quebec Fire Assurance Company and Anderson et al.*, P. C., 7 L. C. J., p. 150, and 13 Moore's Rep., p. 477. But this is an indulgence, and it will not be granted unless there be some important principle involved; and if leave to appeal be granted on an *ex parte* application, the order may be afterwards discharged on the application of respondents, on shewing that the indulgence of an appeal should not be accorded. *Ib.*, 7 L. C. J., p. 151.

4. An appeal does not lie to Her Majesty in Her Privy Council from a judgment of the Court of Appeals, reversing

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a judgment of the Court below, by which the appellant's action was dismissed on a *défense en droit* to the declaration. *Simard and Townsend*, Q. B., 6 L. C. R., p. 147.

5. The right of appeal to Her Majesty in Her Privy Council, upon an opposition made by a defendant to the execution of a judgment, is settled by the nature and quality of the demand, and not by the matters set forth in the opposition. *Gugy and Gugy*, Q. B., 1 L. C. R., p. 273.

6. By the appeal to Her Majesty in Council from the final judgment of the Court of Queen's Bench, the latter tribunal is dispossessed of the cause. And a decree of Her Majesty in Council, purely and simply reversing a judgment of the Court of Q. B., confirming the judgment appealed from, without indicating in what sense the judgment ought to have been rendered, does not invest the Q. B. with jurisdiction, which tribunal, unacquainted with the motives which have determined the Privy Council, is unable to render any judgment. *The Montreal Assurance Company and McGillivray*, Q. B., 10 L. C. R., p. 385.

7. On appeal to Her Majesty in Her Privy Council, the court is not precluded from entertaining a petition to reserve leave to appeal, by the fact that leave to appeal was granted by a colonial court, under the authority of a colonial statute. *Macfarlane et al., and Leclaire et al.*, P. C., 6 L. C. J., p. 170.

8. The right of appeal, when depending on the value of the matter in dispute, should be decided by the manner in which it affects the interests of the appellant. *Ib.*, and 12 L. C. R., p. 154.

9. Application to dismiss an appeal to the Privy Council, on the ground of delay in prosecution, and no certificate being filed, pursuant to the 31st section of the Canada Judicature Act, refused, the rule allowing a year and a day for prosecuting an appeal, though usually adhered to, not being imperative upon the King in Council, and the respondents having no claim to complain of delay, after laying by themselves eight months without making any application. *St. Louis and St. Louis*, P. C., 1 Moore's Rep., p. 143.

" :—From Courts of Vice-Admiralty.—1. The appellate jurisdiction of the High Court of Admiralty from Courts of Vice-Admiralty, is by the 3rd and 4th Will. 4, c. 41, transferred to the Judicial Committee of the Privy Council, p. 5, S. V. A. R.

2. All appeals from decrees of the Vice-Admiralty Courts, are to be asserted within fifteen days after the date of the decree, which is to be done by the proctor declaring the same in court, and a minute thereof is to be entered in the assignation-book; and the party must also give bail within fifteen days from the assertion of the appeal to answer the costs of such appeal, p. 44, *ib.*

" :—*Vide* CERTIORARI.

APPEARANCE:—1. A plaintiff has no right to question the power or authority of an attorney to appear for a defendant not legally served with the writ and declaration, the return being of service at the last domicile of the defendant, and that

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defendant had left the Province, and had no domicile therein; and such appearance being of record, no steps can be taken to call in the defendant by advertisement, or to proceed *ex parte*. *McKercher and Simpson*, Q. B., 6 L. C. R., p. 311, and so also in *Whitney vs. Dinning et al., and Mulholland*, S. C., 6 L. C. J., p. 30.

2. Appearance in a cause need not be filed between the 10th day of July and the 31st day of August, [Con. St. L. C., cap. 83, sect. 79, s. s. 2.] inclusively; but if filed in any action after the last mentioned day, default having been duly recorded in the interim, the party so appearing must pay the costs of taking off the default. *Bell vs. Leonard*, S. C., 1 L. C. J., p. 17.

APPENDIX:—1. Commission of Vice-Admiral under the Great Seal of the High Court of Admiralty of England, to James Murray, Captain-General and Governor-in-Chief in and over the Province of Quebec, in America, dated 9th March, 1764, p. 370. S. V. A. R.

2. Commission under the Great Seal of the High Court of Admiralty of England, appointing Henry Black, Judge of the Vice-Admiralty Court for Lower Canada, dated 27th October, 1838, p. 376.

3. Commission under the Great Seal of Great Britain, for the trial of offences committed within the jurisdiction of the Admiralty of England, dated 30th October, 1841, p. 380.

4. Opinion of Judge Kerr, in the following cases:—*The Camillus*, p. 383. S. V. A. R. *The Coldstream*, p. 386. *Ib.*

5. The several commissions in continuation of the above commission of vice-admiral down to the present time, with their respective dates, p. 390.

6. The several Judges of the Vice-Admiralty Court, since the cession of the country to the Crown of Great Britain, p. 391. *Ib.*

APPRENTICE:—The father of an apprentice misrepresenting the age of his son at the time of his indenture, is liable to the party to whom he binds him, if any damage be incurred by reason of the apprentice quitting his engagement when of age, and before the expiry of the term for which indenture was made. *Rice vs. Coo*, S. C., 1 L. C. J., p. 10.

ARBITRATION:—1. On reference to three *arbitres*, or specifically to any two of them, an award by two is good, if the third has had due notice of the matters referred and of the several meetings, especially that in which the award is made; and the award of two is valid, even should the third refuse his assent. *Meiklejohn vs. Young et al.*, S. R., p. 43.

2. A party who has submitted a matter to arbitrators, cannot after the arbitrators have made their award, call for the decision of the ordinary tribunals, without, in the first place, paying the penalty stipulated in the arbitration bond, unless the award be absolutely null. An award is not absolutely null although the witnesses examined have not been legally sworn. *Tremblay vs. Tremblay*, S. C., 3 L. C. R. p. 482. But the stipulation in a bond to pay a penalty is comminatory. *Bouthillier vs. Turcot*, S. C., 3 L. C. J., p. 50.

ARBITRATION :—

3. An award of arbitrators in itself conclusive cannot be attacked by the verbal evidence of one of the arbitrators. *Joseph vs. Ostell*, S. C., 1 L. C. J., p. 265.* Reversed in appeal, 12th Oct., 1857, *vide* 9 L. C. R., p. 440.

4. An award of arbitrators which does not embrace all the material points submitted, or which discloses excess of authority, will be set aside. *Tate et al. vs. Janes et al.* And E *Contra*—S. C., 1 L. C. J., p. 151.

5. And an award of arbitrators named by the Court which declares that they had " examined the proceedings of record in this cause, examined the witnesses of the parties under oath and deliberated," but without stating that they had notified the parties will be set aside on motion. *Brown et al., vs. Smith et al.*, S. C., 6 L. C. J., p. 126.

6. And an award purporting to be made after notice to the parties, but which was in fact made without such notice will be set aside upon motion setting forth the want of notice, supported by affidavit. *McCulloch vs. McNevin*, S. C., 6 L. C. J., p. 257. But the assessment of costs by arbitrators, under the provisions of the Statutes 2 Will. IV, c. 58, and 13 & 14 Vic. c. 114,† does not vitiate the report. *Tremblay and Champlain and St. Lawrence Railroad Company*, Q. B., 5 L. C. R., p. 219. And even when vested with the powers of *amiables compositeurs*, arbitrators cannot adjudicate on the question of costs, unless specially referred to them ; and so much of their award as adjudicates with regard to costs will be set aside. *McKenna vs. Tabb*, C. C., 2 L. C. J., p. 190.

7. The report of arbitrators and *amiables compositeurs* should be produced *en minute*. *Rodier vs. Mercile*, S. C., L. R., p. 57. And a notarial copy of an award of arbitrators, made under the provisions of the Statute 13 & 14 Vic. c. 114,‡ and a certificate of the notary that the arbitrators were sworn, is not legal evidence of any oath having been taken or award rendered, inasmuch as a public notary has no authority to receive and certify such oath and award. *Roy vs The Champlain and St. Lawrence Railroad Company*, S. C., 4 L. C. R., p. 189. But this decision was reversed in the Queen's Bench, *vide* 6 L. C. R. p. 277. Also in another case of *Tremblay and Champlain and St. Lawrence Railroad Company*, Q. B., 5 L. C. R., p. 219, it was held that in Lower Canada notaries have the power to receive the report of arbitrators and to give a certified copy of the swearing in of the arbitrators annexed thereto ; and that such power is specially recognized as belonging to them by the Statutes 2 Will. IV, c. 58, and 13 & 14 Vic. c. 114.

8. The declaration made by arbitrators in their report that they have been sworn is not evidence of the fact, and their report will be rejected if no certificate is produced to show

* Having been interested in this case I have altered the holding which does not explain exactly the point of the judgment. It will be at once seen that it was not necessary for the Superior Court to decide the question generally, the only witness produced being one of the arbitrators.

† These are the Acts incorporating the Champlain and St. Lawrence Railroad Company.

‡ Act incorporating the Champlain and St. Lawrence Railroad Company.

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that they have really been sworn. *Joseph vs. Ostell*, S. C., 6 L. C. J., p. 40, and 11 L. C. R., p. 499.

9. A report of arbitrators will not be set aside on motion (supported by affidavit) to the effect that their award is not accompanied by satisfactory evidence that the parties or their witnesses were legally sworn, it appearing that the oath was administered to the parties and their witnesses by one of the arbitrators. *Daly et al. vs. Cunningham*, S. C., 6 L. C. J., p. 242.

10. A clause or condition in a policy of insurance that in case of any dispute between the parties, it shall be referred to arbitration, the court will not be ousted of its jurisdiction, nor will it compel the parties to submit to a reference in the progress of the suit. *Scott vs. The Phœnix Assurance Company*, S. R., p. 152.

11. The agent of the contractors for the construction of a railroad having agreed to a reference to arbitrators and *amiables compositeurs*, to settle the value of a piece of land required for the construction of the railroad, the question was raised as to whether the contractors themselves were authorized by the company to submit the matter to arbitration, and if so whether they had transferred such power to the agent. In the Superior Court it was held that they had. *Meredith*, J., dissenting.—And in appeal this judgment was confirmed, the Court being equally divided. *The Quebec and Richmond Railroad Company and Quinn*, Q. B., 6 L. C. R., pp. 129, 350, 366 & 395, also 12 Moore's P. C. cases, p. 232.

12. A merchant who, in compliance with instructions from the Commissioners of Public Works, purchases lands for them under the 13 & 14 Vic. c. 13, is not a mere mandatory, but is entitled to compensation for such services ; and he is entitled to have his claim therefor submitted to arbitration under the 8th section of the Act, and a *mandamus* will issue to compel the commissioners to refer such claim to arbitration. [Con. St. C., c. 28, ss. 49 and 51.] *Young et al. vs. The Commissioner of Public Works*, S. C., 9 L. C. R., p. 43.

" :—*Vide* AGENT.

" :— " SIGNIFICATION.

ARCHITECT.—In an action by an architect for drawing plans, and specifications and superintending building, proof as to value of services cannot be made by adducing evidence as to custom to pay a certain percentage on the outlay of the proprietor. *Footner vs. Joseph*, S. C., 3 L. C. J., p. 233. But in this case it was held on appeal to Queen's Bench, that although an architect has no right in the absence of an express convention to recover a commission on the proprietor's outlay *eo nomine*, yet the value of his services may be established by evidence that the allowance of a commission is usual, and is a fair and reasonable mode of remuneration ; in which case he will recover as for a *quantum meruit*. 5 L. C. J., p. 225 ; and 11 L. C. R. 94.

ARREARS OF INTEREST :—*Vide* HYPOTHÈQUE.

" :— " INTEREST.

ARTICULATION OF FACTS:—1. A general articulation of facts will be rejected from the record as contrary to the law, which requires such articulation to be clear and distinct. *The Molsons' Bank vs. Falkner et al., and Falkner et al., opposants*, S. C., 6 L. C. J., p. 120.

2. An articulation of facts which contains matter not to be found in the pleadings, or matters admitted by the pleading, is nevertheless good. *Rouleau vs. Bacquet*, S. C., 8 L. C. R., p. 154.

3. The default of either party to a suit to produce an articulation of facts, has not the effect of preventing the case from being proceeded with and heard. *Belanger and Mogé*, Q. B., 6 L. C. J., p. 61.

4. Where a party in a cause has failed to answer the articulation of facts filed by his adversary, the facts articulated will be taken as admitted. *Owens vs. Dubuc and Campbell*, S. C., 6 L. C. J., p. 121; and 12 L. C. R., p. 399. And so the default of the plaintiff to answer the articulation of facts having the effect of an admission of the facts alleged, the claim set up in compensation, though not founded on an authentic deed, became *claire et liquide*, and extinguished the adverse claim. *Archambault & Archambault*, Q. B., 10 L. C. R., p. 422. Also 4 L. C., J., p. 284.

5. But a party will be allowed to file an answer to an articulation of facts, even after the final hearing of the cause, on payment of costs, on affidavit that such answers had not been produced through an oversight. *Boswell vs. Lloyd*, S. C., 13 L. C. R. p. 121.

ASSAULT:—1. As to the authority of the master of a merchantman to inflict punishment on a passenger who refuses to submit to the discipline of the ship. *The Friends*, p. 118, S. V. A. R.

2. Assault and battery, and oppressive treatment by the master of a ship upon a cabin passenger,—charge sustained, *The Toronto*, p. 170, S. V. A. R.

3. No words of provocation whatever will justify an assault. *Ib.*

4. If provoking language be given, without reasonable cause, and the party offended be tempted to strike the other, and an action brought, the Court will be bound to consider the provocation in assessing the damages. *Ib.*

5. To constitute such an assault as will justify moderate and reasonable violence in self-defence, there must be an attempt, or offer, with force and violence, to do a corporal hurt to another. *Ib.*

6. In an action against the captain of a ship chartered by the East India Company, for an assault and false imprisonment,—a justification on the ground of mutinous, disobedient, and disorderly behaviour sustained. *The Coldstream*, p. 386, S. V. A. R.

7. In an action of damages for assault and battery, words in the declaration charging the defendants with a design to do grievous bodily harm to the plaintiff, do not necessarily constitute an accusation of felony; and even where the assault charged would amount to a felony, the plaintiff may proceed in an action for damages, without being in the first

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place compelled to prosecute criminally, for the assault of which he complains. *Lamothe and Chevalier*, Q. B., 4 L. C. R., p. 160.

8. It is no assault for a conductor of a railway train to put a passenger off the train, who wrongfully refuses to pay his fare. *Regina vs. Faneuf*, 5 L. C. J., p. 167.

ASSEMBLY :—*Vide* LEGISLATIVE ASSEMBLY

ASSESSMENTS :—1. Assessments may be recovered from a party holding land within the limits of the city of Montreal, under a lease from government for twenty-one years, renewable on certain conditions, on the ground that such party is an owner of the land within the meaning of the by-law of the corporation imposing assessments on real property. *Gould vs. The Mayor, &c., of the City of Montreal*, S. C., 2 L. C. J., p. 260. Confirmed in appeal to Q. B., 1st December, 1858. Also exp. Harvey S. C. 5 L. C. J., p. 378, *Infra* LEASE, No. 12.

2. The undertaking of a tenant in his lease to pay the yearly assessments on the property leased, includes the rate levied on all the assessable property in Montreal, under the provisions of the 22 Vic. ch. 15, sect. 3, commonly called "the Special Tax," where the parties make no distinction as to what assessments the lessee shall pay, he will be held liable for every city tax. *Pinsonneault vs. Ramsay*, C. C., 5 L. C. J., p. 227, and 12 L. C. R., p. 82. But the same day, *Badgley*, J., held that the tax under this statute was not recoverable by a landlord under a general undertaking to pay the assessments. It was not a city tax or assessment of the corporation, but a special tax imposed on property in the city of Montreal for particular purposes, and which did not go into the general fund of the city. *Courcelle dit Chevalier vs. Longpré*, 5 L. C. J., p. 228. But later, *Smith*, J., held that such special tax was recoverable. *Pinsonneault vs. Henderson*, and in three other cases, C. C., 5 L. C. J., pp. 338–9; and also in a case of *Dumas vs. Viau*, *ib.*, and in another case of *Judah vs. Lavoie*, S. C., 5 L. C. J., p. 340. Also *Berthelet vs. Muir, et al.*, C. C., 11 L. C. R., p. 482.

3. Local councils cannot cause the lands of absentee proprietors situate within their jurisdiction to be sold for the non-performance of road-work required by *procès-verbal*, where such work had been let out by such councils to the lowest bidder, until after judgment has been obtained against such proprietors for the work done by road-officers, as permitted by the municipal act. And the letting out of road-work, to which lands are liable, by contract to the lowest bidder, where the work was to be done by private individuals, is not legal, and an action *negatoire* to have lands declared free from illegal rates and to have the councils desist from the sale of lands for rates illegally imposed, is the proper mode of proceeding. *McDougall and The Corporation of the Parish of St. Ephrem d'Upton*, Q. B., 5 L. C. J., p. 229, and 11 L. C. R., p. 353.

5. The line of the Grand Trunk Railway Co. is not liable for assessments for school purposes; but if improperly assessed it is the duty of the Company to object to the

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repartition during the 30 days allowed by law for its amendment. *Commissaires d'école d'Acton vs. The Grand Trunk Railway Company*, C. C., L. R., p. 77.

" :—*Vide* LEASE.

ASSESSORS:—1. Assessors appointed under a statute authorizing the corporation of Montreal to appoint them, and to grant them such remuneration for their services as the council may deem fitting, cannot recover a *quantum meruit* in an action against the corporation. *Gorrie vs. the Mayor, &c., of the City of Montreal*, S. C., 8 L. C. R., p. 236. But in appeal it was held otherwise in the case of *Boulanget vs. The Mayor, &c., of the City of Montreal*, Q. B., 9 L. C. R., p. 363. And so also in *Gorrie's* case.

2. Captain Henry W. Bayfield, R. N., commanding naval and surveying service in the river and gulf of St. Lawrence—his opinion in the following cases:—1. The *Cumberland*, p. 79., S. V. A. R.; 2. The *Nelson Village*, p. 156, *ib.*; 3. The *Leonidas*, p. 230, *ib.*

3. Captain Edward Boxer, R. N., C. B., harbour-master and captain of the port at Quebec—his opinion in the following cases:—1. The *John Munn*, p. 266, *ib.*; 2. *Bytown*, p. 278, *ib.*

4. Lieut. Edward D. Ashe, R. N., superintendent of the Quebec Observatory—his opinion in the following cases:—1. The *Roslin Castle* and the *Glencairn*, p. 306, *ib.*; 2. The *Niagara* and the *Elizabeth*, pp. 316–320, *ib.*

5. Captain Jesse Armstrong, harbour-master of Quebec—his opinion in the case of the *Niagara* and the *Elizabeth*, pp. 316-320, *ib.*

6. As to practice where nautical skill and knowledge are required, Sir James Marriott's Formulary, p. 159, *ib.*

ASSIGNEES:—1. One of two joint assignees may legally receive payment and give a discharge to a debtor of the bankrupt estate, without the concurrence of the other assignee. *Molson and Renaud et al.*, Q. B., 1 L. C. R., p. 495.

2. An assignee of a debt has a right to intervene in a suit instituted with his consent, by the assignors, and to cause all further proceedings to be suspended; but he must bear all the costs of the *instance* up to the time he so intervenes. *Berthelet and Guy et al.*, Q. B., 2 L. C. J., p. 209.

3. An assignee of a plaintiff cannot by motion claim to be made a party to a cause, the proper course being to apply by petition, he being a stranger to the record. *Rose vs. Coutlée and Coutlée*, S. C., 7 L. C. J., p. 284.

ASSIGNMENT:—1. Militia pensions are not assignable. *Chrétien vs. Roy dit Desjardins*, S. C., 6 L. C. R., p. 465. Claims under the rebellion losses Act, 12 Vic., c. 58, are assignable. *Pacaud vs. Bourdages*, S. C., L. R., p. 101.

2. The assignor of an indemnity granted by the provincial government under the 12 Vic., c. 58, is not bound to make good the amount transferred, his claim having been reduced by the commissioners under the said Act. *Barrette and Workman*, Q. B., 6 L. C. R., p. 284.*

* The deed did not set forth any guarantee of the sum mentioned, and the court interpreted the deed as being the sale of uncertain and litigious rights, so this case establishes no exception to the usual rule.

ASSIGNMENT :—

3. An assignment made by a *bailleur de fonds* of part of a sum of money due him for the price of the sale of an immoveable property, gives the assignee a right to be collocated concurrently with the assignor, upon the proceeds of the sale of such immoveable property, notwithstanding that such assignment is made by the assignor without any warranty whatsoever, the assignee accepting thereof *à ses frais, risques et périls. Wurtele et al., vs. Henry*, S. C., 2 L. C. R., p. 317.

4. Where several creditors of a debtor have transferred their claims against him to a third party, without specifying in the *acte* of cession the total amount of the sums so transferred, the *cessionnaire* being only bound to pay 5s. in the £, on these sums, and without all the creditors named in the *acte* having signed the same, the *cessionnaire* is not bound. And the *cédant* cannot compel the *cessionnaire* to pay the amount of the consideration, without putting the latter in possession of the titles against the debtor. *Macfarlane vs. Aimbault et al.*, S. C., 4 L. C. R., p. 88.*

5. Question as to what constitutes fraud in an assignment by an insolvent. *Sharing and Meunier dit Lapierre*, Q. B., 7 L. C. R., p. 250.

6. In order to set aside an assignment on the ground of fraud, the insolvency of the debtor must be alleged and proved. *Bernier vs. Vachon et al.*, S. C., 8 L. C. R., p. 286. In an assignment absence of tradition and want of consideration, are strong indications of fraud; delivery of possession gives only rise to a presumption of honesty, but non-delivery is strong evidence of fraud. *Barbour et al., vs. Fairchild et al. and Miligan*, S. C., 6 L. C. R., p. 113; and an assignment of the interest of an insolvent in his lease or leases of the premises containing the property sold, does not necessarily amount to an actual delivery (*tradition réelle*) in law as against third parties. *Cumming et al., vs. Smith et al.*, 5 L. C. J., p. 1.

7. Assignments not being made by notarial deeds, are not evidence that sales were not *bonâ fide;* and the circumstance of sales being made without warranty, does not raise presumption that such sales were fraudulent, and that because vendor refuses to warrant, it must therefore be taken that purchaser knew that there was fraud or that there was no title. *Macfarlane et al., and Leclaire et al.*, P. C., 12 L. C. R., p. 374.

8. The assignment of an unfinished contract will not be set aside on an allegation of fraud by a creditor of the assignor, such alleged fraud consisting in the assignment of money due on that part of the contract completed at the period of the assignment. *Berlinguet and Drolet*, Q. B., 12 L. C. R., p. 432. But if in such case the amount of money transferred exceeded the value of the work still to be done, the creditors of the assignor might have it set aside for the surplus. *Ib.*

* This judgment was confirmed in appeal, Mr. Justice Rolland remarking that he would have dismissed the action for the reason that the sums were in figures, which gave no sort of authenticity to the deed.

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9. The condition in a voluntary assignment of the estate of an insolvent debtor, accepted by the majority of the creditors, to the effect that the debtor is fully discharged, is inoperative as against a creditor who has not signed ; and such creditor may seize the estate in the hands of the assignees, or of any one to whom the totality may have been sold. And a vendee to whom the assignees have sold the entire estate, the next day after receiving it, being himself a party to the assignment, is accountable for the estate to a dissenting creditor, notwithstanding that the assignees acknowledged payment in full of the price stipulated, and such vendee, as well as the other creditors, must specify the goods and moneys he has received ; and the declarations in such deeds make proof against the parties to them, but not against the dissenting creditor. *Macfarlane et al., and Mackenzie et al., and E contra*, Q. B., 5 L. C. J., p. 106.

10. And it is no answer to a party to a deed of assignment of an insolvent's estate, on an action to account against the assignees that they had sold the estate to one of the insolvents who had undertaken to pay the creditors. *Torrance vs. Chapman et al.*, S. C., 6 L. C. J., p. 32.

11. An assignment, without actual consideration, is only a donation, and the fraud of the debtor is sufficient to dispossess the donee. The law presumes personal property in the possession of married persons, to be common property, unless disproved by strict proof of individual property in the wife. A subsequent creditor may plead simulation of previous deed for property which never passed from debtor. Marriage is a good consideration for *bonâ fide* stipulations of contract of marriage in favor of the wife. *Barbour vs. Fairchild and Milligan*, S. C., 6 L. C. R., p. 113.

12. The assignee of a debt is entitled to intervene on the seizure of the immoveable property of the debtor, made in the name of the assignor, before notification of the assignment for benefit of the assignee, and also to be declared *dominus litis*. And the assignor has no right to contest such a demand nor to claim to be *first* re-imbursed the costs by him incurred as well on the suit as upon the seizure. *Berthelet and Guy et al.*, Q. B., 8 L. C. R., p. 305. But assignee is liable for the costs, 2 L. C. J., p. 209.

13. In the case of *Cumming et al. and Smith et al.*, it was held in Queen's Bench, 5 L. C. J., p. 1, that the estate and effects of an insolvent are the *gage commun* of all his creditors, and that a sale *omnium bonorum*, made by an insolvent trader, at common law and according to the principles of the law of commerce, and especially under the edict of King Henry IV. of France, May 1609, is absolutely null and void. Also 10 L. C. R., p. 122 ; also *Withall vs. Young et al. and Michon*, Q. B., 10 L. C. R., p. 149.

14. So a creditor is not bound to submit to conditions in a deed of composition between a debtor and the majority of his creditors ; and thus the limitation in a deed by assignment requiring a creditor, who receives his proportion of the estate of an insolvent debtor, to give a discharge in full, is inoperative as regards creditors not parties to the deed. And

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where the assignor holds moneys of the estate, the Court will order him to pay over to an attaching creditor not a party to the deed of assignment. *Macfarlane vs. Delisle and Mackenzie et al.*, T. S., S. C., 3 L. C. J., p. 163.

15. And so also an auctioneer receiving the goods of an insolvent for sale cannot set-off the proceeds against a debt due to himself, but is liable to account to the creditors of the insolvent. *Fisher vs. Draycott and Scott*, S. C., L. R, p. 44.

16. A debtor who has assigned all his property for the benefit of his creditors, and who afterwards has paid his debts, can have the deed of assignment set aside and may even seize any part of his property so assigned in the hands of the third persons to whom the judgment of retrocession has not been notified, subject probably in such cases to costs if the third party persist in his possession of such property. *Hagan and Wright*, Q. B., 11 L. C. R., p. 92.

17. A bailiff's certificate cannot be taken as authentic to establish the signification of an assignment. *St. John vs. Delisle*, S. C., 2 L. C. R., p. 150.

" :—*Vide* BANKRUPTCY.
" :— " INSURANCE.
" :— " PARTNERSHIP.
" :— " TRANSPORT.

ASSIGNATION :—*Vide* SERVICE.

ASSUMPSIT :—1. It is no answer to an action of assumpsit, for goods sold and delivered, that they were not according to order, unless defendant have returned the goods or given plaintiff notice to take them back. *Wurtele et al. vs. Boswell*, 3 Rev. de Lég., p. 193. Nor that the defendant paid by a note at a long date unless he can establish that plaintiff accepted the note. *Lavoie vs. Crevier*, Q. B., 9 L. C. R., p. 418.

2. An action of assumpsit for work and labor done and performed cannot be maintained if it was done under a contract. *McGinnis vs. McCloskey*, S. C., 1 L. C. J., p. 193. And money paid in advance on account of the consideration of a contract for building cannot be recovered back by action of assumpsit. *Ingham vs. Kirkpatrick*, S. C., 3 L. C. J., p. 282.

3. A partner has no action of assumpsit against his former partner after dissolution of the partnership for pretended debts paid by him, or for money taken by him from the partnership funds. *Thurber vs. Pilon*, S. C., 4 L. C. J., p. 37.

4. In an action of assumpsit a defendant may be asked whether he gave a note for the amount claimed although such note were then prescribed. *Bagg et al. vs. Wurtele*, S. C., 6 L. C. J., p. 30.

ATERMOIEMENT :—1. Under a deed of composition or *atermoiement* the failure to pay a second or subsequent instalment, the first being paid, gives the creditor the right to sue for the whole balance due. S. C. *Brown et al. vs. Hartigan*, 5 L. C. J., p. 41.

2. And where the period fixed for payment of the composition had elapsed, without the same having been paid, the debtor was condemned and held liable to pay the full

ATERMOIEMENT :—

amount of his debt although he had tendered the full amount of such composition prior to the institution of the action. *Beaudry et al. vs. Bareille*, 1 Rev. de Lég., p. 33. Also in a case of *Atkinson vs. Nesbitt*, 1 Rev. de Lég., p. 110, it was held that the term of payment fixed by an act of *atermoiement*, is a condition *résolutoire*, which annulls the act entirely without its being so declared *en justice*, and which gives the creditor the right to sue on the original debt *de plano*. But it is otherwise if the delay be in any way owing to the fault of the creditor.

3. And where upon a covenant in the deed of composition founded upon the delivery at a certain time and place, of two promissory notes, endorsed by a third party to whom the amount due should be assigned, the delay of two days incurred in the delivery of the notes will not deprive the debtor of the benefit of the composition, the creditor not having presented himself to receive the notes and execute the assignment, but having, on the contrary, made known his intention to present himself to receive the notes in question later, by reason of his residence at a distance from the place where the notes were to be delivered. *King and Breakey*, Q. B., 7 L. C. R., p. 306; and so also in *Boudreau & al. vs. D'Amour*, S. C., 3 L. C. J., p. 124.

4. A deed of composition between a firm and its creditors, in which it is stipulated that all the creditors should sign, is not valid or binding unless they all do so. *Cuvillier & al. vs. Buteau*, 1 Rev. de Lég. p. 109.

5. A transfer of certain debts to creditors, which debts, if paid, are to be taken in full discharge of the debtor, operates no novation; and if the case be a commercial one, and the debts be not paid, it is not necessary to bring an action *en déchéance* before suing on the original debt. *Boudreau & al. vs. D'Amour*, S. C., 9 L. C. R., p. 330, and 3 L. C. J., p. 124. And in the same case it was held that the delay granted by one of the *co-cessionnaires* for the payment of one of the debts so tranferred binds the other *co-cessionnaires.*

6. But where notes of other parties have been given as the consideration of a compensation, and that such notes have been retained by the compounding creditor, the latter cannot sue on the original debt although two of the notes were not paid till long after it was due, and that the other was still not wholly paid. *Roy et al., vs. Turcotte*, C. C., 7 L. C. J., p. 53.

7. A promissory note or any undertaking to give any consideration by an insolvent debtor to a creditor, in contemplation of a deed of composition, and as a preference to such creditor without the knowledge of the other creditors, is null and void, and will be declared so even as against the compounding debtor himself. *Greenshields vs. Plamondon*, S. C., 3 L. C. J., p. 240. But in the Queen's Bench this judgment was reversed, the note not being for the defendant's own debt but for one for which he was security for a third party, and because the agreement was not prejudicial to the other creditors, who did not complain of it. *Greenshields & al. and Plamondon*, 10 L. C. R., p. 251.

ATTACHMENT:—1. Attachment awarded against a master for taking out of the jurisdiction of the court his vessel, which had been regularly attached. *The Friends*, p. 72, S. V. A. R.

2. Application for an attachment for contempt for resisting the process of the court, rejected; the statement of the officer being contradicted by the affidavits of two other persons present at the arrest. *The Sarah*, p. 86, *ib.*

3. Application for an attachment for a contempt against a magistrate, first seized of a seaman's suit, for having issued a warrant, and arrested the seaman whilst attending his proctor for the purpose of bringing the suit, rejected. *The Isabella*, p. 134, *ib.*

4. Attachment decreed for contempt, in obstructing the marshal in the execution of the process of the court. *The Delta*, p. 207, *ib.*

ATTORNEY:—1. The attorney *ad litem* is responsible to the sheriff for his fees and disbursements on writs of execution issued on his *fiat*, and two attornies in partnership are jointly and severally liable for such fees and disbursements. *Boston and Taylor*, Q. B., 7 L. C. R., p. 329, and 1 L. C. J., p. 60. But an attorney is not liable for the indemnity due to witnesses, summoned by him at the request of his client. *Laroche vs. Holt et al.*, C. C., 3 L. C. R., p. 109.

2. The substitution of an attorney for the appellant in lieu of one who previously represented him, is an acquiescence in all proceedings of the first attorney, there being no *désaveu*, and this notwithstanding any irregularity in the proceedings. *Burroughs and Molson et al.*, Q. B., 8 L. C. R., p. 494.

3. Where a suggestion of the death of one of several defendants is filed of record, a motion to compel the remaining defendants to substitute an attorney in the place of the attorney of record, one of whom had been promoted to the bench, will not be granted until such suggestion is removed or disposed of. *Sauvageau vs. Robertson et al.*, S. C., 9 L. C. R., p. 224.

4. When one of two partners, attorneys, leaves the district, the other can continue to act in the cause in his individual name, without the necessity of a regular substitution. *Tidmarsh vs. Stephens et al.*, S. C., 1 L. C. J., p. 16, and 6 L. C. R., p. 194. And so also it was held that service upon one of the partners, the other having been raised to the bench was sufficient, in the case of *McCarthy and Hart*, Q. B., 9 L. C. R., p. 395. And where one of three attorneys of record is dead, *peremption d'instance* will be properly demanded in the name of the two survivors. *De Beaujeu vs. Rodrigue*, S. C., 7 L. C. J., p. 43.

5. An attorney in a cause is *dominus litis*, and he cannot be interfered with by any arrangement entered into with his own client by the opposite party or his attorney, without his sanction. *O'Connell vs. the Corporation of Montreal*, S. C., 4 L. C. J., p. 56, and 10 L. C. R., p. 19.

6. An attorney has no right to a fee for a re-hearing, unless the re-hearing takes place by the order of the court, and to enable the court to be more fully informed of the case. *Boswell vs. Lloyd*, S. C., 13 L. C. R., p. 18.

ATTORNEY :—

7. A practising attorney cannot become bail or surety in any proceedings cognizable by Superior Court. *Routier and Gingras*, S. C., 3 L. C. R., p. 57. Nor in Appeals from the Superior Court to the Queen's Bench, without contravening the 6th rule of practice. *Lemelin and Larue*, Q. B., 10 L. C. R., p. 190.

8. Where an attorney has represented a party in a cause subsequent to judgment, another attorney *ad litem* cannot take proceedings in the cause without a substitution, and on motion of the first attorney all proceedings of the second attorney will be rejected from the record. *Gillespie et al., vs. Spragg*, S. C., 6 L. C. J., p. 28.

9. And substitution of a new attorney will not be granted unless there be full revocation of the attorney of record; so where one of three co-plaintiffs made an *acte* of substitution, the other two not being parties to the *acte*, the court refused the motion. *Mann et al., vs. Lambe*, S. C., 5 L. C. J., p. 98.

10. But when attorneys of record consent to a substitution, no adjudication is necessary. *Huot dit Delude vs. McGill et al.*, S. C., 7 L. C. J., p. 123.

11. A party having appeared by his attorney in a suit, cannot examine a witness personally, nor even as counsel at *enquête* if he be a practising barrister. *Ramsay vs. David and Walker*, S. C., 6 L. C. J., p. 295.*

" :—*Vide* ADVOCATES.
" :— " BAIL.
" :— " BOND.
" :— " CERTIFICATE OF SERVICE.
" :— " JUDGMENT.

ATTORNEY GENERAL :—1. During the absence of the attorney-general, the powers and duties of the office devolve upon the solicitor-general. *The Dumfriesshire*, p. 245, S. V. A. R.

2. The attorney-general appearing for Her Majesty, cannot appear by attorney, and where an information was signed by *procureurs du procureur-général pro reginâ*, the information will be dismissed on *exception à la forme*. *The Attorney General pro reginâ, vs. Laviolette et al.*, S. C., 6 L. C. J., p. 309.

AUCTION:—Where a purchaser refuses to pay in compliance with the conditions of sale, the goods, after notice to purchaser, may be again sold at auction, and he will be liable for any difference in the price, if less than at the first sale, and all costs and charges. *Maxham et al., vs. Stafford*, S. C., 5 L. C. J., p. 105.

AUCTIONEER:—1. Where an auctioneer puts up a registered vessel for sale, without naming his principal, and the same is adjudged, without any express condition as to the time and manner of executing the written transfer of such vessel, the auctioneer cannot recover from the purchaser the sum for

* These two decisions were given the same day at *enquête* sittings. It is almost needless to say that the primary and indefeasible right of a party, is to appear in his own case. But how is this case to be reconciled with *Ryan and Ward*. *Vide* COSTS, No 13, where it was held that the parties may personally agree to withdraw an action, without the intervention of the attorney demanding *distraction de frais*? Or with the still more recent case of *Ostell and Joseph*, S. C. M No. 2254, 1864, where the parties settled in fraud of the attorneys of the Defendant? Both decisions may be wrong; but both cannot be right.

AUCTIONEER :—

which the vessel was adjudged, unless he procure and deliver to the purchaser a legal transfer of the vessel executed by the owner or by some person legally authorized for the purpose, according to the requirements of the registry act. *Burns vs. Hart*, P. R., p. 63.

2. On an action for a statement due on a *prix de vente*, defendant cannot avoid payment by setting up that the auctioneer from whom he purchased, described the lot as an *emplacement*, &c., with *mitoyen* right on gable of buildings belonging to C., the notarial deed subsequently passed making no mention of such right. *McKenzie vs. Joseph*, S. C., 13 L. C. R., p. 168.

3. An auctioneer receiving the goods of an insolvent party for sale, cannot off-set the proceeds against a debt due to himself, but is liable to account to the creditors of the insolvent. *Fisher vs. Draycott and Scott*, S. C., L. R. p. 44.

4. An auctioneer is bound to deliver to his principal the notes he may have received for the goods he has sold whether he guarentees the sales or not, and if he sells goods for his principal on purchasers' notes, he has no right to accept from the purchaser a note which covers the price of goods belonging to another. *Sinclair vs. Leeming et al.*, Q. B., 5 L. C. J. p. 247.

5. The undertaking to guarantee sales by an auctioneer or other agent, where notes are given in payment, is reasonably interpreted to create a liability to endorse such notes. *Ib.*

AVAL :—1. An *aval* may be made by a signature *sous croix*, if the matter for which the note is given be of a commercial nature. *Paterson et al. and Pain*, S. C., 1 L. C. R. p. 219.

2. The signature of the person, not the payee, nor subsequent holder under the payee written in blank on a promissory note, may be considered an *aval*; and the *donneur d'aval*, as such, is not entitled to notice of protest. Whether such signature in blank is an *aval* or not is to be decided by the jury. *Merritt vs. Lynch*, S. C., 3 L. C. J., p. 276.

3. *The donneur d'aval* is not entitled to protest. *Pariseau vs. Ouellet*, S. C., L. R., p. 57. *Vide Supra*, No. 2.

AVEU :—*Vide* ADMISSION.

BAIL :—*Vide* LEASE.

" :—*Emphitéotique.*—*Vide* HYPOTHÈQUE.

BAIL :—By Attorney.—A practising barrister or attorney cannot become bail or surety in any proceedings cognizable by the Superior Court. *Routier and Gingras*, S. C., 3 L. C. R. p. 57. Nor in appeals from the Superior Court. *Lemelin and Larue*, Q. B., 10 L. C. R. p. 190.

" :—To Sheriff.—1. Bail to a sheriff for a defendant on *capias ad respondendum*, is only liable for the amount stated in the bail bond, and not for the full amount of the judgment, rendered against such defendant. *Joseph vs. Cuvillier*, S. C., 5 L. C. R. p. 94.

2. A motion to put in special bail after the expiration of eight days from the return day, which does not set forth special grounds in support thereof, cannot be received. *Begin et al. vs. Bell et al.*, S. C., 8 L. C. R., p. 138.

BAIL :—

3. Special bail may be put in even after judgment and after the bail to the sheriff have been sued, and this on petition of the bail themselves. *Lefebvre vs. Vallée*, S. C., 3 L. C. J., p. 117, and 9. L. C. R., p. 49. And also in another case of *Campbell and Atkins et al.*, Q. B., 9 L. C. R., p. 74. And in another case, though not without difficulty, and only in compliance with the decision of the Queen's Bench, that a petition to put in special bail will be granted after the eight days after the return has expired; and even at any reasonable time thereafter depending on cause shewn and diligence made. *Miles vs. Aspinall*, S. C., 7 L. C. J., p. 124. But at Sherbrooke it was held that it would not be granted after judgment or at any time after the expiration of the eight days unless special cause was shewn. *Vannevar et al. vs. De Courtnay*, S. C., 7 L. C. J. p. 120.

4. The bail of a party is an incompetent witness on his behalf. *The Sophia*, p. 219, S. V. A. R.

BAIL :—In Criminal cases.—1. Where a party accused of perjury has been arraigned and pleaded "not guilty," and no day certain has been fixed for the trial, and no forfeiture of his bail has been declared, the mere failure of the party when called upon to answer in the term subsequent to that in which he was arraigned cannot operate as a forfeiture of such bail. *The Attorney General. pro Regina, vs. Beaulieu*, S. C., 3 L. C. J., p. 117. Also the case of *Croteau*, 9 L. C. R., p. 67.

2. A prisoner confined in gaol upon a charge of a capital felony, may be admitted to bail after the finding of a true bill by the grand jury, if, upon the reading of the depositions against him, those depositions are found to create but a very slight suspicion of the prisoner's guilt. Ex parte *Maguire*, 7 L. C. R., p. 57.

BAIL BOND :—*Vide* APPEAL.

BAILLEUR DE FONDS.—1. Privilege of *bailleur de fonds* will be postponed to the *hypothèque* of an ordinary judgment creditor whose judgment was registered before the deed of the vendor. *LeMesurier & al. vs. McCaw, and Dolan*, Opposant, S. C., 2 L. C. J., p. 219.

2. The special privilege of the *bailleur de fonds* is preferable to the general privilege of the physician for *frais* of the last illness upon the proceeds of immoveable property, even though there should be no moveables out of the proceeds of which such physician can be paid. *Taschereau vs. Delagorgendière and Proulx*, S. C., 9 L. C. R., p. 497.

3. The *expertise* made by a builder or architect at the time of inscribing his privilege, may be attacked by the *bailleur de fonds*, and the latter may have a contradictory *expertise*, if there be a conflict of their privileges, and the estimation of the two kinds of property relatively to the time when the privilege of the builder was enregistered. But the *bailleur de fonds* has a right to the full value of the property at the time of the sale, and not only to a proportional part of it. *Doutre vs. Green and Elvidge*, S. C., 5 L. C. J., p. 152. The same case is also reported, 11 L. C. R., p. 79, with the view of bringing out other points of the case which do not appear to be subject to generalisation.

" :—*Vide* ASSIGNMENT.

BAILIFF:—1. A writ of summons addressed to any of the bailiffs residing in a district will be good, if it was served by a bailiff duly appointed for such district.* *Tetu vs. Martin*, S. C., 3 L. C. R., p. 194.

2. A bailiff can execute a writ of *fi. fa.* against his brother-in-law or other relative. *Lemieux vs. Coté and Coté*, S. C., 10 L. C. R. p. 184.

3. But the service of a writ of summons made by a bailiff, related to the plaintiff, is null. *Birs dit Desmarteau vs. Aubertain*, S. C., 6 L. C. J., p. 88.

4. A bailiff has no action for the recovery of the price of goods seized and sold *en justice*, against the purchaser to whom he has delivered them previous to being paid. *Pelletier vs. Lajoie*, C. C., 5 L. C. R., p. 394.†

5. In the C. C. a rule *nisi causa* will not be declared absolute praying that a bailiff who has made no return to a writ of execution, with which he was charged, be declared in contempt of Court and imprisoned until he pays the debt and costs. *Rolland vs. Reuger and Lafontaine*, C. C., 7 L. C. J., p. 48.

6. A bailiff not a party to a suit cannot move to be allowed to amend his return. *Hobbs vs. Seymour et al.*, S. C., 13 L. C. R. p. 75, and 7 L. C. J., p. 46. *But Monk*, A. J., afterwards permitted the bailiff to amend his return on petition. *Ib.*

7. Bailiff's fees are absolutely prescribed by the lapse of three years under the 12 Vic. c. 44, [Con. Stat. L. C. c. 82, s. 34, s. s. 3.] *LePailleur vs. Scott et al.*, C. C., 1 L. C. J., p. 275, and 6 L. C. R., p. 59.

8. The date in the return of service of a bailiff may be in figures. *Lamothe and Garceau*, Q. B., 7 L. C. J., p. 115.

" :—*Vide* PRESCRIPTION.—SERVICE.

BANC D'EGLISE:—*Vide* PEW.

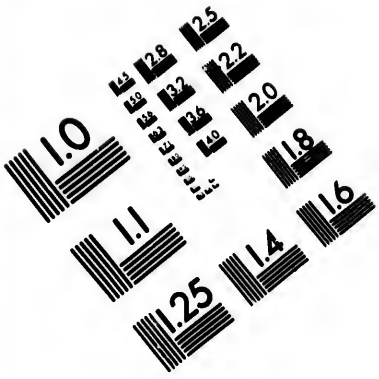
BANK:—*Vide* EVIDENCE.

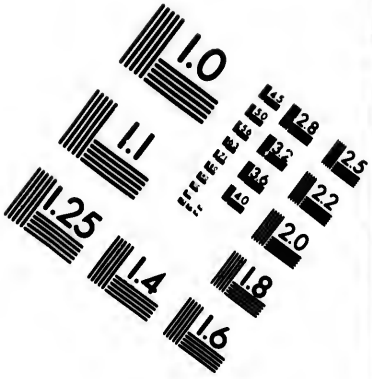
BANK OF MONTREAL:—In an Act to amend the charter of the Bank of Montreal (24 Vict. c. 91, s. 4), it is provided that when the directors have "reasonable doubts" as to the legality of any claim to any share, dividend or deposit of or in the said bank, when the legal right of possession to such share, dividend or deposit shall change by any lawful means other than that by transfer, they shall be allowed to present a declaration and petition to the Superior Court, setting forth the facts, and praying for an order or judgment, adjudicating and awarding the said shares, dividends or deposits to the party or parties legally entitled to the same. Within the meaning of such Act it is not sufficient merely to allege that the petitioners entertain such doubts; but the grounds thereof must be stated and fully declared in the petition else it will be dismissed with costs. *The Bank of Montreal and Glen et al.*, S. C., 6 L. C. J., p. 248, and 12 L. C. R., p. 348.

BANKRUPTCY:—1. An English commission of bankruptcy operates in Canada as a voluntary assignment by the bankrupt. The assignees may therefore sue for debts due to the bankrupt,

* But see certain cases in which a bailiff may serve Writs, &c., out of the district for which he is appointed, Con. Stat. L. C., cap. 83, sect. 65.

† *Semble*, plaintiff, had not himself paid for the goods nor been troubled for the payment of them.





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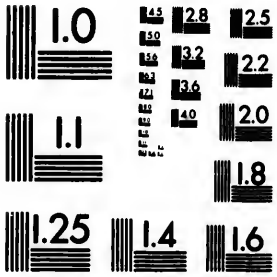

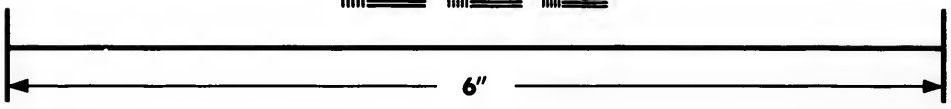

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BANKRUPTCY :—

or for his property, and may take the share of the proceeds of the bankrupt's estate, which belongs to the English creditors, but such proceedings of the assignees cannot deprive the provincial creditors of any acquired rights or privileges as to the property of the bankrupt, or proceeds thereof to which they, by the law of Canada, may be entitled ; nor can such rights or privileges be affected by the commission or by the assignment. *Bruce vs. Anderson*, S. R., p. 127.

2. The assignee of a bankrupt has a right to claim property acquired by the bankrupt subsequently to the issuing of the commission and previous to the granting of the certificate. *Blanchard and Whiteford*, S. C., 3 L. C. R., p. 61.

3. Bankruptcy vests in the creditors the absolute property of the bankrupt estate. The acknowledgment of indebtedness, or confession of judgment by a bankrupt, in favor of any person, is no evidence as against the other creditors, and on contestation of such a claim on a plea of fraud and collusion, it is the duty of the creditor to establish his claim, and to adduce evidence of the consideration of the debt claimed when the cause is set down for *enquête*. The payment by a third party of sums due by a bankrupt or insolvent debtor, without transfer or subrogation, creating a debt subsequent to the insolvency, cannot give to such party a right to rank on the estate of the insolvent debtor which he possessed at the time of his insolvency. Evidence of such claim not having been made when the cause was regularly inscribed for *enquête* could not be adduced subsequently when proof was ordered by the Court of Appeals on exceptions, which had been wrongly over-ruled by the Court below. *Bryson and Dickson*, Q. B., 3 L. C. R., p. 65.

4. The Crown is not bound by the certificate granted to a bankrupt from recovering sums of money due for revenue. *The Attorney General, pro Reginâ, vs. White & al.*, S. C., 1 L. C. R., p. 359.

5. The claim of a notary for making a *livre terrier* for a seigniory will be discharged by a certificate of discharge under the commission in bankruptcy. *David and Hart*, S. C., 10 L. C. R., p. 453.

6. In an action brought by the *cessionnaire* of the assignees of a bankrupt estate, who has purchased the outstanding debts of the estate, for the recovery of any such debt, it is necessary to allege in the declaration that the sale was made by the order of the judge, and that the formalities required by the 67th section of the Bankrupt Act have been complied with. *Warner vs. Mernagh*, S. C., 2 L. C. R., p. 452.

7. The term bankruptcy, in the 7th sect. Con. St. L. C., c. 37, does not mean the same as insolvency. The former is the condition of a trader who had done or suffered some act to be done which is deemed an act of bankruptcy. Insolvency is the inability to pay one's debts. And the Court was of opinion that an hypothec given within ten days of *déconfiture* is not inoperative. *Anderson & al. and Généreux*, Q. B., 13 L. C. R., p. 374.

8. The sale of the immoveables of a Bankrupt does not purge the hypothecs with which such property is charged,

BANKRUPTCY :—
although the hypothecary creditor may have filed his claim against the bankrupt unless there be an express renunciation. Exp. *Chalot*, 1 Rev. de Lég., p. 265. But see *Cadieux and Pinet & al.*, Q. B., 6 L. C. R., p. 446.

BANKRUPT :—*Vide* HYPOTHÈQUE.

BANK STOCK :—*Vide* TUTOR.

BAPTISMS :—*Vide* REGISTERS.

BAR :—The Council of the bar acting and taking cognizance of complaints against members of the profession under the 72nd chapter of the C. S. L. C., have no jurisdiction to try a complaint made against a member for an act done as a mere agent. *Ex parte Devlin*, S. C., 7 L. C. J., p. 29.

BASTARD :—*Vide* PATERNITÉ.

BATEAU :—*Vide* JURISDICTION.

BEACHES :—1. A *censitaire* who has been in possession of the right of fishing in the River St. Lawrence in front of his property for thirty years and upwards, and whose titles declare that he is proprietor of such right, may bring a possessory action, when he is disturbed in his possession, without being obliged to produce a title from the Crown, such title, so far as third parties are concerned, being presumed. *Gagnon and Hudon*, Q. B., 6 L. C. R., p. 242.

2. The beaches of the north shore of the river St. Lawrence are now vested in the Quebec Harbour Commissioners, and they alone have the control and management of the same, as also the right of punishing any person who may encroach upon, or encumber them, and the Trinity House in so far as it conferred any powers of control and management, is repealed by implication. *Ex parte Lane*, S. C., 11 L. C. R., p. 453.

BET :—1. A bet touching the result of an election is null, and a note given for it is also null. *Dufresne vs. Guévremont*, C. C., 5 L. C. J., p. 278. Even in the hands of an innocent holder. *Biroleau vs. Derouin*, S. C., 7 L. C. J., p. 128.

2. Betting on horse races by the owners of the horses is not contrary to law, and such bets can be enforced by suit. *Rickaby vs. Sutliffe*, S. C., 13 L. C. R., p. 320.

BETTERMENTS :—*Vide* IMPROVEMENTS.

BIGAMY :—On an indictment for bigamy committed in a foreign country, it is necessary that the indictment should contain the allegations that the accused is a British subject; that he is or was resident in the province, and that he left the same with intent to commit the offence. *Regina vs. McQuiggan*, Q. B., 2 L. C. R., p. 340.

BILL OF EXCHANGE :—1. The drawer of an inland bill of exchange is *quoad hoc* a merchant, and a *capias ad satisfaciendum* may be had upon a judgment thereupon obtained against him, under the Ordinance 25 Geo. III., c. 2, sect. 38.* *Georgen vs. McCarthy*, S. R., p. 53.

2. The drawer of a bill of exchange is liable to the damages provided by the laws of the country in which it is drawn, and no other. *Astor vs. Benn et al.*, S. R., p. 69.

* No longer in force. *Vide infra Whitly vs. Rourke*, vo. CAPIAS; also Con. St. L. C., cap. 87, sect. 7, s. s. 3.

BILL OF EXCHANGE :—

3. By the usage of Canada, and in the absence of legislative enactment, all bills of exchange are allowed three days of grace after becoming due; and to bind the indorsers, demand of payment ought to be made on the third day of grace, with protest and signification, and these formalities are to be observed even when the bill is made payable at residence of the holder himself. *Knapp et al., and the Bank of Montreal*, Q. B., 1 L. C. R., p. 252.

4. The acceptance of a bill of exchange, by the officer of a society, if not within the scope of his regular duties as such officer, is, unless specially authorized by the society, not binding upon it. *Brouning vs. The British American Friendly Society*, S. C., 3 L. C. J., p. 306.

5. The secretary and accountant of the Montreal and Champlain Railroad Company has no power to accept drafts on behalf of the company, and moneys covered by such drafts may be seized by process of *saisie-arrêt* notwithstanding such acceptance. *Ryan et al., and the Montreal and Champlain Railroad Company*, Q. B., 4 L. C. J., p. 38.

6. The holder of a Bill of Exchange through the drawer has an action against the acceptor. *Rowbottom vs. Scott*, S. C., L. R., p. 32.

BILL OF LADING :—1. An affreighter cannot proceed by way of revendication as in the case of an unlawful detainer, against the master of a ship, when such affreighter and master cannot agree as to the quantity of goods shipped, and as to the bill of lading to be signed. *Gordon et al., vs. Pollock*, Q. B., 1 L. C. R., p. 313.

2. A clause in a bill of lading to the effect that the carrier may at his option, tranship at Quebec, and forward goods to Montreal, at ship's expense and *merchant's risk*, does not relieve carrier from liability arising from negligence and want of care in handling and landing goods at Montreal. *Samuel vs. Edmonstone et al.*, S. C., 1 L. C. J., p. 89.

3. A bill of lading, as between the parties thereto, may be explained by parole testimony. *Fowler vs. Stirling et al.*, S. C., 3 L. C. J., p. 103.

4. The vendor of merchandize, who is named the consignor in the bill of lading, is nevertheless not liable for the freight of said merchandize, which he had delivered to vendee's agent before shipment according to contract and to the knowledge of the ship's agent. A bill of lading may be transferred by mere delivery, without endorsement. *Ib.*

" :—*Vide* EVIDENCE.

" :— " FREIGHT.

" :— " INSURANCE.

BILL OF PARTICULARS :—A plaintiff will be compelled to give particulars of demand, although the action be for the balance of an account acknowledged. *Labbé vs. Mackenzie*, C. C., 10 L. C. R., p. 77. But omission to file a bill of particulars, even where defendant is in gaol under *capias*, will not entitle defendant, under the 30th rule of practice, to dismissal of the action. *Henderson vs. Enness*, S. C., 2 L. C. J., p. 187. And a bill of particulars may be filed at *enquête*, if defendant, instead of moving to dismiss plaintiff's action,

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pleads to the merits. *Westrop vs. Nichols et al.*, S. C., 2 L. C. J., p. 194. And where defendant, after demand of plea, moves to dismiss action for want of particulars of demand, and plaintiff immediately moves to defer his claim to the *serment décisoire* of defendant, the plaintiff's motion must be granted and defendant compelled to answer. *Lenfesty and Metivier*, Q. B., 10 L. C. R., p. 199.

BON :—The amount of a *bon* payable *on demand* by a Lower Canada debtor to a foreign creditor, is recoverable with costs, without any proof of demand before institution, and although defendant tenders the amount of the *bon* with the plea. *Shuter et al., vs. Paxton et al.*, S. C., 5 L. C. J., p. 55. *

BOND :—In an action on a bond signed by an attorney whose authority to sign the same is impugned by the plea, such plea must be supported by affidavit, under the requirements of the 87th section of the Judicature Act of 1857, 20 Vic., c. 44, [Con. St. L. C., cap. 83, sect. 86, s. s. 2.] *The Attorney General, pro Reginâ, vs. McPherson et al.*, C. C., 2 L. C. J., p. 121. But in a more recent case against the same defendants, the reverse was held, C. C., 2 L. C. J., p. 182.

BOOKS OF ACCOUNT :—Books of account, *titres de créance*, and papers belonging to defendant and in his possession are *insaisissables*. *Fraser vs. Loiselle*, S. C., 5 L. C. R., p. 299.

" :—*Vide* EXECUTION.

BORNAGE :—1. In an action *en bornage*, if the defendant denies the plaintiff's right of action, he will be condemned to pay costs. *Weymess et al., and Cook*, Q. B., 2 L. C. R., p. 486. But when a defendant pleads his willingness to bound and prays *acte* thereof, and the action has been brought without previous notice, the plaintiff will be condemned to pay costs. *Slack and Short*, Q. B., 2 L. C. J., p. 81. And so also where the defendant prays for the dismissal of the action with costs. *Dansereau et al., vs. Privé*, S. C., 1 L. C. J., p. 283.

2. An action *en bornage* cannot be defeated by the existence, during ten years and upwards of a *mur mitoyen* along a portion of the division wall, and of a fence along the remaining portion thereof. *Macfarlane vs. Thayer*, S. C., 2 L. C. J., p. 204. Nor will such action be defeated by the existence of a fence between the two properties during 20 years. *Devoyau and Watson et al.*, Q. B., 1 L. C. J., p. 137. A *clôture d'embarras* is not evidence of a previous *bornage*. *Lanouette et al., and Jackson*, Q. B., 7 L. C. R., p. 362.

3. In an action *en bornage* where the plaintiff's title shewed that there was a deficiency in superficies of 2¾ arpents, while defendant's title shewed that his land was of a uniform width of 2 arpents, and where line fences and ditches had been run to a certain distance, the direction of such fences and ditches will be followed, but so as to give

* It is to be regretted that the Judge did not cite some case in support of the alleged practice of the Court, which would seem to be in violation of the equity of the case. A man promises to pay £5 on demand, and the creditor who chooses to make this demand by the expensive process of a suit at law, shall have his costs, there being no laches on the part of the debtor! Is the distinction because the plaintiff lives at New York—a courtesy to a foreign creditor?

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defendant his full width of two arpents. *Lambert vs. Bertrand*, S. C., 3 L. C. J., p. 115. And where it is established by the surveyor's report that a wall or fence encroaches on the plaintiff's property, the defendant must pay the costs of the action; but the costs of the survey will be equally borne between them. *Macfarlane vs. Thayer*, S. C., 2 L. C. J., p. 204.

4. In an action *en bornage* the defendant cannot be condemned to compel his neighbours to bound with him. *Fradet vs. Labrecque*, S. C., 8 L. C. R., p. 218.

" :—*Vide* ACTION PETITOIRE.

BOTTOMRY :—*Vide* INTEREST.

BREACH OF PROMISE OF MARRIAGE :— *Vide* COMMENCEMENT DE PREUVE PAR ÉCRIT.

BREVET :—*Vide* PROMISSORY NOTE.

BREVET D'INVENTION —*Vide* LETTERS PATENT.

BROKER :—1. A broker assuming to be the mutual agent of buyer and seller, and accordingly signing bought and sold notes, will not be presumed in law to be such mutual agent from the mere fact of his being a broker; and in the absence of sufficient evidence of his being authorized by *both* parties to sign such notes, they will not constitute a valid memorandum in writing within the Statute of Frauds. *Syme et al., vs. Heward*, S. C., 1 L. C. J. p. 19.

2. In an action of damages for refusing to take delivery of and pay for goods, bargained for and sold through a broker, proof of the contract cannot legally be made, without the production of the bought as well as the sold note, or without due notice to the defendants to produce the bought note. *Gould et al., vs. Binmore et al.*, S. C., 6 L. C. J., p. 296.

BROTHEL :—Rent cannot be recovered by suit for premises leased as a house of ill-fame. *Garish vs. Duval*, C. C., 7 L. C. J., p. 127.

BUILDER :—1. A builder is liable for the *vices du sol*, owing to which certain houses constructed by him have given way, although working by plans and specifications under the directions of an architect in charge. *Brown vs. Laurie*, S. C., 1 L. C. R., p. 343. Confirmed in appeal. 5 L. C. R., p. 65.

2. A builder has a special privilege in the nature of an *hypothèque* upon any building erected by him and for repairs. But this privilege will not be allowed to the prejudice of the other creditors of the proprietor, unless within a year and a day, there be something enregistered to show the nature of the work done, or the amount of the debt due thereon. *Jourdain vs. Miville*, S. R., p. 263. And a builder is without such privilege on the proceeds of real estate, who has not complied with the formalities prescribed by the 4 Vic. c. 30, sects. 31-2, (C. St. L. C., pp. 352-3,) requiring a *procès-verbal* to be made before the work is begun to be done, establishing the state of the premises in regard of the work about to be done; requiring also a second *procès-verbal* to be made within six months after the completion of the work, establishing the increased value of the premises; requiring also that the second *procès-verbal* establishing the acceptance of the work be registered within 30 days from the date of

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such second *procès-verbal*, in order to secure such privilege. *Clapin vs. Nagle and McGinnis*, S. C., 6 L. C. J., p. 196.

" :—*Vide* BAILLEUR DE FONDS.

BUILDING SOCIETIES :—1. The right of convoking meetings connected with building societies created under the 12 Vic., c. 57, 14 and 15 Vic., c. 23, and 18 Vic., c. 116, [Con. St. L. C., cap. 69] is vested in the president or secretary of such associations, and the requisition should be addressed to the president and directors. This requisition should indicate the objects for which the meeting is convoked. The 1st section of the 18 Vic., c. 116, has not abrogated the dispositions contained in the 7th section of the 12 Vic., c. 57, [Con. St. L. C., cap. 69, sect. 7.] The by-laws of these associations should be registered in accordance with the 12 Vic., c. 57, sect. 5, [Con. St. L. C., cap. 69, sect. 5.]

2. The directors should be elected one by one, and not in block.

3. The president should preside at all these meetings, and it is while he so presides that the by-laws should be passed or altered. *Jodoin vs. Dubois*, S. C., 3 L. C. J., p. 325.

BY-LAW :—1. A stockholder in a joint-stock company can bring an action of account against the corporation, and thereby contest the validity of a by-law made by a board of its directors. *Keys vs. The Quebec Fire Assurance Company*, S. R., p. 425.

2. On *certiorari* it was held that a by-law of the Corporation of Montreal concluding in the following words : " No person shall hereafter construct any wooden buildings of any sort or description whatsoever within the limits of the said city ..... and any person infringing any of the provisions of this section, shall be liable to a penalty, &c." must be so interpreted as to make it applicable only to proprietors of the lots or buildings and to workmen employed in erecting the same. *Ex parte Lahaye et al.*, S. C., 6 L. C. R., p. 482. And so also in ex parte *Ledoux*, S. C., 8 L. C. R., p. 255, it was held that if there is no evidence sent up to the Court above that the party accused was a *proprietor*, or only a workman employed by the proprietor, the conviction will be quashed.

3. The legality of a by-law may be examined on a motion to quash a conviction predicated thereon. And a by-law, imposing a penalty of £5, and imprisonment for 60 days, in default of payment, is in excess of an authority granted by statute to impose by by-law a penalty not exceeding £5, or 60 days imprisonment, and is therefore illegal. Ex parte *Rudolph vs. The Harbour Commissioners of Montreal* prosecutors, S. C., 1 L. C.J., p. 47.

4. The by-law of the Corporation of Montreal affecting to impose a duty on the agents of Foreign Insurance Companies doing business there is null and void, the 14 & 15 Vic. c. 128, not having conferred that power. *The Mayor, &c. of the City of Montreal, and Wood*, S. C., 3 L. C. J., p. 230, and 9 L. C. R. p. 449.

5. The sale of fresh pork in a shop in the city of Montreal, such shop not being in any public market, is not a violation of the by-law of the corporation of Montreal, No. 196, of the

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22d March, 1848, which imposes a penalty for the sale of such articles, "*dans ou sur aucune rue, place, ruelle ou autre place publique de cette cité, que sur un des dits marchés publics, etc.*" *Exparte Daigle*, Petioner for writ of *certiorari*, S. C., 5 L. C. J., p. 224, and 11 L. C. R., p. 289. Also in a case of *Ex parte Forest*, No. 800, S. C., 29th June, 1861.

BY-ROAD :—A by-road leading from a public road to a toll-bridge, must be made and maintained by the occupant of said toll-bridge, and in case of neglect on the part of such occupant, the municipal corporation, within whose jurisdiction the by-road lies, can recover from such occupant the amount paid by them in repairing the road. *Corporation of the Parish of Ste. Rose vs Leprohon*, S. C., 2 L. C. J., p. 118.

CANONICAL DECREE :—*Vide* CERTIORARI.

CAPIAS :—1. A party arrested under a *capias* will be discharged, if it be proved that the cause of action arose in a foreign country. *Bottomley et al., vs. Lumley*, S. C., 13 L. C. R., p. 227.

2. And a debt for goods purchased in England, and paid for by bills drawn upon defendant at Toronto, but payable at a bank in England, is a cause of action arising in a foreign country, within the meaning of the statute. *Ib.* Confirmed in appeal.

3. A debt arising out of a contract made in Scotland to deliver passengers' luggage in the port of Montreal, and where delivery was not made, is not a cause of civil action which has arisen in a foreign country. *Macdougall vs. Torrance*, S. C., 5 L. C. J., p. 148. Therefore a *capias* may be issued upon it. *Ib.*

4. But the colony of Barbadoes is a "foreign country," within the meaning of the 8th sect. C. Sts. L. C., c. 87, and consequently a *capias* will not be maintained for a debt arising there. *Trobridge et al., vs. Morange*, S. C., 6 L. C. J., p. 312.

" :—Affidavit.—1. The sufficiency of an affidavit for a *capias* cannot be tried on petition. *Chapman vs. Blennerhasset*, S. C., 2 L. C. J., p. 71.

2. The words "plaintiff, book-keeper, clerk or legal attorney," in the 25 Geo. III., c. 2, [Con. St. L. C., cap. 87, sect. 1,] are not sacramental. An affidavit made by the cashier of a branch bank, plaintiff, is sufficient without taking any other quality. *Coates and the Bank of Montreal*, 2 Rev. de Lég., p. 328. And an affidavit for a writ of *capias ad respondendum*, made by the book-keeper of a branch of the Bank of Upper Canada, is sufficient. *Bank of Upper Canada, vs. Alain*, S. C., 5 L. C. R., p. 318. And it is sufficient that he should take the quality of book-keeper in the heading of the affidavit, without its being again mentioned in the heading of the affidavit. *Hogan vs. Hoskins*, S. C., 12 L. C. R., p. 84.

3. On the face of an affidavit for a *capias*, it is necessary to state all that is required to give right to the process, leaving nothing to be inferred. *Nye vs. Macaslister*, S. C., L. R., p. 27. So it must be mentioned in the affidavit

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where the debt was contracted. *Brisson vs. McQueen*, S. C., 7 L. C. J., p. 70. But it is not necessary to allege that defendant living out of the Province has property within it. *Darling vs. Cowan*, S. C., L. R., p. 105. And so it is necessary substantially to allege that the defendant is about to leave the Province, with intent to defraud, and not that such is plaintiff's *belief*. *L'Hoist vs. Butts*, S. C., 10 L. C. R., p. 204. And if the essential allegations be set forth in the disjunctive instead of the conjunctive, the affidavit will be held to be bad and the *capias* will be quashed. *Talbot vs. Donnelly*, S. C., 11 L. C. R., p. 5.

4. And the affidavit must contain the allegation of the personal indebtedness of defendant. *Alexander vs. McLachlan*, S. C., 1 L. C. J., p. 5.

5. But it was decided at Quebec that where the affidavit shows a personal indebtedness, the allegation that the defendant is "personally indebted," is not essentially necessary. *Lampson vs. Smith*, S. C., 7 L. C. R., p. 425. Nor is it necessary to say that without the benefit of such writ, the plaintiff may lose his remedy. *Berry vs. May*, S. C., 13 L. C. R., p. 3. And "of the city of Kingston, Canada West," is a sufficient indication of the domicile of plaintiff. *Ib.*

6. The allegation in such affidavit that the defendant is personally indebted to the plaintiff for work done by the plaintiff for the defendant and for wages and salary earned in the service of the plaintiff, is sufficient, although it is not stated that the work was done at the instance and request of the defendant. *Joutras vs. Dunlop*, S. C., 7 L. C. R., p. 420. And so also it was held in the case of *Macnamara vs. Meagher*, S. C., 5 L. C. J., p. 49. But in this last case there was a further admission of indebtedness alleged.

7. An affidavit which only states that the defendant is indebted to the plaintiff in a certain sum, for board and lodging during six months and for articles of clothing furnished, is bad. *Cuthbert vs. Barrett*, S. C., 1 L. C. R., p. 212. And for goods damaged on board a ship, it is also necessary to state in the affidavit that they were so damaged before delivery, and while they were in the keeping of the defendant. *Gale et al., vs. Brown*, S. C., 3 L. C. R., p. 148.

8. And in an action by a livery-stable keeper to recover £30, being £5 for four days hire of a horse, and £25 for the value of the horse which was not returned, by judgment on a motion to quash a *capias* issued in the case, it was held: that the refusal of the defendant, as alleged in the affidavit of plaintiff in this cause, to return the horse therein mentioned, does not create a debt for the sum of £25, the alleged price of the horse, but only gives to the plaintiff a right to recover the said horse with the damages suffered in consequence of his detention, and for the value of the said horse as damages in case of his non-delivery after judgment. *Dumaine vs. Guillemot*, S. C., 6 L. C. R., p. 477.

9. An affidavit for a *capias* shows no legal indebtedness in alleging that the defendant is personally indebted to the plaintiff in the sum of £150 currency, for the amount of the penal sum or penalty stipulated and specified in and by

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his bond made and executed by the defendant, at Stanbridge aforesaid, on the 29th April, 1843, conditioned and contingent, the said penalty upon his the said defendant giving to the said deponent, one Sylvester J. Allen, a good and sufficient warranted deed of two lots described to be divided between them, notwithstanding the allegation of the division of the lots as agreed on, and the granting of a deed of one of the lots to Sylvester J. Allen, by the defendant, and that the defendant had been called upon and had refused to give a deed to plaintiff of the other lot, the right of the plaintiff being to obtain a deed, and in default thereof the sum stipulated as damages. *Allen vs. Allen*, S. C., 6 L. C. R., p. 478.

10. An affidavit for a *capias* which contains several different averments of debt, inconsistent with one another, is not void because one of them is insufficient. *Green vs. Hatfield*, S. C., 12 L. C. R., p. 115.

11. And in the affidavit setting up the cause of indebtedness as being on a promissory note, it is not necessary to say where the note was made. *Berry vs. May*, S. C., 13 L. C. R., p. 3.

12. A creditor for a sum under £10, may obtain an assignment of other debts due by the defendant, and sue out a writ of *capias ad respondendum* for the amount due to him personally, and the amount assigned to him, if together they exceed £10. *Quinn vs. Atcheson*, S. C., 4 L. C. R., p. 378. And such assignee may bring suit without having previously notified his deed to the debtor. *Ib.*

13. It is insufficient to allege in the affidavit to obtain a *capias* that deponent is informed, and has reason to believe that defendant is about to leave the Province, without saying by whom he is informed. *Perrault vs. Desève*, S. C., L. R., p. 19. And so likewise the allegation that deponent has been credibly informed that the defendant has secretly removed his goods in the night time with intent to defraud his creditors, is not sufficient, unless the name of the party, from whom the information was obtained, is disclosed. *Cornell vs. Merrill*, S. C., 1 L. C. R., p. 357. But it is sufficient if it be alleged that defendant himself had said that he was about to leave the Province. *Benjamin et al., vs. Wilson*, S. C., 1 L. C. R., p. 351.

14. The allegations that defendant has taken away goods placed with the plaintiff as security for the payment of a note, and that he has refused to deliver a horse, that he is a stranger and has failed to keep his appointments, and that he has withdrawn himself from his creditors, are not sufficient to justify the issuing a writ of *capias ad respondendum* under the 12 Vic., c. 42, [C. Sts. L. C., c. 87.] *Leeming vs. Cochrane*, S. C., 1 L. C. R., p. 352. But the allegation that defendant had sold his saw-mill and all his wood and was keeping his moveable property and himself concealed, is sufficient. *Perrault vs. Desève*, S. C., L. R., p. 19.

15. The omission in such affidavit of the words "with intent to defraud his creditors generally, and the defendant in particular," is fatal. *Lamarche vs. Lebrocq*, S. C., 1 L. C.

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R., p. 215. And so also it was held in *Wilson vs. Ray*, S. C., 4 L. C. R., p. 159. But in such affidavit the words "may lose his said debt or sustain damage," are equivalent to the allegation that "he may be deprived of his remedy." *Lampson vs. Smith*, S. C., 7 L. C. R., p. 425. And so also in the case of *Hasset vs. Mulcahey*, it was held that the substitution of the words "that without the benefit of a writ of *capias*, the creditor will lose his debt or suffer damage," for the words "will lose his remedy," is not fatal. 6 L. C. R., p. 15. And in case of *Tetu vs Pelletier*, S. C., 6 L. C. R., p. 32, it was held that it was not necessary in such affidavit to swear that the plaintiff, without the benefit of a *capias ad respondendum* against the body of the defendant, may be deprived of his remedy. And so also in *Lelièvre vs. Donnelly*, *ib.*, p. 247. Or that he will suffer damages and lose his debt. *Doutre vs. McGinnis*, S. C., 5 L. C. J., p. 158.

16. And where the cause of the taking out a *capias* is for deterioration to real estate hypothecated, under cap. 47, C. Sts. L. C., it is not necessary to allege that the damage was wilfully done, if it appear that it was not done by accident or in the ordinary course of events. *Ib.* And in the affidavit it is not necessary to ask for a *capias*, the *fiat* suffices. *Ib.*

17. An affidavit for a *capias* on the ground that defendant has secreted his effects, is not sufficient, if the reasons for the belief be that he is insolvent, and that he went to Rimouski and was carrying on business there, and that he did not make an assignment of his estates to his creditors. *Hamel et al., vs. Côté*, S. C., 11 L. C. R., p. 446.

18. An affidavit stating that the deponent's grounds for belief that the defendant is about to leave the Province with intent to defraud his creditors, are, that the defendant's vessel is loaded and ready for sea, that he, the defendant, intends sailing in her, and has told deponent that he would not return to Canada, is sufficient. *Wilson vs. Reid*, S. C., 4 L. C. R., p. 157. Also an affidavit is sufficient in which it is stated that deponent's grounds for believing that the defendant is about to leave the Province, with a fraudulent intent, are, that the defendant has no domicile in the Province, that he is a seafaring man about to leave the Province with his vessel, and may never return, and that he has made no provision for the payment of the debt. *Berry vs. Dixon*, S. C., 4 L. C. R., p. 218. And an affidavit wherein it is stated that the reasons for believing that the defendant is about to leave the Province with a fraudulent intent, are, that the defendant is the master of a vessel, which vessel is loaded and ready to go to sea with the defendant as master, and that the defendant himself has stated that he was immediately about to sail to parts beyond the sea, is sufficient. *Quinn vs Atcheson*, S. C., 4 L. C. R., p. 378. Also an affidavit was held to contain sufficient grounds for the belief of the defendant's departure, with a fraudulent intent, which stated that the defendant refuses to pay the sum sworn to be due; that the vessel of which he is master is immediately about to sail for Europe, and that the

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defendant is to sail therein. *Lefebvre vs. Tullock*, S. C., 5 L. C. R., p. 42. And so also in the case of *Hassett vs. Mulcahey*, S. C., 6 L. C. R., p. 15. And in another case of *Macdougall vs. Torrance*, S. C., 5 L. C. J., p. 148. And in other case in which the affidavit set forth that the defendant was about to go to his original domicile, Scotland, where his family had resided for five years, without paying plaintiff the balance, and without leaving any property in Canada out of which the plaintiff could get paid, and after repeated applications had been made to him for payment. *Ross et al., vs. Burns*, S. C., 7 L. C. J., p. 35.

19. And it is not necessary in such affidavit to state that the defendant has been requested to pay the debt and refused so to do. But in an affidavit for a *capias*, the allegation that the defendant, who resides at Rouse's Point, in the United States, is upon the point of immediately leaving the Province to go to the United States, and giving the names of the deponent's informants, discloses no intention of fraud, and is insufficient. *Larocque vs. Clarke*, S. C., 4 L. C. R., p. 402. Also L. R., p. 67.

20. For the grounds of belief that are sufficient under 22 Vic. c. 5, sec. 48, [Con. Stat. L. C., cap. 87, sect. 9,] *vide Macfarlane vs. Belliveau*, S. C., 9 L. C. R., p. 261. And an affidavit to hold to bail, under the 22 Vic. c. 5, sec. 48, [Con. St. L. C., cap. 87, sect. 9,] which does not disclose the grounds of the allegation, "that the defendant is not a trader, and that he is notoriously insolvent, and has refused to compromise or arrange with his creditors," and omits the allegation, that he has refused to make a *cession de biens*, to them, is bad, even though it be alleged, as required by the 12 Vic. c. 42, [Con. St. L. C., cap. 87, sect. 1,] that "he has secreted his estate, debts and effects, with intent to defraud, &c.," and the *capias* issued in virtue hereof, will be quashed on motion. *Warren et al., and Morgan*, Q. B., 9 L. C. R., p. 305.

21. A petition under the 12 Vic. c. 42, sec. 8, [Con. St. L. C., cap. 87, sect. 18,] alleging that the defendants had, after the institution of the action, and before the making of the statement filed therein, as well as within thirty days next preceding the institution of the action, secreted a large portion of their property, exceeding in value £2,000, with the intent to defraud their creditors, namely, that at the city of Quebec, during the year 1856, and the fall of the year 1855, while they, the defendants, were well known to be in a state of insolvency, made over clandestinely for cash, and money securities convertible and converted into cash by them, to divers persons, among others to Freer Jacobs and others, their stock in trade, with the express intent to cheat and defraud their said creditors; and that they did by such means cheat and defraud plaintiffs and other creditors, was held sufficient on demurrer. *Foster et al., vs. Dorion et al.*, S. C., 8 L. C. R., 152.

22. And a fraudulent sale or transfer of real estate was held to be sufficient to maintain a *capias*. *Langley vs. Chamberlain*, S. C., 5 L. C. J., p. 49.

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23. The alienation of real estate alone, is not a sufficient cause for the issue of a *capias;* but when a debtor alienates his estate, and delares that he received for it a less sum than he actually received, there is an intention on his part to deceive his creditors, if he has no other property to meet his liabilities, and an affidavit containing such allegations will be sufficient to maintain a *capias. Dumont vs. Gourt*, S. C., 7 L. C. J., p. 119.

24. Fraudulent preferences to creditors by a defendant after insolvency, form no grounds for *capias.* The defendant's intention to go to Boston, and the fraudulent preference he had shown to other creditors, and his treatment of the plaintiff 's agent when he called upon him to make an assignment, by telling him not to bother him, were circumstances sufficiently strong to shew that his intention was to defraud the plaintiff. *Tremain vs. Sansum*, S. C., 4 L. C. J., p. 48. As to sufficiency of allegations in affidavit for *capias. Tessier vs. Pelletier*, S. C., 5 L. C. R., p. 422.

25. A *capias* cannot be quashed by motion on the ground that the reasons of belief set forth in the affidavit, do not specifically allege any fraudulent intent on the part of the defendant. *Henderson vs. Enness*, S. C., 2 L. C. J., p. 186.

26. Although the special grounds of belief set out in a *capias ad respondendum*, to the effect that the defendant is immediately about to leave the Province with fraudulent intent be disproved, yet if it be proved that the plaintiff's apprehensions as to defendant's intended departure with fraudulent design were founded, the *capias* will be maintained. *Blackensee vs. Sharpley*, Q. B., 6 L. C. J., p. 288, and 10 L. C. R., p. 240.

27. On a petition to set aside a writ of *capias ad respondendum*, on the ground that the statement of facts sworn to in the affidavit is untrue, the *onus probandi* is entirely on the defendant to prove that what is sworn to is false. *Egert et al., vs. Laidlaw*, S. C., 7 L. C. J., p. 227.

28. In case of an irregularity in suing out a *capias ad respondendum*, a motion to discharge the defendant from the sheriff's custody, for want of a sufficient affidavit to hold to bail, and not an exception *à la forme*, is the mode of taking advantage of such irregularity. *Barney vs. Harris*, S. R., p. 52. Also *Vide Paterson vs. Hart*, S. R., p. 52 in note.

29. Sufficient notice of a petition for discharge from a *capias* is given if it be served on Saturday between 4 and 5 p. m. for Monday morning. *Trobridge vs. Morange*, S. C., 6 L. C. J., p. 312.

30. A *capias* cannot be quashed by a petition in vacation. *Hogan et al., vs. Gordon*, S. C., 2 L. C. J., p. 161.

31. A petition for discharge from arrest under *capias*, may be made even after issue joined. *Chapman vs. Blennerhasset*, S. C., 2 L. C. J., p. 71. But not after final judgment in the suit. *Hogan et al., vs. Gordon*, S. C., 2 L. C. J., p. 162. *

* Doubtless is meant if the *capias* be taken out before final judgment.

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32. A *capias* may issue as well after as before judgment. *Gale vs. Allen*, S. C., 3 L. C. R., p. 456. But in *Pelletier et al., vs. Freer, Stuart, J.* thought that it was doubtful whether an action could be brought on a judgment of a court here and held, quashing the *capias*, that it could only be maintained on proof of the allegation that defendant was about to leave the Province with intent to defraud his creditors. S. C., 12 L. C. R., p. 199.

33. A *capias* will be quashed if the cause of action set forth in the declaration vary from that set forth in the affidavit. *Maillot vs. Bernier*, S. C., 1 L. C. R., p. 389. But *pendente lite*, a reference to the declaration filed in the cause for the nature of the debt is sufficient. *Malo vs. Labelle*, S. C., 2 L. C. J., p. 194.

34. When a party is arrested for concealing his goods, the *capias* will be quashed if it appears that the goods concealed belonged to his wife. *Gendron vs. Lemieux and Lemieux*, S. C., 12 L. C. R., p. 222.

35. An affidavit for a *capias* in which the creditor's name is given as "*Joutras*," is good, although in the declaration it be written "Justras." *Joutras vs. Dunlop*, S. C., 7 L. C. R., p. 420.

36. An action, commenced by a *capias*, is unaffected by the quashing of the *capias*, and this, notwithstanding that the amount demanded does not exceed £15. *Elwes vs. Francisco*, S. C., 1 L. C. J., p. 188.

37. The plaintiff may be ruled and compelled to return his action into court before the return day, if such action be commenced by a *capias ad respondendum*. *Kelly vs. Horan*, S. C., 1 L. C. R., p. 143. And so also in *Mackie vs. Cox*, S. C., L. R., p. 44, the delay to answer process being established in favor of the defendant.

38. Under the Judicature Act, 12 Vic. c. 38, sect. 63, [Con. St. L. C., cap. 83, sect. 6,] a writ of *capias ad respondendum*, signed, "F. H. Marchand," "Clerk of the Circuit Court," attested with the seal of the Circuit Court, St. Johns, returnable into the Superior Court, headed in the margin, "in the Superior Court," is irregular, such not being a writ in the Superior Court as required by the Judicature Act. *Hitchcock vs. Meigs*, S. C., 6 L. C. R., p. 175.

39. The 2 Geo. IV., c. 2, requiring that the plaintiff, residing in Upper Canada, before obtaining a *capias*, should swear that his debtor also residing in Lower Canada, has no property there, out of the proceeds of which he can reasonably expect to be paid, is virtually repealed by the 8 Vic. c. 48, and 12 Vic. c. 42, which are general laws applying to both sections of the Province. *Whitly vs. Rourke*, S. C. 3 L. C. R., p. 100.

40. Imprisonment under the 8th section of the 12th Vic. c. 42, [Con. St. L. C., cap. 87, sect. 18,] can only be effected after personal service of the judgment and notice, therein referred to, on the defendant. *Benjamin et al., vs. Wilson*, S. C., 1 L. C. J., p. 4.

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not filed in the Prothonotary's office, a statement under oath of all his credits, property and effects, and such defendant will be imprisoned for such space of time, not exceeding a year, as the Court, in its discretion, shall determine. Defendant need not have notice of the petition for such process. *Macfarlane vs. Béliveau*, S. C., 4 L. C. J., p. 357.

" :—*Vide* BILL OF EXCHANGE.

CARRIERS :—1. Common carriers are liable for all losses and damage except that occasioned by the act of God and by the King's enemies and by inevitable accident and *vis major*. Proof, to the effect, that the goods placed by the plaintiff in the custody of the defendant were destroyed by a fire which could not be accounted for otherwise than by the presumption that it was the result of spontaneous combustion, does not constitute inevitable accident or *vis major*. Proof that the defendant had previous to and at the time of the fire posted up in all the company's stations, with other printed conditions, a notice that the company would not be responsible " for damages occasioned by delays from storms or unavoidable cause, or from damages from fire, heat, &c.," that a similar notification and similar conditions were printed on the back of the company's advice notes to consignees as to the arrival of goods, and that the plaintiff had been seen on a previous occasion reading such condition and notification, does not constitute an agreement between the plaintiff and defendant, that the goods in question were to be carried on these terms, particularly in the face of an unconditional receipt given by the company for the goods as in the present case. And a common carrier will not be exempted from liability even where such an agreement is proved if he be guilty of negligence. *Huston vs. The Grand Trunk Railway*, S.C., 3 L. C. J., p. 269; confirmed in Appeal, 6 L. C. J. p. 173. And a clause in a bill of lading to the effect that the carrier is not liable for " leakage, breakage and waste," does not relieve him from liability arising from negligence. *Harris & al. v. Edmondstone & al.*, S. C., 4 L. C. J. p. 40. But a common carrier may limit his liability by conditions inserted in the bill of lading; and if he receives goods on board his lighter he is not liable for the loss arising from a delay in transhipment, owing to a short shipment of goods, where the bill of lading contained a clause that, if from any cause the goods did not go forward on the ship, the same should be forwarded by the next steamer of the same line. *Torrance & al. v. Allan*, S. C., 6 L. C. J. p. 190.

2. In case of damage the carrier is bound to prove that the damage is within the exceptions of the bill of lading. *Gaherty vs. Torrance & al. and E. Contrâ*, S. C., 4 L. C. J. p. 371.

3. Salt ought not to be carried on deck between Quebec and Montreal, unless there be a special permission to that effect. *Ib.*

This case went to Q. B., where it was held: 1st. That in general, a consignee who complains of short delivery or damage of goods ought at once to protest, in order that the disputed facts may be investigated;

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2nd. That, in general, a survey ought to be had, without delay, upon goods delivered in a damaged state, and this after notice to the parties interested, especially in cases where the consignee intends to retain the goods;

3rd. That the burden of proof was on the bailee to show that the damage was occasioned by the dangers of navigation. 6 L. C. J. p. 313.

4. The owners of river craft are responsible for losses occasioned by their own want of care, attention or experience, or of that of their servants. *Borne v. Perrault & al.*, S. R. p. 591. And so a steamer running as a passenger boat between Quebec and Montreal is liable for the baggage of passengers. *Bankier v. Wilson al.*, S. C., 5 L. C. R. p. 203. And where a passenger on board such boat leaves his luggage on the deck, outside of the cabin door, and is told by one of the hands on board that it is safe in such a place, the owner of the steamboat, in the event of the luggage being taken away or lost, is liable for the value thereof. *Ib.* And common carriers are responsible for money *bonâ fide* taken for travelling expenses, if the amount be reasonable, and such as a prudent man would put in his trunk. And if the traveller be a ship master, they are liable for a dressing-case and for night-glasses or telescopes, upon the presumption that he may reasonably have thought they would be useful to him on his voyage. But carriers are not liable for articles of jewellery. *Cadwallader v. The Grand Trunk Railway Company*, S. C., 9 L. C. R. p. 169. But in a case of *Macdougall v. Torrance*, S. C., 4 L. C. J. p. 132, the captain of a ship was held liable for jewellery which had been stolen from a lady's trunk on the voyage. But in another case of *Macdougall v. Allan & al.*, on an action for damages by a lady passenger for goods shipped in the hold of the vessel and not delivered at the port of destination, a plea to the effect that the loss happened without any fault or privity on their part, but by reason of robbery, embezzlement or secreting thereof, that the plaintiff did not insert in the bill of lading, or in any way declare in writing to the master of the vessel, the true nature and value of the articles, was held good on demurrer, S. C., 12 L. C. R. p. 321.

5. And the liability of a common carrier for a quantity of wheat on board a barge, established by an acknowledgment of its receipt in writing, cannot be affected by parol evidence that the barge was not his and that he acted only as agent. *Syme & al v. Janes & al.*, S. C., 2 L. C. J. p. 169.

6. And in an action against a carrier for goods lost, if he decline swearing to the value of them, the Court will submit the matter to the *serment decisoire* of the plaintiff. *Hobbs v. Senecal & al.*, S. C., 1 L. C. J. p. 93. But in a case in the Circuit Court, it was held that the owner of a trunk which has been lost by the negligence of a common carrier may, in a suit against the carrier, prove by his own oath, *ex necessitate rei*, the contents and value of the articles therein contained. *Robson v. Hooker & al.*, 3 L. C. J. p. 86. Also in a case of *Cadwallader v. The Grand Trunk Railway Company*, S. C., 9 L. C. R. p. 169; and so also for the contents

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41. A defendant arrested under *capias*, at suit of different creditors, is entitled to an alimentary allowance from each plaintiff, and tender of such allowance in English silver; coin defaced (by bending or stamping) is illegal. *Warner vs. Fyson, Crawford vs. Fyson, Merritt vs. Fyson*, S. C., 2 L. C. J., p. 105. Nor can such alimentary allowance be paid in American gold dollars. *Bruneau vs. Miller*, S. C., 2 L. C. J., p. 189.

42. A party who has been illegally arrested, and the *capias* quashed, must be fully at liberty before he is arrested anew at the suit of the same party, and a re-arrest *entre deux guichets*, is an arrest in the custody of the gaoler. *Hamel vs. Côté*, S. C., 11 L. C. R., p. 479.

43. The bond given to the sheriff is null if it contains the clause that the party shall give special bail on the day of the return, and not before or after judgment. The decease of the defendant before judgment, liberates bail. *Raymond vs. Walker*, 3 Rev. de Leg., p. 297.

44. The liability of the bail to the sheriff on a writ of *capias ad respondendum*, is for the amount endorsed on the writ, and no more. And where the sheriff has taken bail for double the amount of the debt sworn to in the affidavit, and the plaintiff has afterwards obtained a judgment for a larger amount, the liability of the bail cannot be extended beyond the amount sworn to in the affidavit, and endorsed on the writ of *capias*. An assignment by the joint-sheriff, under their customary signature, and in the form used in England, is a good assignment. A motion by the defendant to be permitted to put in special bail for the amount sworn to, and endorsed on the writ, which motion was rejected, is not a sufficient compliance with the writ so as to relieve the bail to the sheriff. *Torrance et al., vs. Gilmour et al.*, S. C., 2 L. C. R., p. 231.

45. The plaintiff in an affidavit for a *capias* gave as the grounds of his belief: "that he was this day informed by A and B, that the defendant has all his goods packed for a start from Canada, and that he will leave the said Province to-morrow, and will not return again, and that he so intends leaving with the fraudulent intent as aforesaid." On a petition for release, A and B examined on defendant's behalf, stated that they only said he was going to New York. In cross-examining defendant's witnesses, plaintiff went into other matters, and such proof was held admissible, the plaintiff not being held to the precise matters set up in his affidavit. *Blankensee and Sharpley*, Q. B., 10 L. C. R., p. 240.

46. That "maketh oath and saith," imports that the deponent has been sworn, and it is not necessary to say "having been duly sworn, maketh oath and saith." *Berry vs. May*, S. C., 3 L. C. R., p. 3.

"At Quebec." shows sufficiently where deponent has been sworn. *Ib.*

The day of the month and the year may be written in figures. *Ib.*

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47. But where an affidavit is said to be "sworn at the city of Montreal," without "before us," it is bad. *Heugh et al., vs. Ross et al.*, S. C., 13 L. C. R., p. 32. Confirmed in appeal.

" :—*Vide* APPEAL.

" :— " MINOR.

CAPIAS AD SATISFACIENDUM :—1. No *capias ad satisfaciendum* * can issue on a judgment obtained by the payee against the drawer of a promissory note, although payable to order, the parties not being merchants or traders, and the note not purporting to be for value received in goods, wares or merchandize. *Herald vs. Skinner*, P. R., p. 1.

2. In the case of *Mercure and Laframboise et al.*, Q. B., 5 L. C. R., p. 168, it was held, that a *contrainte par corps* by *capias ad satisfaciendum*, in the case provided for by the 37th section of the Ordinance of 1785, 25 Geo. III, c. 2, † has not been affected by the 12 Vic. c. 42, and that such *capias* therefore may issue against a debtor refusing to open his doors to the bailiff charged with a writ of execution against him and even where no force or violence was used. *Desharnais vs. Amiot*, C. C., 4 L. C. R. p. 43. And the return of the bailiff is sufficient ground for the issuing of the writ (*Mercure and Laframboise*), though probably not sufficient to justify a condemnation, as in the case of *Kempt vs. Kempt*, S. C., 2 L. C. J., p. 280, it was held that the Sheriff's return to a writ of execution to a like effect was not, and an appeal lies from the judgment allowing such *contrainte par corps*, in like manner as from any other judgment from which an appeal is granted. And in the case of *The Bank of Upper Canada vs. Kirk*, S. C. 6 L. C. R. p. 462, it was held that by the statute 12 Vic. c. 42, execution against the body by writ of *capias ad satisfaciendum* had been abolished. ‡ [Con. St. L. C. cap. 87, sect. 7, s. s. 3.]

3. A *capias ad satisfaciendum* (so called in the report) will issue on proof by plaintiff, in an action begun by process of *capias ad respondendum*, that defendant under bail has

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* Abolished by 12 Vic. c. 42, s. 2, Con. St. L. C. cap. 87, sect. 7, s. s. 3.

† Con. St. L. C. cap. 83, sect. 143.—It is by error that this *contrainte par corps* is called a *capias ad satisfaciendum*. And although now classed in the Consolidated Statutes as an execution, it is evidently not so, otherwise it would be an absolute contradiction to ss. 3, sect. 7. of the cap. 87, Con. St., which says, "No writ of *capias ad satisfaciendum*, or other execution against the person shall issue or be allowed." The effect of this *contrainte* may be similar to that of an execution against the person, but strictly speaking it is not one, but a special punishment for a grave contempt, and it is specially reserved for the operation of the last cited clause by section 21. But is not sect. 143, Con. Sts L. C. cap. 83, in contradiction with sect. 2, 12 Vic. c. 42, at least in so far as regards effects already secreted? But the cap. 87 sect. 7, C. Sts. L. C. does not reproduce textually the 12 Vic. c. 42, sect. 2. Nevertheless it may be maintained that without affidavit, but on due proof, a defendant who has secreted his effects may be taken and detained in prison until he satisfies the judgment against him.

‡ The report, which is very short and unsatisfactory, evidently is that of a case where this process was used in an action for debt; for the 12 Vic no where alludes to the case of the Ord. of 1785, improperly in *Mercure and Laframboise* called a *capias ad satisfaciendum*. In the 1st motive of the judgment, as all through his remarks, the Chief Justice adheres to the correct expression of a *contrainte par corps*. The case of *The Bank of U. C. vs. Kirk*, cited above shows how inconvenient is the confounding of the terms. It results then that the *capias ad satisfaciendum*, properly so called, is abolished by the 12 Vic, but not so the *contrainte par corps* for *rebellion à justice*, a high species of contempt at all times reproved by our law. And it would seem that for defendant to secrete his effects is a *rebellion à justice*. *Vide* Ord. Civ. tit. xix, arts. 16 and 17.

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of a trunk which had been broken open. *Macdougall v. Torrance*, S. C., 4 L. C. J. p. 132. But where notice of the deficiency of goods has not been given to the carrier till several months afterwards, he is not responsible. *Swinburne v. Massue & al.*, S. R., p. 569.

7. A carrier who undertakes to convey goods from Quebec to Chicago, with power to tranship at Kingston, complies with the usage of that port by transhipping from a steamer into a sailing vessel, and is therefore not responsible for the loss of such goods occasioned by tempestuous weather, in which such sailing vessel was wrecked. *Warren v. Henderson*, S. C., 8 L. C. R. p. 108.

8. A carrier who delivers goods to a consignee, after being notified by the shipper of the goods, *in transitu*, not to deliver them, is liable to him for the value. *Campbell & al v. Jones & al.*, S. C., 3 L. C. J. p. 96, and 9 L. C. R. p. 10.

9. A carrier has a right to retain possession of goods carried until the whole freight be paid. *Paterson v. Davidson*, S. R. p. 140 (in note), and even where the freight is at a fixed rate per package, and that the goods are not all ready for delivery. *Brewster & al v. Hooker & al.*, S. C., 1 L. C. J. p. 90, and 7 L. C. R., p. 55.

10. But in the case of *Fitzpatrick v. Cusack and The Grand Trunk Railway Company*, it was held, S. C.: That a receipt-note containing a printed condition to the effect that all goods are subject to a lien, not only for the freight of the particular goods but for any general balance due by the owners, &c., does not constitute an agreement to that effect between the carrier and the consignor, even where it was proved that the consignor had taken many such receipt-notes. 12 L. C. R., p. 306.

11. If merchandize in good order is entrusted to a carrier and arrives at its destination in a damaged state, where he holds it subject to freight, he is liable for the value. And if he pretends that fraud and concealment have been practised, the *onus* of proof lies with him. *Hart v. Jones*, S. R. p. 589.

12. A carrier can maintain an action against an owner and consignee for any unusual and unnecessary delay in receiving the cargo from their vessel, although occasioned by the fault of the carriers employed by the defendants to receive and forward it on their account. *Henderson v. Caverhill & al.*, S. C., 13 L. C. R. p. 77.

" :—*Vide* BILL OF LADING.
" :— " DAMAGES.
" :— " FREIGHT.
" :— " MEASUREMENT.

CATHOLIC, ROMAN :—*Vide* DIXMES.

CAUSE OF ACTION :—*Vide* JURISDICTION.

CAUTION :—*Vide* SURETY.

CERTIFICATE :—Of no plea.—It is not required to take a certificate of no plea when defendant consents that the case should go *ex parte*. *Larocque v. Dumouchel* 1 Rev. de Lég. p. 48.

" :—Of service.—1. A bailiff had returned a writ, and in the certificate of service had qualified himself as " bailiff of the Superior Court " only, without adding for the district of

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Montreal, and it it was held, that the bailiff having taken the quality of bailiff of the Superior Court, the Court was bound to know the signature of its own officer. *Rowbotham v. Scott*, S. C., L. R. p. 2.

2. Where no certificate of service was endorsed, on writ returned into Court, it was held that there was nothing before the Court to amend. *Tidmarsh v. Stephens & al.*, S. C., L. R. p. 16.

3. The certificate of bailiff that he has served a practising attorney with a petition, by leaving it at the office of the Clerk of the Court, without stating that such attorney has neither actual nor elected domicile within the jurisdiction, is null. *Groom and Boucher*, S. C., 2 L. C. J. p. 69.

CERTIORARI :—1. A *certiorari* will lie for excess of jurisdiction and illegality in the proceedings of commissioners appointed by the Governor of the Province, under the Ordinance of 31 Geo. III., c. 6,* for the building and repairing of churches. *Rex vs. Gingras*, S. R., p. 560.

2. The powers exercised by commissioners appointed by virtue of the 2 Vic. c. 29 [Con. St. L. C., cap. 18], in relation to the erection of parishes, are not judicial powers, subject to the revision of the Superior Court on *certiorari*. Ex parte *Lecours*, S. C., 3 L. C. R., p. 123. But in *Robert et al., and Viger et al., and Allard et al.*, Mr. Justice *Mondelet* held, that commissioners for the civil erection of parishes under the 2 Vic. c. 29 [Con. St. L. C., cap. 18], had no right to delegate to one of their number the right to take evidence in a case,—that such delegation was an excess of jurisdiction, and that all proceedings had thereon might be set aside on *certiorari*.

3. The ecclesiastical decree of the Archbishop of Quebec, for the erection of a parish, is not a civil proceeding, subject to the revision of the Superior Court by means of a writ of *certiorari*. Such proceeding is purely ecclesiastical, without the jurisdiction of the Superior Court, so long as no proceedings are had for the purpose of obtaining a ratification of such decree by the civil authorities. Ex parte *Guay*, 2 L. C. R., p. 292.

4. A party imprisoned for contempt of court of Quarter Sessions cannot have his conviction removed by *certiorari*. Ex parte *Vallières de St. Réal*, S. R., p. 593.

5. The Superior Court, sitting in the district of Montreal, has no jurisdiction, and cannot grant a writ of *certiorari* to inquire into a conviction held before a Justice of the Peace in the district of Three Rivers. Ex parte *Cumming*, S. C., 3 L. C. R., p. 110.

6. In matters of *certiorari* the court will not order the writ to issue unless upon proof that actual injustice has been done, and the existence of mere irregularities in the proceedings of the Inferior Court is not sufficient to justify the granting of the writ. Ex parte *Gauthier*, S. C., 3 L. C. R., p. 498. And when a judgment of a Commissioners' Court is only bad in form the Court will not grant a writ of *certiorari*, unless it

* Suspended by 2 Vic. cap. 29, sec. 22, Con. St. L. C., cap. 18.

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appears there has been an excess of jurisdiction. Ex parte *Gibeault*, S. C., 3 L. C. R., p. 111.

7. But a writ of *certiorari* will be granted upon the judgment of a Court of Commissioners, on the ground that the action was at the suit of a party styling himself president of a committee to collect the salary of the Rev. T. Desnoyers, curate, &c., to recover a tax for the support of a missionary. Ex parte *Saltry*, 6 L. C. R., p. 476. And so also in an action praying for a condemnation for six pounds five shillings, or for an account of the defendant's gestion, as tutor, a judgment condemning defendant to pay a sum of money will be quashed. Ex parte *De Montigny*, S. C., 6 L. C. R., p. 484. And if a cause be heard and taken *en délibéré* by two commissioners for the trial of small causes, it cannot be adjudged by *one* of such two commissioners *alone*. Ex parte *Brodeur*, S. C., 2 L. C. J., p. 97. But a case may be returned before one magistrate, and adjourned from day to day by one or more, it being sufficient if the trial and conviction take place before one and the same. *Carrignan and Montreal Harbour Commissioners*, S. C., 5 L. C. R., p. 479.

8. There is no excess of jurisdiction in a Court of Commissioners granting defendant eight days to plead, although the service of the writ was not personal. Ex parte *Goodman*, S. C., 6 L. C. R., p. 476.

9. Delegates for the opening of roads, under the 8 Vic. c. 40, sects. 44, 45 and 46 [repealed], may make a return to a writ of *certiorari*. It is not necessary, *à peine de nullité*, that the return bear the seal of such officer. Ex parte *Talbot*, 2 Rev. de Leg. p. 46.

10. A magistrate has no right to refuse to make a return to a writ of *certiorari* because the fees due in such case have not been paid to the Clerk of the Peace; but a rule *nisi* for contempt will not issue *de plano* and without previous notice to the magistrate. Ex parte *Davies*, S. C., 3 L. C. R., p. 60.

11. The writ of *certiorari* issuing under the provisions of the 12 Vic. c. 41 (C. Sts. C. cap. 89), must be addressed to the Justice of the Peace making the conviction and not to the bailiff effecting the service of such writ; and such writ of *certiorari* addressed to a bailiff is a nullity, and will be superseded. *The Queen vs. Barbeau et al.*, S. C., 1 L. C. R., p. 320.

12. On motion, a writ of *certiorari* will be quashed, a *copy* of the writ having been served on the magistrate and his return being made thereon. Ex parte *Lahayes*, S. C., 6 L. C. R., p. 486. And also in ex parte *Filiau*, S. C., 4 L. C. R., p. 129.

13. The defendant in a case of a writ of *certiorari* cannot compel the petitioner to proceed upon such writ by a mere motion, the proceedings to be had in such case must be by means of a *procedendo*. Ex parte *Morriset*, S. C., 2 L. C. R., p. 302.

14. A *certiorari* not prosecuted during six months will be dismissed on motion. Ex parte *Boyer dit Laderoute*, S. C., 2 L. C. J., p. 188. Also *Domina Regina*, on application of *Chagnon*, S. C., 2 L. C. J., p. 189. And also ex parte *Préfontaine*, S. C., 2 L. C. J., p. 202.

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15. The inspectors of fences and ditches will not be relieved from the costs of setting aside, by *certiorari*, a judgment of Justices of the Peace, homologating, on petition of such inspectors, a *procès-verbal* relating to a water-course, notwithstanding the inspectors tender to the applicant, by notaries, the costs of the proceedings, previous to the return of the writ of *certiorari*, and promise in such tender that the applicant shall not be troubled in future by reason of the *procès-verbal*. Ex parte *Dagenais*, S. C., 6 L. C. R., p. 112.

16. Costs on *certiorari* are in the discretion of the Court. Ex parte *Léonard*, S. C., 1 L. C. J., p. 255. So also in Ex parte *Demers*, S. C., 7 L. C. R., p. 428, a motion to compel a magistrate to return the original papers of a cause under a writ of *certiorari*, such motion will be granted, but without costs against the magistrate. But in Ex parte *Terrien*, 7 L. C. R., p. 429, a like motion was granted, with costs, against the magistrate. And in the case Ex parte *de Beaujeu*, S. C., 1 L. C. J., p. 15, costs were not allowed against a Justice, who was manifestly acting merely in the execution of his duty.

17. There is no appeal from a judgment rendered on a writ of *certiorari*. *Bazin et al. vs. Crevier et al.*, 3 Rev. de Lég., p. 401.

18. The return of the notice of motion for a writ of *certiorari* is well made by a bailiff, and such return need not be proved upon oath. Ex parte *Roy*, S. C., 7 L. C. J., p. 109.

" :—*Vide* BY-LAW.

" :— " CONVICTION.

" :— " RECORDER.

" :— " CERTIORARI :—Ex parte *Allère*, S. C., L. R., p. 8. *Archambault, Ib.*, p. 68. *Belanger, Ib.*, p. 31. *Botineau, Ib.*, p. 3. *Doyle, Ib.*, p. 66. *Gould, Ib.*, p. 73. *Landry, Ib.*, p. 3. *Moquin, Ib.*, p. 84. *Trudeau, Ib.*, p. 66. *Veronceau, Ib.*, p. 79.

CESSION :—In default of a vendor making cession of letters patent to a purchaser in the terms of an agreement between them, to the effect that the purchaser should obtain such letters patent in the name of the vendor, the court will give a judgment to have the effect of such cession as if a sufficient deed had been passed to that effect, and the judgment will have the force and effect which such a deed would have had, and will invest the purchaser with all the rights, title, interest and property which he could have acquired by such deed. *Leblanc et Pelerin*, Q. B., 7 L. C. J., p. 113.

" :—*Vide Langlois et al. v. Verret*, 2 Rev. de Lég., p. 177.

CHURCH :—*Vide* CONVICTION.

CHURCHES :—1. The commissioners appointed under the Ordinance 2 Vic. c. 29, and the subsequent statutes on the same subject, in what respects the building of churches, parsonage houses, &c., form a special tribunal exercising judicial authority within certain limits. And an *acte de répartition* duly homologated by such commissioners, is *primâ facie* evidence of its contents, at least until the contrary is proved. The right of appeal in suits for the recovery of amounts levied for defraying the expenses of building, has been

CHURCHES :—
allowed and exercised. *Renière and Millette*, Q. B., 5 L. C. R., p. 87. But in the case Ex parte *Lecours*, the S. C. held that the powers of such commissioners were not judicial powers subject to its revision on *certiorari*. 3 L. C. R., p. 123.

2. The Circuit Court cannot take cognizance of the nullities of a *cotisation rôle* for the building of a church owing to the omission of rate-payers and fraud on the part of the syndics. The Circuit Court must give judgment against the rate-payers according to the *rôle*. *The Syndics of the Parish of St. Norbert, vs. Pacaud*, C. C., 6 L. C. J., p. 290. And in ex parte *Boucher and Dessaulles et al., Coms., and Langellier et al., Syndics*, it was held that there was no appeal, and that the only way to proceed was by *certiorari*. But the refusal to admit the evidence offered by the opposants, and the fact that illegal evidence had been admitted by the syndics, is not an excess of jurisdiction, and a writ of *certiorari* granted for such reasons will be set aside. S. C., 6 L. C. J., p. 333.

" :—*Vide* AGRICULTURAL ACT.

" :— " CERTIORARI.

CHURCH OF ENGLAND :—A clergyman of the Church of England, in a parish where there is a consecrated burial-ground cannot be compelled to perform the service in a place that has not been consecrated or set apart for burials by the authorities of that church. Exp. *Wurtele*, S. C., L. C. R., p. 414.

CIRCUIT COURT :—1. The Circuit Court, sitting in any given circuit, has jurisdiction in actions, the cause of which has arisen within the limits of such circuit, although the defendants reside in a district other than that in which such circuit is situate, and have been served with process in such other circuit. *Hardy et al., v. Trothier et al.*, S. C., 1 L. C. R., p. 286.

2. The Circuit Court will declare a by-law to be invalid while judging on the merits of the judgment of an inferior tribunal. *Dumont vs. Aumais*, S. C., 7 L. C. J., p. 110.

" :—*Vide* APPEAL.

CITY COUNCILLOR :—Being a householder for twelve months before election, is a necessary qualification for the office of City Councillor, and the candidate who has received the greatest number of votes, not being so qualified, may be unseated of his office, and the candidate having the next greatest number of votes may be seated in his stead. *Lynch vs. Papin*, S. C., L. R., p. 109.

CIVIL DEATH :—1. A party condemned to death by the court martial which sat in Lower Canada in 1839, and subsequently pardoned, cannot *ester en jugement*, or revendicate his property forfeited by reason of his attainder. *Rochon vs. Leduc*, S. C., 1 L. C. J., p. 252.

2. A person confined in the Provincial Penitentiary, under a conviction for forgery, is not *mortuus civiliter*, and a signification of a transfer during that period on his wife is valid. *Rowell vs. Darah*, S. C., 2. L. C. J., p. 208.

" :—*Vide* COMMUNAUTE.

CODE MARINE :—The *code marine*, even if it ever was in force, was no part of the common law of Canada, but a part of the public law, and consequently superseded by the effect of the conquest ; and if it was law in the admiralty jurisdiction alone, whether public or common law, it was abolished by the introduction of English Admiralty law. *Baldwin vs. Gibbon*, S. R., p. 72.

COINS :—*Vide* CURRENCY.

COLLECTOR OF CUSTOMS :—*Vide* NOTICE OF ACTIONS.

COLLISION :—1. The Court of Vice-Admiralty exercises jurisdiction in the case of a vessel injured by collision in the River St. Lawrence near the city of Quebec. *Howard vs. The Camillus*, S. R., p. 158, and *Ritchie vs. Orkney et al.*, S. R., p. 613, and S. V. A. R., p. 383.

2. There are four probabilities under which a collision may occur :

a. It may occur from the fault or misconduct of the vessel suffering from the collision ;

b. Or the accident may have happened from unavoidable circumstances, without fault on the part of either vessel ;

c. Or both parties may be to blame, as where there has been a want of skill or due diligence on both sides ;

d. Or the loss and damage may be owing to the fault or misconduct of the vessel charged as the wrong-doer.

In the first two cases, no action lies for the damage arising from the collision.

In the third case, the law apportions the loss between the parties, as having been occasioned by the fault of both of them.

In the fourth case, the injured party is entitled to full compensation from the party inflicting the injury. *The Cumberland*, p. 75, S. V. A. R. *The Nelson Village*, p. 156. *Ib.*

3. Owners of vessels are not exempt from their legal responsibility, notwithstanding that their vessel was under the care and management of a pilot. *The Cumberland*, p. 75, S. V. A. R.

4. Ship held liable for collision, notwithstanding there being a pilot on board. *The Lord John Russell*, p. 190, S. V. A. R.

5. The circumstance of having a pilot on board, and acting in conformity with his directions, does not operate as a discharge of the responsibility of the owner. *The Creole*, p. 199, S. V. A. R.

6. But when a collision is occasioned by the mismanagement of a pilot, placed on board or in charge according to law, enforced by a penalty, the vessel is not liable, and the mode, time and place of bringing a vessel to anchor is within the peculiar province of such pilot in charge. *The Lotus—Clark*, 11 L. C. R., p. 342. And where the pilot is in fault, it is the practice of the Admiralty Court to give no damages on either side. *Ib.*

7. A pilot act which obliges vessels going out or coming into port to receive a pilot, under a penalty or forfeiture of half pilotage, is not compulsory but is optional. The ship need not take a pilot if it prefer to pay the penalty or forfeiture. *The Creole*, p. 199, S. V. A. R.

COLLISION :—

8. In cases of collision arising from negligence or unskilfulness in management of ship during the injury, the pilot having the control of the ship is not a competent witness for such ship, without a release, although the master is. *The Lord John Russell*, p. 190, S. V. A. R.

9. In a cause of collision, where the loss was charged to be owing to negligence or want of skill, the Court, with the assistance of a captain in the Royal Navy, being of opinion that the damage was occasioned by accident, chiefly imputable to the imprudence of the injured vessel and not to the misconduct of the other vessel, dismissed the owners of the latter vessel, with costs. *The Leonid s*, p. 226, S. V. A. R.

10. Where it appeared that the collision was the effect of mere accident, or that over-riding necessity which the law designates by the term *vis major*, action dismissed, with costs. *The Sarah Anne*, p. 294, S. V. A. R.

11. Where both parties are mutually blameable in not taking measures to prevent accidents, the rule is to apportion equally the damages between the parties, according to maritime law, as administered in the Admiralty Court. *Ib.*

12. Vessel giving a foul berth to another vessel, liable in damages for collision done to the vessel to which such foul berth was given by her, although the immediate cause of the collision was a *vis major*, and no unskilfulness or misconduct was imputable to the offending vessel after giving such foul berth. *The Cumberland*, p. 75, S. V. A. R.

13. Where one ship is at anchor, it augurs great want of skill and attention, in a harbour like that of Quebec, for a ship under sail to be so brought-to as to run foul of her. *The Lord John Russell*, p. 190, S. V. A. R.

14. Damages awarded in case of a collision in the harbour of Quebec. *Ib.*

15. In a case of collision against a ship for running foul of a floating-light vessel, the Court pronounced for damages. *The Miramichi*, p. 237, S. V. A. R. In such a case the presumption is gross negligence or want of skill, and the burthen is cast on the shipmaster to repel the presumption. *Ib.*

16. Vessels are required of a dark night to show their position, by a fixed light, while at anchor in the harbour of Quebec; and the want of such light will amount to negligence, so as to bar a claim for any injury received from other vessels running foul of them. *The Mary Campbell*, p. 222, S. V. A. R.

17. The omission to have a light on board in a river or harbour at night amounts to negligence, *per se*. *The Dahlia*, p. 242, S. V. A. R.

18. By-law of the Trinity House of 12th April, 1850, requires a distinct light in the fore-rigging "during the night." *The Mary Campbell*, p. 222, S. V. A. R.

19. The regulations of the Trinity House require a strict construction in favour of their application. *The Dahlia*, p. 242, S. V. A. R. Having a light on board in such case is an indispensable precaution. *Ib.*

COLLISION :—

20. By-laws of Trinity House respecting lights, not abrogated by desuetude or non-user. *The Mary Campbell*, p. 222, S. V. A. R.

21. Every night in the absence of the moon is a dark night in the purview of the Trinity House regulations of the 28th June, 1805. *The Dahlia*, p. 242, S. V. A. R. More credit is to be attached to the crew that are on the alert than to the crew of the vessel that is placed at rest. *Ib.*

22. In a case of collision between two ships ascending the River St. Lawrence, the Court, assisted by a captain of the Royal Navy, pronounced for damages, *holding*, that when two vessels are crossing each other in opposite directions, and there is doubt of their going clear, the vessel upon the port or larboard tack is to bear up and heave about for the vessel upon the starboard tack. *The Nelson Village*, p. 156, S. V. A. R.

23. Two steamers were coming from Montreal to Quebec, and when opposite the city of Quebec the one took the course usual on such occasions and passed down below the lowermost wharf, at the mouth of the River St. Charles, where she turned, to stem the tide and come to the wharf at which she was to land her passengers ; and the other did not descend so low, but made a short and unusual turn, with the intention of passing across the course of the former and ahead of her, after she had turned and was coming up against the tide:

Held,—That the collision complained of resulted from a rash and hazardous attempt on the part of those on board of the steamer which made such short and unusual turn to cross the course of the other, contrary to the usual practice and custom of the river and the rules of good seamanship, for the purpose of being earlier at her wharf. *The Crescent*, *The Rowland Hill*, p. 289, S. V. A. R.

Manœuvres of this dangerous kind, which might, in a crowded port like that of Quebec, result in the most serious loss of property and of life, ought to be discountenanced. *Ib.*

24. In a cause of collision between two steam-vessels, the Court, assisted by a captain in the Royal Navy, pronounced for damages and costs, holding that the one which crossed the course of the other was to blame. *The Bytown*, p. 278, S. V. A. R.

25. The general rule of navigation is, when a ship is in stays, or in the act of going about, as she becomes for the time unmanageable, it is the duty of any ship that is near her to give her sufficient room. *The Leonidas*, p. 226, S. V. A. R.

But, when a ship goes about very near to another, and without any preparatory indication from which that other can, under the circumstances, be warned in time to make the necessary preparations for giving room, the damage consequent upon want of sufficient room may arise from the fault of those in charge of the ship going about at an improper time and place. *Ib.*

Or, in the case of darkness, fog, or other circumstances rendering it impossible for the ships to see each other so

COLLISION :—

distinctly as to watch each other's evolutions, the fault may be with either. *Ib.*

26. By the Merchant Shipping Act, (17 and 18 Vict., c. 104, ss. 296, 297,) and the Steam Navigation Act, (14 and 15 Vict., c. 79,) as well as by the rule of the Trinity House of Quebec, when a steamer meets a sailing vessel going free, and there is danger of collision, it is the duty of each vessel to put her helm to port and pass to the right, unless the circumstances are such as to render the following of the rule impracticable or dangerous. *The Inga*, p. 335, S. V. A. R.

No sufficient cause being found for not following this rule, a sailing vessel condemned in damages and costs for putting her helm to starboard, and passing to the left of a steam tow-boat, thereby causing collision with the vessel in tow, the steamer and her tow coming down the channel, nearly or exactly upon a line with the course of the sailing vessel. *Ib.*

Conflict of English and American law, how to steer. *Ib.*

27. Where two ships, close hauled, on opposite tacks meet, and there would be danger of collision if each continued her course, the one on the port tack shall give way, and the other shall hold her course. *The Mary Bannatyne*, p. 350, S. V. A. R.

She is not to do this, if by so doing she would cause unnecessary risk to the other. *Ib.*

Neither is the other bound to obey the rule, if by so doing she would run into unavoidable imminent danger ; but if there be no such danger, the one on the starboard tack is entitled to the benefit of the rule. *Ib.*

The circumstances of the case examined, and no sufficient cause being found for not following the rule, the vessel inflicting the injury, condemned in damages and costs. *Ib.*

28. The settled nautical rule is, that if two sailing vessels, both upon a wind, are so approaching each other, the one on the starboard and the other on the port tack, as that there will be a danger of collision if each continue her course, it is the duty of the vessel on the port tack immediately to give way, and the vessel on the port tack is to bear away so early and effectually as to prevent all chance of a collision occurring. *The Roslin Castle—The Glencairn*, p. 303, S. V. A. R. Also 4 L. C. R., p. 38.

29. The general rule is, that where two vessels are approaching each other, both having the wind large, and are approaching each other so that if each continued in her course there would be danger of collision, each shall port helm, so as to leave the other on the larboard hand in passing. *The Niagara—The Elizabeth*, p. 308, S. V. A. R.

But it is not necessary that because two vessels are proceeding in opposite directions, there being plenty of room, the one vessel should cross the course of the other, in order to pass her on the larboard. *Ib.*

Although there may be a rule of the sea, yet a man who has the management of one ship is not allowed to follow that rule to the injury of the vessel of another, when he could avoid the injury by pursuing a different course. *Ib.*

COLLISION :—

The Court pronounced for damages against a vessel sailing down the River St. Lawrence, on her homeward voyage to Liverpool, running foul of another coming up in tow of a steamer, the night at the time being reasonably clear, and sufficiently so for lights to be seen at a moderate distance. *Ib.*

30. Liability of a steamboat for collision between vessels, one of which is towed by the steamboat. *The John Counter*, p. 344, S. V. A. R.

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 the consequences. *Ib.*

Cases may also occur in which both are in fault, and in such cases both vessels would be liable to the injured vessel, whatever might be their responsibility *inter se*. *Ib.*

31. If the collision arose solely from the misconduct of those on board the steam tug, both the other vessels are exempt from responsibility and the action on the part of each must be dismissed, leaving them to their recourse against the steamer. *The Niagara—The Elizabeth*, p. 308, S.V. A. R.

The law in such case is, that the tow is not responsible for an accident arising from the mistake or misconduct of the tug. *Ib.*

Steamers are to be considered in the light of vessels navigating with a fair wind: the steamer and the *Niagara* were considered in this respect as on an equality. *Ib.* And so a vessel in tow, with a head wind and no sails, and fast to the steamer, so that she could only sheer to a certain distance on either side of the course in which she was towed by the steamer, is powerless to a very great extent. *Ib.*

If it be practicable for a vessel which is following close upon the track of another to pursue a course which is safe and she adopts one which is perilous, then, if mischief ensue, she is answerable for all consequences. *The Mary Bannatyne*, p. 350, S. V. A. R.

32. 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. *The John Counter*, p. 344, S. V. A. R.

33. In order to support an action for damages in a case of collision, it is necessary distinctly to prove that the collision arose from the fault of the persons on board of the vessel charged as the wrong-doers, or from the fault of the persons on board of that vessel and of those on board of the injured vessel. *The Sarah Anne*, p. 294, S. V. A. R.

34. If a vessel make every precaution against approaching danger, it is not sufficient to subject her to damage for injury to another by collision, that in the moment of danger those on board such vessel did not make use of every means that might appear proper to a cool spectator; there must be gross negligence. *The Niagara—The Elizabeth*, p. 308, S. V. A. R.

35. In a case of collision by one steamer against another, where the loss was charged to be owing to the negligence of the defendants, the Court, being of opinion that the damage

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was occasioned by such negligence, gave damages and costs. *Maitland vs. Molson*, S. R., p. 441. And a vessel which is placed by those in charge in such a position that danger will arise, if some event not improbable arise, will be answerable for damages. *The Lotus—Clark*, 11 L. C. R., p. 342.

36. If there was no proper and sufficient look-out, and if the proper means were not adopted for avoiding collision, after the time when the other vessel's lights were seen, her having taken the most seamanlike and proper course when the collision was all but inevitable, does not exempt a vessel from liability. *The Niagara—The Elizabeth*, p. 308, S. V. A. R. Also 4 L. C. R., p. 264.

37. In the case of a collision between two vessels in the Lachine Canal, where the injured vessel was in violation of the rules and regulations of the canal, on the wrong side of the canal, the owner of the other vessel is not liable in damages, in the absence of proof of "any wilful act or negligence" on the part of the crew of the latter. *Leger vs. Jackson & al.*, S. C., 3 L. C. J., p. 225.

38. And where no proper measures have been taken to prevent all reasonable probability of a collision on board of the plaintiff's vessel, and said vessel not having the lights required by law, the plaintiff cannot claim any damages. *Sauvageau vs. La Compagnie du Richelieu*, S. C., 7 L. C. J., p. 39.

39. Nor even where there is doubt as to the cause of the collision. *Bertrand vs. Dickinson*, S. C., 12 L. C. R., p. 304. And in a case of collision, where the evidence on both sides is conflicting and nicely balanced, the Court will be guided by the probabilities of the respective cases which are set up, and owners of the vessel proceeded against, dismissed without costs. *The Ailsa—Alexander*, V. A. C., 10 L. C. R., p. 362.

40. Master may avail himself of the wind and tide, and sail into port by night as well as by day. *The Mary Campbell*, p. 222, S. V. A. R.

41. There is no rule of law preventing vessels from entering or leaving the harbour of Quebec at any hour, or obliging them to keep any particular track or part of the channel in so doing. *The Niagara—The Elizabeth*, p. 308, S. V. A. R.

Harbour Master has authority to station all ships or vessels which come to the harbour of Quebec or haul into any wharf within the same, and to regulate the mooring and fastening and shifting and removal of such ships or vessels. *Ib.*

Where berths had been assigned or confirmed by the harbour master to several vessels in a dock in the harbour of Quebec, and the harbour master expressly directed the vessel proceeded against 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, because there was not room enough in the dock; and the master hauled his vessel forward, and as the water fell in the dock and the space between the wharves at the water level diminished the vessels became tightly jammed together, so that it was impossible to move them;

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and as the water continued to fall the pressure became so great that one of the other vessels was completely crushed, and another was suspended between the crushed vessel and the wharf and thrown over nearly on her beam ends, thereby receiving great damage ; the owner of the vessel so contravening the harbour master's orders condemned in damages and costs. *Ib.*

Upon the point submitted for the professional opinion of assessors, their opinion should be as definite as in a complicated case of this nature it is possible it should be. *Ib.*

In certain cases the Court will direct the questions to be re-considered and more definitely answered. *Ib.*

COLLOCATION :—The holder of a collateral security can only be collocated conditionally, and, in the meantime, till it is established if he can realize his debt the other less privileged creditors may be allowed to take the moneys, on giving security that they will restore the same if the prior creditor is not satisfied. *Doutre vs. Green and Elvidge*, S. C., 5 L. C. J., p. 152.

" :—*Vide* ASSIGNMENT.

COMMENCEMENT DE PREUVE PAR ÉCRIT :—*Vide* EVIDENCE.

COMMERCIAL MATTERS :—1. The transactions of tradesmen and artisans, in the way of their trade, are to be considered as commercial matters, and in all actions brought upon such transactions recourse must be had to the English rules of evidence, under the ordinance of the 25 Geo. III., c. 2, sec. 10 [Con. St. L. C., cap. 82, sec. 17], and generally in all cases which by the laws of France were cognizable by the consular jurisdiction. *Pozer vs. Meiklejohn*, P. R., p. 11, and S. R., p. 122.

2. The engagement of a shopman is a commercial matter, giving admission to the evidence permitted in such cases. *Perrigo & Hibbard*, S. C., L. R., p. 34.

3. The sale of firewood between parties not traders is not a commercial matter, and consequently the evidence of plaintiff's nephew is inadmissible.* *Desbarats vs. Murray*, S. C., 3 L. C. J., p. 27.

" :—*Vide* EVIDENCE.

" :— " JURY TRIAL.

COMMINATORY CLAUSE :—1. A stipulation in a deed, that in default of the purchaser paying his first instalment when due, the vendor might treat deed as null on notifying purchaser to that effect, accompanied by an express declaration that such stipulation was *de rigueur*, and one without which the vendor would not have signed the deed, is comminatory, and therefore not executory *à la rigueur*. *Homier vs. Demers*, S. C., 1 L. C. J., p. 12. And in an action of damages for the non-performance of a special agreement, in which a penalty is stipulated to be paid by the party failing, the penalty is not to be considered as stipulated damages, and therefore whatever loss is proved to have been sustained, whether beyond, below or equal to the value of the penalty, the plaintiff will have judgment for. *Mure & al. vs. Wileys & al.*, P. R., p. 61. And so a penalty established in a *compromis* is only comminatory and the party in favor of whom

* This was decided prior to the alteration in the law of ev., C. S. L. C., cap. 82, sec. 14.

COMMINATORY CLAUSE :—
the award has been rendered is bound to prove the damages which result from the inexecution of the *compromis* and of the award. *Bouthillier vs. Turcot*, S. C., 3 L. C. J., p. 50.

2. But a clause in an obligation stipulating "that in case the debtor should make default in the payment of the interest to accrue and become due on a principal sum for the space of thirty days after the intended payments should become due and payable then and in that case the whole of the principal sum with all the interest then due, should immediately become due and exigible," is not a covenant which will be regarded as a *clause comminatoire*. *McNevin vs. The Board of Arts and Manufactures for Lower Canada*, S. C., 6 L. C. J., p. 222, and 12 L. C. R., p. 335.

3. The following obligation in a deed of donation from father to son is not comminatory: "que si le donataire venait à vendre, échanger ou donner le dit terrain à des étrangers ou faire quelque autre acte équipollent à vente, il sera tenu et obligé tel qu'il le promet en ces présentes, de bailler et payer aux dits donateurs seulement la somme de deux milles livres ancien cours, le jour de la passation soit des actes de ventes, échange, donation et autres actes équipollents à vente," and such clause is not comminatory, but is a charge of the donation which may be exacted hypothecarily of the defendant purchaser, a stranger. *Cheval dit St. Jacques vs. Morrin*, S. C., 6 L. C. J., p. 229.

" :—*Vide* LEASE.

COMMISSION :—1. A charge of five *per centum* commission for the collection of debts does not necessarily imply a warranty on the part of the agent making such charge. *Glass vs. Joseph & al.*, 3 Rev. de Lég., p. 22.

2. The plaintiffs who were in the habit of advancing supplies of goods, cash and negotiable securities required from time to time by customers to support them in their dealings, and returns being made by such customers at their convenience, in the freight of produce from the upper country, and in the transfer of vessels and barges, and in payment of cash and negotiable securities, charged a commission of five *per centum* on all advances made by them, when the customers had no funds in their hands, and the interest from the time the different items of their account became due, under a previous agreement to that effect; and it was held that this contract was not usurious, but a customary allowance for the trouble and inconvenience of transacting the business. *Pollock and Bradbury*, S. C., 3 L. C. R., p. 171. Also P. C. Moore's, p. 227.

3. The agreement that a certain rate of commission shall be *del credere* may be inferred from the fact, that, according to the usage of trade, the rate charged is such as is usually charged as a guarantee or *del credere* commission. *Renkin and Foley*, Q. B., 6 L. C. J., p. 156.

" :—*Vide* SHIP.

COMMISSIONER :—A contractor for a public building can maintain an action against the Commissioners with whom he contracted for the erection of such building, if they have received from government the money which is due to them. *Larue vs.*

COMMISSIONER :—

Crawford, S. R., p. 141. But the Seigniorial Commissioners cannot be sued by a seignior to pay him the interest on his *lods et ventes* income, out of moneys placed to their credit in a Bank by the Receiver General of the Province for the purpose of paying the seigniors their interest. *Ramsay vs. Judah & al.*, S. C., 2 L. C. J., p. 251.

" :—PUBLIC OFFICER.

COMMISSIONERS' COURT :—1. Commissioners' Courts have jurisdiction in actions for $25. Ex parte *Bourbeau*, S. C., 13 L. C. R., p. 65.

Commissioners' Courts have not jurisdiction in cases for sums over $25, which have been divided in order to bring their suits within that amount. It would be otherwise if there was remission of the rest of the debt. Ex parte *Desparois*, S. C., 7 L. C. J., p. 35.

2. Commissioners' Courts have jurisdiction in an action in which a party is sued as *heir*. Ex parte *Charbonneau*, S. C., 7 L. C. J., p. 122.

" :—CERTIORARI.

COMMISSION ROGATOIRE :— A *commission rogatoire* may issue on motion therefor, without affidavit of any kind. *Willis & al., vs. Pierce*, S. C., 2 L. C. J., p. 77. Also *Johnston vs. Whitney*, S. C., 6 L. C. J., p. 29. But a *commission rogatoire* asked for on the day the case is fixed for evidence and final hearing, will not be granted without affidavit. *Lane & al., vs. Ross & al., and Ross & al.*, S. C., 4 L. C. J., p. 295.

COMMISSIONS :—1. Commission of Vice-Admiral in and over the Province of Quebec, under the Great Seal of the High Court of Admiralty of England, dated 19th March, 1764. p. 370, S. V. A. R.

2. Commission of Judge of the Vice-Admiralty Court in the Province of Lower Canada, under the Great Seal of the High Court of Admiralty of England, dated 27th October, 1838. p. 376, *ib.*

3. Commission under the Great Seal of the United Kingdom of Great Britain and Ireland, for the trial of offences committed within the Admiralty jurisdiction, dated 30th October, 1841. p. 380, *ib.*

COMMON SOCCAGE :—*Vide* IMPROVEMENTS.

COMMUNAUTÉ :—1. There is no *communauté de biens* between persons married in England, who have settled and died in Canada. *Rogers et al., vs. Rogers*, 3 Rev. de Lég., p. 255; also, 3 L. C. J., p. 64. And where Lower Canadians got married in the United States without an ante-nuptial contract, it was held that the rights of parties will be governed by the matrimonial domicil. *Languedoc et ux, vs. Laviolette*, S. C., 1 L. C. J., p. 240, and 8 L. C. R., p. 257. (Confirmed in Appeal, March, 1858.)

2. But although there is no community of property, according to the custom of Paris, between parties married in Upper Canada, their then domicil, without any ante-nuptial contract, yet an action *en séparation de biens* will be maintained in favor of the wife by reason of the insolvency of the husband, since their removal to Lower Canada. *Sweetapple vs. Gwilt*, S. C., 7 L. C. J., p. 106.

COMMUNAUTÉ :—

3. A clause in a marriage contract, stipulating that the marriage rights of the parties should be governed by the laws and customs of England, will not exclude *communauté*. *Wilson and Wilson*, 2 Rev. de Lég., p. 431.

4. A *communauté de biens* which was always treated by the parties interested as existing, notwithstanding its legal dissolution by civil death, subsequently removed by pardon, will also be treated by the courts of law as having existed uninterruptedly since the marriage. *Cartier vs. Béchard*, S. C., 1 L. C. J., p. 44.

5. A covenant in a marriage contract, that "the parties take one another, with the property and rights to each of them belonging and such as may hereafter accrue, of what nature soever, which said property, moveable or immoveable, shall enter into the community," is a covenant of *ameublissement* of all the property belonging to the parties, notwithstanding a subsequent clause of *réalization*; consequently the customary dower cannot be claimed out of the husband's *propres*. *Moreau vs. Mathews and Fisher*, S. C., 4 L. C. R., p. 436.

6. A party contracting a second marriage cannot dispose by marriage contract, in favor of his second wife, of any portion of the conquests of the first community, or of a greater portion of the *acquêts* than that accruing to the child taking the smallest share. *Keith vs. Bigelow*, S. C., 2 L. C. R., p. 175.

7. A judgment obtained against a married woman, *commune en biens*, assisted in the suit by her husband, cannot be the ground of a demand to have the said judgment declared executory against the husband; but such judgment may be invoked as an authentic acknowledgment of the debt, the action containing conclusions to the effect that the husband, as master of the community, be condemned personally to the payment of such debt. *Berthelet and Turcotte*, Q. B., 6 L. C. R., p. 152.

8. A married woman, *marchande publique*, but *commune en biens*, cannot sue without her husband. *Lynch vs. Poole*, L. R., p. 60.

9. In an action *en séparation de corps et de biens*, a bill for medical attendance on the plaintiff was properly charged among the debts due by the *communauté*. *Jannot vs. Allard*, S. C., 6 L. C. R., p. 474.

10. The stipulation of separation of debts between husband and wife in community, by contract, has no effect against creditors of the wife, if such clause be not followed by an inventory of the goods the wife possessed at the time of her marriage *McBean vs. Debartzch*, S. C., 5 L. C. J., p. 150.

" :—*Vide* MARRIED WOMEN.

" :— " SIMULATION.

COMPENSATION :—1. Damages for the non-performance of a special agreement for the transportation of goods, where a part has been transported, delivered and accepted, cannot be pleaded by way of compensation against an action on the *quantum meruit* for freight carried upon such part so delivered and

COMPENSATION :—

accepted. The party must institute a cross *demande* or a separate action for such damages. *Guay vs. Hunters*, P. R., p. 36.

2. Damages resulting from fraud may be set off against the price of sale. *Prevost vs. Leroux*, S. C., 3 L. C. J., p. 321.

And it was held in *Jordeson vs. McAdams & Co.*, that on a demand for damages for an illegal arrest, the defendant cannot set up in compensation money due him for rent. S. C., 13 L. C. R., p. 229.

3. Compensation must be specially invoked, and the conclusions to a plea to that effect must be special, and ask that the compensation be declared to have taken place. *Gugy vs. Duchesnay*, S. C., 1 L. C. R., p. 478.

4. The value of goods of defendant's in the hands of plaintiff cannot be set off in compensation against a promissory note. *Ryan et al vs. Hunt et al.*, S. C., 10 L. C. R., p. 474.

5. In an action by The Montreal Provident and Savings' Bank on a Notarial obligation for moneys lent, defendant cannot set up in compensation a sum of money deposited in such bank and transferred to him by such depositor. *Morris et al vs. McGinn*, S. C., 1 L. C. R., p. 110. So in the report, but this summary conveys an utterly erroneous impression as to the real holding of the Court. It was decided that a debtor, subsequent to the insolvency of the bank, could not purchase up the depreciated claim of a depositor and offer it in compensation of his own debt to the bank.

6. In an action of damages for an illegal arrest, defendant cannot set up in compensation a sum due him for rent. *Jordeson vs. McAddams*, S. C., 13 L. C. R., p. 229.

7. A debt need not be *claire et liquide* to be set up in compensation against a debt certain, provided it be easily proved. So an account for goods sold and delivered may be opposed to a debt due under a notarial instrument. *Hall and Beaudet*, Q. B., 6 L. C. R., p. 75. But in an action on a notarial obligation, the defendant will not be allowed to set up unliquidated damages by way of compensation. *Chapdelaine vs. Morrison*, S. C., 6 L. C. R., p. 491.

8. The endorser of an accommodation promissory note has a right to set up in compensation, against the holder of such note, all sums of money which the holder has paid or for which he has become indebted to the maker since the protesting of the note; and the salary of a bank officer, paid by quarterly instalments, may be set up in this way against the bank by an accommodation endorser. *The Quebec Bank vs. Molson*, S. C., 1 L. C. R., p. 116.

9. In an action brought by the heir of an insolvent, deceased, for a debt contracted with the executors, a debt due by the deceased may be set up in compensation. *Moss et al. vs. Brown et al., and Hardy*, S. C., 12 L. C. R., p. 202.

10. The defendant having become the surety of Perkins, Smith & Co., under a notarial obligation, for advances to the extent of £3,000, to be made by the plaintiff for the purpose of getting out timber, it was held—that the proceeds of timber exceeding £3,000 in value, received by the plaintiff, may be pleaded by the defendant in payment of the original

COMPENSATION :—

advances made by the plaintiff to P., S. & Co., and that the defendant is entitled to have all the moneys paid by P. S. & Co., imputed upon the original advance made under the notarial obligation, to which he was a party as surety, unless it has been otherwise specially agreed upon at the time of payment. *Symes vs., Perkins*, S. C., 1 L. C. R., p. 136.

11. A debt due to a defendant by a partnership of which the plaintiff was a member, cannot be offered in compensation of the personal debt of the plaintiff. *Batten vs. Desbarats*, S. C., L. R., p. 4; also *Howard vs. Stuart*, S. C., 6 L. C. J., p. 256.

12. An action by the party indicateed in a deed of sale as the person to whom the *prix de vente* of an immoveable shall be paid, will be dismissed upon plea of compensation by the defendant, as holder of notes previously made by the vendor, the *indication de paiement* not having been accepted by the plaintiff; and the registration of the deed by the plaintiff does not affect the defendant's rights in such a case. *Seaver et al., vs. Nye*, S. C., 8 L. C. R., p. 221.

13. In a plea of compensation, defendant must pray that the debt he pretends plaintiff owes him may be set off. *Beaudry vs. Vinet*, S. C., 7 L. C. J., p. 44.

14. The default of the plaintiff to answer the articulation of facts having the effect of an admission of the facts alleged, the claim set up in compensation, though not founded on an authentic deed, became *claire et liquide*, and extinguished the adverse claim. *Archambault & Archambault*, Q. B., 10 L. C. R., p. 442.

" :—*Vide Coterell vs. Gormley et al.*, 1 Rev. de Lég., p. 334, and *Macfarlane vs. Rodden et al.*, S. C., L. R., p. 37.

" :—DAMAGES.

COMPLAINTE :—1. *Complainte* cannot be maintained for a *trouble* by entering a pew in church, by one parishioner against another. *Auger vs. Gingras*, S. R., p. 135. Nor by a priest against his Bishop whom he has accused of violently dispossessing him of his church. And generally there is no revendication of a thing *publici & divini juris*. *Nau and L'Artigue*, Q. B., Montreal, 19th June, 1838.

2. To maintain an action *en complainte* for trespass on a fishery on the shores of the St. Lawrence, it is necessary to prove a possession under title from the Crown. *Morin vs. Lefevre*, 1 Rév. de Lég. p. 354.

COMPOSITE FIRM :—*Vide* PARTNERSHIP.

COMPOSITION :—*Vide* ATERMOIEMENT.

COMPROMISE :—*Vide* TRANSACTION.

CONCESSION :—1. By the common law of France there is nothing to prevent a seignior stipulating a *prix de vente* in a deed of concession *à titre de cens*; and there is no legislative restriction to this rule in Canada. *Boston vs. Lerigé dit Laplante*, S. C., L. R., p. 91.

2. A concession by a seignior of a lot of land, at a fixed rate for every arpent, cannot be extended beyond the precise quantity so conceded notwithstanding the description thereof by *tenants et aboutissants*, and it is not to be considered as the sale of a *corps certain*. *Sanche & al and Longpré*, Q. B., 3 L. C. R., p. 458.

CONDITION :—*Vide* DEED.

CONDITION PRECEDENT :—Agreement for lease for five years from 1st April, 1840, the landlord undertaking to erect by that time, a warehouse, on part of the ground to be demised, and to put the old warehouse in repair, the amount of rent to be determined with reference to the amount of the landlord's expenditure on the buildings. The new building was not erected, nor the old warehouse repaired, on the 1st of April, but no objection was made by the intended lessees, who then occupied part of the premises under a former agreement, and shortly afterwards the whole premises were destroyed by fire, and it was held on a bill filed by the landlord for specific performance of the agreement, and for the defendants to rebuild the premises, and to accept a lease ; that it was a condition precedent, that the premises should be put in repair before the lease was granted, and that, as the landlord had not performed his engagement within the time limited, the contract could not be enforced in equity, and the bill was dismissed. *Counter and Macpherson & al.*, S. C., 5 Moore's Rep., p. 83.

" :—*Vide* INSURANCE.

CONFESSION OF JUDGMENT :—1. A confession of a judgment to which the defendant has set his cross countersigned by his attorney *ad litem*, is invalid and insufficient, the defendant must attach his signature to the confession, and if unable to sign, the confession must be made by a notarial instrument. *McKenzie vs. Jolin*, S. C., 5 L. C. R., p. 64.

2. The confession of judgment against a copartnership which has ceased to exist by one of the late copartners is invalid. *The Canada Lead Mine Company vs. Walker & al.*, 11 L. C. R., p. 433.

CONFESSIONS :—*Vide* EVIDENCE.

CONFIRMATION OF TITLE :—1. A creditor who has tendered an overbid, in application for confirmation of title, in conformity with the third section of the 9th Geo. IV, c. 20 [Con. St. L. C. cap. 36, sect. 11,] need not accompany his tender with a deposit of such overbid ; he need not give notice of his putting in security ; the sureties need not justify that they are proprietors of real estate, nor describe any estate to be specially hypothecated. Such creditor will not be declared the purchaser, until he has required the original purchaser to declare whether he will retain the property at the price offered and paid the purchase money, and the original purchaser will not be allowed to retain the property unless he pays the whole of the purchase money, and in default of his so doing the creditor who has overbid him, shall be allowed to deposit the purchase money and become the purchaser. Ex parte *Roston* S. C., 3 L. C. R., p. 297. But *vide* 27 & 28 Vic., c. 39, sect. 4.

2. A judgment of confirmation obtained by two defendants, one of whom was described in the public notices given in such cases by the name of " Brackmon " instead of " Blackmon " is a valid defense to an hypothecary action, the property being described in such notice, and the name of the vendor, debtor of the plaintiff, correctly given, and the identity of the property admitted on the record. *Redpath vs. Blackmon & al.*, S. C., 6 L. C. R., p. 408.

CONFLICT OF LAWS :—*Vide* COMMUNAUTÉ.

CONFLICTING DECISIONS :—Conflicting decisions of Doctor Lushington in the case of *The City of London*, and of Judge Sprague in the case of *The Osprey*. See the case of the *Inga*, p. 335, S. V. A. R.

CONGÉ DE DÉFAUT :—*Congé de défaut* was refused by the Court, it only having opened at 11 P. M. *Petit vs. Lucas*, 2 Rev. de Lég., p. 177. But the Superior Court held in *Ballantyne & al. vs. Worden*, 4 L. C. R., p. 320, that it could not grant a *congé de défaut;* that such a proceeding was only permitted in the Inferior Courts.

CONSENT :—Litigant parties cannot by consent alter the nature of a writ after it is returned into Court. *Richard and Denison*, Q. B., 4 L. C. J., p. 42. And the parties cannot, by consent, desist from a judgment which had been rendered by mistake dismissing a plea, in order to have the decision of the Court on the merits. *Clarke & al. vs. Clarke & al.*, S. C., 2 L. C. J., p. 209.

CONSIDERATION :—Liability on a bail-bond is valid consideration for a promissory note, for which the security may sue so soon as he is troubled on the bond and before he has paid any thing to the bondholder. *Perry vs. Milne*, S. C., 5 L. C. J., p. 121.

" :—*Vide* ASSIGNMENT.
" :— " MARINER'S CONTRACT.
" :— " PROMISSORY NOTE.

CONSIGNEE :—1. Before the passing of the 10 & 11 Vic. c. 10, [Con. Sts. C., cap. 59,] the consignee of goods could not pledge them for his own debt; and the consignor might revendicate them in the hands of a third party. *Rostron & al. vs. Walker*, S. C., 1 L. C. R., p. 318.

2. A consignee is not obliged to discharge a cargo of grain, according to the provisions of chapter 60 Con. Sts. of L. C., at a greater rate than 2,000 minots *per diem*. *Marchand vs. Renaud*, S. C., 6 L. C. J., p. 119.

" :—*Vide* DELIVERY.
" :— " FREIGHT.
" :— " INSURANCE.

CONSOLATO DEL MARE :—The 148th and 149th *capitoli* of the *consolato del mare* declare that the sale of the ship, or the change of the master operates as a discharge of the seamen. *The Scotia-Risk*, p. 166, S. V. A. R.

" :—*Vide* OWNERS.
" :— " SALE OF SHIP.

CONSTRUCTION :—*Vide* MARINERS' CONTRACT.

CONSOLIDATED STATUTES :—*Vide* CONVICTION.

CRIMES AND MISDEMEANORS :—12 & 13 Vict. c. 96, makes provision for the prosecution and trial in Her Majesty's colonies of offences committed within the jurisdiction of the Admiralty. *Vide* also 18 & 19 Vic. c. 91, s. 21.

CONTEMPT :—A frivolous opposition made to retard a judicial sale is a contempt of Court, and a rule will be granted where from several such oppositions having been produced, it may be presumed that a contempt is intended. *Thomas vs. Pepin and Pepin*, C. C., 5 L. C. J., p. 76. As proceedings for

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contrainte par corps for contempt the party should have notice of the motion for a rule *nisi*.* *Roy vs. Beaudry, and Lafrenière dit Guyon*, S. C., 6 L. C. J., p. 85.

" :—*Vide* CAPIAS AD SATISFACIENDUM.

" :— " CERTIORARI.

" :— " TRESPASS.

CONTENANCE :—*Vide* DECRET.

CONTESTATION :—*Vide Hart vs. Vallières*, 2 Rev. de Rég., p. 319.

CONTRACT :—1. If the terms of a contract be altered by two other deeds stipulating for its resiliation, one of which provides for the payment of a penalty by the party seeking its resiliation, and if one of the parties, with the consent of the other, transfers his rights to a third party, alluding in general terms, to the right to resiliate under one of such deeds, without specifying which, and without any reference being made to a penalty, such third party is relieved from any liability for such penalty. *Monaghan vs. Benning*, S. C., 1 L. C. J., p. 150.

2. A contract made by certain parties as *mandataires* of certain others cannot be sued on by the former. *Mandigo & al. vs. Hoyle & al.*, S. C., L. R., p. 4.

3. A contract made by an agent in his own name may be sued on by the principal. *Read vs. Birks*, C. C., 2 L. C. J., p. 161.

4. When goods are purchased by a party with a view to furnish them to persons about to enter into partnership to trade therewith, and where the firm have obtained them under agreement with the purchaser, there is no liability in the firm to pay the vendor the price of the said goods, there being no privity of contract between them. *Ducasse & al., vs. Beaugie & al.*, S. C., 13 L. C. R., p. 13.

CONTRACT OF MARRIAGE :—*Vide* ASSIGNMENT.

" " " :— " COMMUNAUTÉ.

CONTRACTORS :—A party who contracts for work to be done for him will not be held responsible for materials furnished by third persons for such work, unless it appear that the sale of such materials has been made to him. *Bridgman and Ostell*, Q. B., 9 L. C. R., p. 445.

" :—*Vide* RAILWAY CASES.

CONTRAINTE PAR CORPS :—1. A rule for *contrainte par corps* against a woman *sous puissance de mari*, though *séparée de biens* from her husband, will be rejected, unless notice of the rule be given to the husband. *McDonald vs. McLean and Wilson and Doyle*, S. C., 11 L. C. R., p. 6.

2. A *contrainte par corps* against a married woman upon a judgment for principal, interests and costs cannot be obtained. *Scott & al., vs. Prince*, S. R., p. 467. And in any case the allowance of the *contrainte par corps après les quatre mois* is discretionary with the Court. *Woodington vs. Taylor*, S. R., p. 470, *in note*. And so also in *Gogy vs. Donaghue*, S. C., 9 L. C. R., p. 274. And where the formalities prescribed by the judgment have not been complied with, the defendant will be discharged from custody on motion. *Ib.*

* A similar decision was given in the case of *Leverson & al. vs. Cunningham and Boston*.

CONTRAINTE PAR CORPS :—

3. A writ of *habeas corpus* cannot be granted to liberate a prisoner charged with process in a civil suit, even though the writ of execution in virtue of which he was arrested be irregular. Ex parte *Donaghue*. In Chambers, 9 L. C. R., p. 285.

The writ of *habeas corpus* is not granted for the purpose of reviewing the judgments of a civil court, or of questioning the regularity of its proceedings, either before or after judgment, but merely to keep courts within their jurisdiction, and not to correct their errors. *Ib.*

And even if the writ of arrest be irregular, yet if it does not appear to be out of the scope of the jurisdiction of the court from which it issued, it cannot be declared to be void, and the prisoner consequently cannot be liberated on a *habeas corpus*. *Ib.*

Where application for a writ of *habeas corpus* is made to a Judge in Chambers, and refused, judicial comity will prevent another judge from entertaining it. *Ib.*

4. An interlocutory judgment requiring Boston and Coffin, joint-sheriff, to deliver up certain machinery, seized under process of revendication cannot be made executory against Boston alone, he having, since the judgment, become sole sheriff, and the judgment not having been signified to or made executory against him. *McPherson vs. Irwin*, 2 L. C. R., p. 313.

5. The court cannot condemn a person to be imprisoned until he does a specific act, as for instance, to bring back goods that he has carried off, unless there is a special law authorizing it. *Early vs. Moon*, 2 Rev. de Lég., p. 121.

6. The *contrainte par corps* for damages and costs, which might be exercised in virtue of the art. 2, tit. 34 of the Ordinance of 1667, was abolished by the 12 Vic. c. 42, [C. Sts. L. C., caps. 83 and 87.] *Whitney vs. Dansereau*, S. C., 4 L. C. J., p. 211.

7. In the motion for *contrainte par corps* for deterioration of an immoveable property under seizure, under cap. 85, C. Sts. L. C., sects. 29 and 30, it is not necessary that all the terms and expressions of the statute should be included; but the rule must contain them. *Varin vs. Cook et al.*, *and McGinnis et al.*, S. C., 5 L. C. J., p. 160.

" :—*Vide* ACTION EN REDDITION DE COMPTE.
" :— " CAPIAS AD SATISFACIENDUM.
" :— " CONTEMPT.
" :— " CURATOR.
" :— " FOLLE ENCHÈRE.
" :— " GARDIEN.
" :— " SHERIFF.

CONVICTION :—1. On *certiorari* it was held, that a conviction against a bailiff for exacting more than his legal fees, will be quashed on the ground that the magistrate permitted the information to be amended, and because no precise date of the offence was given. Ex parte *Nutt*, S. C., 6 L. C. R., p. 488.

2. And a conviction will be quashed if the summons states no place where the offence was committed, although

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the place appear on the face of the conviction. Ex parte *Leonard*, S. C., 6 L. C. R., p. 480.

3. An information setting out that the defendant had conducted himself in a disorderly manner at a church door by keeping his hat on his head during the procession of the Holy Sacrament, discloses no legal offence, and the conviction for such pretended offence will therefore be quashed. Ex parte *Filiau*, 4 L. C. R., p. 129. And on a *certiorari* a conviction to constitute an offence under the 3rd sect. of the 7th Geo. IV., c. 3, [Con. St. L. C., cap. 22, sect. 3,] providing for the maintenance of good order in churches, the act complained of must have been committed during divine service. Ex parte *Dumouchel*, S. C., 3 L. C. R., p. 493, and Ex parte *Dalton*, *ib.* And a conviction for assault will be quashed, there being nothing alleged to show it was made unlawfully. Ex parte *Holden*, S. C., 6 L. C. R., p. 481. And so a conviction under the 14 and 15 Vic. c. 100, [Con. St. L. C., cap. 6,] for retailing spirituous liquors, and not alleging it to be done "without license," discloses no offence and cannot be sustained. *Woodhouse and* Ex parte *Hogue*, S. C., 3 L. C. R., p. 93.

4. Certainty and precision are required in the statement and description of an offence under a penal statute, and an information charging several offences in the disjunctive is bad. And a confession of the defendant to an information in the above particulars, will not aid or cure this defect, and no conviction can be pronounced. And a conviction must be of the offence charged in the information, and not of a different offence, or of several offences in the conjunctive charged in the disjunctive. And a conviction adjudging the defendant to be guilty of the several offences therein enumerated, and condemning him "for his said offence" to pay but one penalty, is bad. *Hogue and* Ex parte *Monette dit Belhumeur*, S. C., 3 L. C. R., p. 94.

5. A conviction by a Justice of the Peace under "The Lower Canada Municipal and Road Act of 1855," must shew—1st. That the Justice had jurisdiction. 2nd. Whether the road was a front or a by-road, and whether there was a *procès-verbal*. And the condition will be quashed if the complaint be in relation to a road and the conviction relate to a bridge. And a public bridge is any bridge over ten feet in length. And under the said act justices have no jurisdiction for moneys laid out in repairs, but only for the recovery of fines and penalties. *Matte and Brown*, S. C., 11 L. C. R., p. 443.

6. A summons issued under the 4th and 5th Vic. c. 26, for malicious injuries to property, must be upon complaint under oath; and a conviction in which it is stated that the offence complained of was committed "*depuis environ huit jours*" is bad for want of certainty. Ex parte *Hook*, S. C., 3 L. C. R., p. 496.

7. A conviction by the Recorder of the city of Montreal, for a penalty for constructing a wooden building within the city limits, contrary to a by-law of the corporation, will be quashed, no notes of evidence having been transmitted to

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the court above to shew whether the applicant fell within the provisions of the by-law as being a proprietor, or whether, as sworn to in his affidavit, he was merely a workman employed by the proprietor. Ex parte *Ledoux*, S. C., 8 L. C. R., p. 255.

8. The service of a copy of a summons issued by a magistrate, certified by the clerk of the peace, followed by the appearance of the defendant, is sufficient. *Carignan and Montreal Harbour Commissioners*, S. C., 5 L. C. R., p. 479.

9. A complaint may be made, and summons issued for two offences, provided the object be not to arrest the defendant in the first instance. And a conviction for one of such offences, specifying it, is good. *Ib.*

10. It is not necessary in a complaint for breach of by-law to insert the by-law itself, or to make a distinct allegation that it is in force. *Ib.*

11. A case may be returned before one magistrate, and adjourned from day to day before one or more, it being sufficient if the trial and conviction take place before one and the same; but a conviction for two offences inflicting only one penalty is bad. *Ib.*

12. A conviction for one month instead of two months may be bad, inasmuch as a judgment for too little is as faulty as a judgment for too much, and such conviction will be quashed for want of jurisdiction. Ex parte *Slack*, 7 L. C. J., p. 6.

An order may be amended by the S. C. but not a conviction. *Ib.*

No costs are given against a collector of Inland Revenue, prosecuting in discharge of a public duty. *Ib.*

The Judge of the Sessions being vested with all the powers of two Justices of the Peace, by sec. 61, c. 102, and by sec. 82, c. 103, C. S. of C., and by sec. 3, c. 102, of the C. S. L. C., no appeal lies from a conviction rendered by him under c. 6, C. S. L. C. *Ib.*

13. But in another case it was held that an appeal lies to the General Quarter Sessions of the Peace from a conviction rendered by the Judge of the Sessions of the Peace in and for the city of Montreal, under sec. 50, c. 6, Con. St. L. C. *Ex parte Thompson*, 7 L. C. J., p. 10.*

14. In a prosecution for selling liquors without license, it is not necessary to negative the averment that the defendant is not a distiller within the provisions of the 1st sec. of chap. 6 of the Consolidated Statutes of Lower Canada. *Ex parte Moley*, S. C., 7 L. C. J., p. 1.

The allegation that defendant sold by retail, at one time, fermented liquors, in a less quantity than 3 gallons, to wit: 3 glasses of beer, is sufficient and legal, and such an allega-

* This case is important, as it appears Smith, J. held this, as the French version of the Consolidated Statutes did not reproduce the original Statute. In other words, that when the original Statute was at variance with the Consolidated Statutes that the former should prevail. This opinion is supported by the terms of the Statute, ordering a consolidation; but whether it be so or not there is the constitutional weakness in every consolidation which is not passed by Statute but only put into force by Proclamation, that by no terms can Parliament delegate to any branch of the Legislature or to any person whatever the power of making law.

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tion of an offence, committed on a day certain and "at divers times before and after," does not include several offences, it being conformable to the form of declaration given in the said chap. 6 Con. St. of L. C. *Ib.*

By the said chap. 6, the convicting magistrate has a discretionary power of giving any one of the three judgments mentioned in sec. 32, sub-sections 38 and 39, and sec. 40.

And the convicting magistrate has the right to grant costs either upon conviction or dismissal of the prosecution, and even to attorneys. *Ib.*

15. And at Quarter Sessions, it was held in this case, that the transferee of a license must comply with all the formalities required by sec. 16 and sub-section 2, cap. 6, Con St. L. C., before he can exercise the rights granted by such license. *Thompson and Bellemare*, 7 L. C. J., p. 74.

16. A prosecution for selling liquors without license need not be under oath. *Ex parte Cousine*, S. C., 7 L. C. J., p. 112.

17. A Deputy Revenue Inspector may validly sign a plaint or information for selling liquor without a license, Quarter Sessions, *Reynolds and Durnford*, 7 L. C. J., p. 228.

18. A conviction will lie against a partner alone for selling liquor without a license. Quarter Sessions, *Mullins and Bellemare*, 7 L. C. J., p. 228.

" :—*Vide* TAVERN-KEEPERS.

CO-PARTNERSHIP:—*Vide* PARTNERSHIP.

CORPORATION:—1. The bequest of a sum of money to trustees for the benefit of a corporation not *in esse*, but in apparent expectancy, is not to be considered a lapsed legacy. And a similar bequest, to be applied towards defraying the expenses to be incurred in the erection and establishment of a University or College, upon condition that the same be erected and established within ten years from the testator's death, such condition is accomplished if a corporate and political existence be given to such University or College by letters patent, emanating from the Crown, although a building applied to the purpose of such University or College may not have been erected within that period of time. *Desrivières vs. Richardson*, S. R., p. 218. And so in a devise of real estate to a corporation, upon the condition that it should, within the period of ten years, erect and establish, or cause to be erected and established upon the said estate a University or College ; it was held,—that the words erect and establish, &c., extend only to the erection and establishment of the corporation or body politic forming the University or College, and not to the erection of a building in which the University or College is to be established. *The Royal Institution vs. Desrivières*, S. R., p. 224.

2. If a corporation composed of certain trustees, to be subsequently named by the Crown, be established by Statute, the existence of the corporation will commence at the time when the statute was passed, and not at the time when the trustees were named. *Ib.*

3. The head of a corporation may bind the body corporate by any contract from which it may derive a benefit. *Ib.*

CORPORATION :—

4. And corporations are bound by the acts of their agents, in the same way and to the same extent as persons are. *Ferrie and Wardens of the House of Industry.* 1 Rev. de Lég., p. 27.

5. The individual members of a corporation cannot be impleaded in respect of the affairs of such corporation. *The Attorney General, pro Reginâ, vs. Yule & al.*, S. C., 1 L. C. J., p. 289.

6. A corporation duly constituted in a foreign country may proceed for the recovery of its debts in Lower Canada. *Laroque & al. and The Franklin County Bank,* Q. B., 8 L. C. R., p. 328.

7. Generally, a corporation must sue in its own name; and an action in which it purports to be represented by its executive will be dismissed, and plaintiff will not be permitted to amend. *The Corporation of the Parish St. Jérusalem, vs. Quinn*, S. C., 3 L. C. J., p. 234.

8. The Corporation of Montreal is liable for damages caused by the overflowing of street drains, which have become obstructed, and where such overflowing has had the effect of rendering the packages containing the goods unmerchantable; and although the contents themselves be uninjured, damages will be recoverable. *Kingan vs. The Mayor, &c. of the City of Montreal*, S. C., 2. L. C. J., p. 78. And the Corporation of Montreal is also bound to fill up an old water course which does damage to the property of a citizen, within the limits of its jurisdiction. *Voyer, vs. The Mayor, &c. of the City of Montreal* S. C., 1 L. C. J., p. 166. But the Corporation of the City of Montreal is not liable in damages to a person falling into the cellar of a house burned down, and not rebuilt, the lot being uninclosed contrary to the by-law of the Corporation, the cause of such damage being too remote. *Belanger & ux. vs. The Mayor &c. of the City of Montreal*, S. C., 8 L. C. R., p. 228.

9. The Ordinance 2 Vic. c. 26, [Con. St. L. C. cap. 19,] was intended to vest property in religious bodies, and their powers must extend to the performance of acts necessary to the preservation of their rights. *Leslie & al vs. Shaw & al.*, 3 Rev. de Lég., p. 246.

10. A declaration filed in pursuance of the 12 Vic. c. 57, s. 1, [C. Sts. L. C., cap. 69, Sect. 1,] which the parties signed, but to which they omitted to put their seals, is nevertheless sufficient and answers the object of the Statute,—that of making known the names of the persons originally comprising the building society. *The Union Building Society vs. Russell*, S. C., 8 L. C. R., p. 276.

11. The legal existence of a Corporation cannot be questioned by an incidental proceeding such as a plea in a cause, but must be attached by means of proceedings under the 12 Vic. c. 41, [Con. Sts. L. C. cap. 88, *Ib.*]

" :—*Vide* EXPROPRIATION.

CORPORATORS :—*Vide* ACTION EN GARANTIE.

COSTS :—1. An Attorney party in a cause, who appears in person, is entitled to his fees, upon judgment in his favor with costs. *Brown vs. Gugy*, S. C., 11 L. C. R., p. 483.

Costs :—

2. But this was reversed in Appeal. 11 L. C. R., p. 401. And in *Gugy vs. Ferguson*, it was held in the Q. B., that he was not entitled to his fees. 11 L. C. R. p. 409.

3. Plaintiff having brought his action in the Superior term and recovering only for an amount in the competence of the inferior term was condemned to pay defendant costs of the Superior term. *Sanguinet & al vs. Lecuyer*, 1 Rev. de Lég. p. 230.

4. In an action where judgment is rendered for a larger amount than is admitted and tendered by plea, but where the defence is, in the main, sustained, the plaintiff will be condemned to pay the costs of contestation. *Routh vs. Dougall*, S. C., 2 L. C. J. p. 286.

5. The costs of an action *en garantie* will be given against a principal plaintiff suing before the expiry of the delay of payment, when the defendant calls in his *garant formel*. *Aylwin vs. Judah* S. C., 7 L. C. R., p. 128.

6. The words "*depens de l'action*" do not signify the costs of the action as introduced "amount demanded" but only the costs as of the "amount recorded" *Laurier vs. La Corporation du Petit Séminaire de Ste. Thérèse*, S. C., L. R., p. 5.

7. And where the action is brought for a larger sum than £50, and judgment is rendered for £50 and interest, the plaintiff is only entitled to costs as of the first class in Circuit Court, and a motion to revise the taxation of the Prothonotary, awarding costs as of the second class of the Superior Court, will be granted. *Vallée vs. Latouche*, S. C. 10 L. C. R., p. 433.

8. And reversing a judgment of the S. C., 3 L. C. J., p. 46, it was held that a condemnation to pay the costs in the Court below, in a judgment setting aside a verdict and ordering a new trial, means all the costs of the trial by jury, and not simply the costs of the motion setting aside the verdict. *Ouimet & al vs. Papin*, Q. B., 9 L. C. R., p. 268.

9. And in an action of damages for personal wrongs in the Superior Court, where judgment awards only £10 currency and costs, the costs will be taxed as in a case in the Circuit Court of that amount. *Wilson vs. Morris and Ravaria*, plaintiff, *par reprise d'instance*, S. C., 1 L. C. J., p. 266., also *Kerr vs. Gugy*, S. C., 10 L. C. R., p. 478.

10. If an action be settled as to the principal only, upon condition that the defendant shall pay the costs, such action may be returned into Court and proceeded with for the costs only, if such costs are not paid. *Darche & al vs. Dubuc*, 1 L. C. R., p. 238.

11. If it appears that plaintiff and defendant have settled a case betwen them with a view to defraud the plaintiff's attorney of his costs, the action will be dismissed with costs against defendant. *Richards vs. Ritchie & al.*, S. C. 6. L. C. R., p. 98. And so when *distraction de frais* is prayed plaintiff and defendant cannot settle as to costs without the intervention of the attorney. *Stiguy vs. Stiguy & al.*, 2 Rev. de Lég. p. 120. But in *Hébert and La Fabrique de St. Jean*, it was held that where the plaintiff compromises with the de-

Costs :—

fendant, the defendant agreeing to pay the costs of the action, the plaintiff cannot enter his action for the costs. Q. B., 13 L. C. R., pp. 66 & 451.

And the demand for distraction of costs does not take away the plaintiff's right to compromise. *Ib.*

No distraction takes place until ordered by the Court. *Ib.*

12. But were a shipper has taken out an action to revendicate his goods in the hands of the master, who refused to sign the bills of lading, the action of revendication may be returned for the costs although the bills of lading were signed subsequently to the issue of the writ but before its execution. *McCulloch & al. and Hatfield*, Q. B., 13 L. C. R., p. 321.

13. But in a more recent case it was held, and confirmed in appeal, the Court being equally divided, that a plaintiff may personally withdraw an action, in the absence of and without the intervention of an attorney *ad litem*, although the attorney should have prayed for *distraction de frais. Ryan and Ward & al.*, Q. B., 6 L. C. R., p. 201.

14. The amount of costs payable on the amendment of a declaration is in the discretion of the Court. *Daoust vs. Deschamps*, S. C., 4 L. C. R., p. 425. But on amendment after filing of an exception *à la forme* full costs of action will be allowed. *Boudreau vs. Richer*, S. C., 6 L. C. R., p. 474.

15. A plaintiff has no right to demand an attachment for contempt against a defendant, who has been condemned to pay costs, upon an incidental proceeding, and who has failed so to do, but such plaintiff is entitled to demand an execution during the pendency of the case. *Ferguson vs. Gilmour*, S. C., 5 L. C. R., p. 421.

16. Costs in a cause cannot be attached by a creditor, during the pendency of a cause, as belonging to the party, to the prejudice of the attorney. *Gauthier vs. Lemieux*, S. C., 2 L. C. R., p. 273.

17. Costs due in a former action will not entitle defendant to a suspension of proceedings, unless it appear that the causes of action are identical, and that the parties also are identical. *Lalonde vs. Lalonde*, S. C., 1 L. C. J., p. 290. And the non-payment of costs in a former action cannot form the subject of an exception *dilatoire*. *Lynch vs. Papin*, S. C., L. R., p. 27.

18. Costs are not privileged unless the original demand is of a privileged character. *Lalonde vs. Rowley and La Banque du Peuple opposant, and Lafrenaye and Papin*, contesting the report of distribution, S. C., 1 L. C. J., p. 274. 6 L. C. R., p. 192. So in an action for rent a plaintiff has a privilege upon the proceeds of defendant's moveable effects for the whole of his costs, and this privilege entitles him to be collocated, in preference to the claim of the lessor of the house, in which the goods are seized, for rent. *Jervis vs. Kelly*. S. C., 4 L. C. R., p. 75. Also, in a case of *Kerry & al. vs. Pelly & al., and Watson*, Contg., S. C., 6 L. C. J., p. 293, and 13 L. C. R., p. 163. And upon distribution of moneys, attorney of seizing creditor is entitled to fee allowed upon homologation of report. *Ib.* And so in *Mar-*

Costs :—

childon vs. Mooney, S. C., 8 L. C. R., p. 122, it was held, that costs of action, as accessory of the principal, rank before an hypothecary claim, registered subsequently to the obligation for the amount of which judgment has been rendered, but previously to the judgment condemning the defendant to the payment of costs. But in the case of *Morrin vs. Daly*, S. C., 6 L. C R., p. 48, a different rule was followed. But a seizing creditor of a debt of an unprivileged character is only entitled to be collocated, by privilege, upon the proceeds of a judicial sale, for the costs of an ordinary action by default settled at the sum of £4 9s. *Denis vs. St. Hilaire*, S. C., 5 L. C. R., p. 386. But it is said that in case of *Gauthier vs. Blaiklock*, No. 237, in the Superior Court at Quebec, decided on the 9th April, 1855, the plaintiff's attorney was given a privilege for the whole of his costs and the costs of an appeal. S. C., 5 L. C. R., p. 388. And in another case of *Garneau vs. Fortin*, S. C., 2 L. C. R., p. 115, it was held, that a plaintiff has a right to be collocated by privilege for all his costs of suit, when such costs are indispensably necessary to obtain the seizure and sale of the defendant's real estate. And a plaintiff who has taken execution against a defendant and brought his effects to sale has a privilege for all his costs of action and execution according to the class under which his action comes, to be taxed as in a case decided upon the merits *ex parte*, after *enquête*. *Michon vs. Leigh et Gagnon*, S. C., 6 L. C. R., p. 95.

19. The words fee of office do not extend to costs of an action, alleged to have been taxed too high, so as to give ground for an evocation. *Derome vs. Lafond*, S. C., 6 L. C. R., p. 474.

20. A party who desists from a judgment and tenders plaintiff's attorney the amount of damages proved, plaintiffs having no domicile in the country, will be given costs though the judgment desisted from be held to be bad and reversed in appeal; and this though there be no consignation of the money. *Leverson & al. and Boston*, Q. B., 3 L. C. J., p. 223, and 9 L. C. R., p. 238. But where a party is collocated erroneously, *ultra petita*, he must pay the costs of the contestation although on receiving such contestation he at once acquiesced in it, and consented that judgment should be given as demanded in the contestation but without costs. *Adams vs. Hunter and Evans*, S. C., 11 L. C. R., p. 172.

21. And where the appellant fails on all the grounds of his appeal but one, being the rectification of a clerical error of the Superior Court, by which £50 4s. was adjudged instead of £54 4s., the Q. B. will correct the error and condemn the appellant to pay costs. *Levey and Sponza*, Q. B., 6 L. C. J., p. 183.

22. A Revenue Inspector suing in the Queen's name for penalties under the Act 14 & 15 Vic. c. 100, is not liable for costs. *Hogue and Murray*, S. C., 3 L. C. R., p. 287.

23. In a case of *peremption d'instance*, the action will be dismissed, each party paying his own costs. *Fournier vs. The Quebec Fire Insurance Company*, S. C., 6 L. C. R., p. 97.*

* But it has not been so held in Montreal, and in the Queen's Bench it was held that the decision as to costs was discretionary with the Court. Vide *Vo. Peremption d'Instance.*

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24. Where a petitioner for ratification of title has agreed by his deed to pay a sum of money due to a *bailleur de fonds*, an opposition by such creditor will be admitted but without costs. *Lenoir and Lamothe & al.*, S. C., 10 L. C. R., p. 451.

25. When the *moyens* of an opposition are sufficient to cover the conclusions demanded, the opposant will be given the costs of contestation of a report of distribution, and such opposant will not be under the necessity of setting up the fact that the immoveable property was held in common soccage, and consequently not liable to a general hypothec. *Evans and Boomer*, Q. B., 11 L. C. R., p. 465. The case in the S. C. is reported 12 L. C. R., p. 170, under the heading of *The Quebec Building Society vs. Jones* and divers opposants.

26. The costs of the contestation of a registrar's certificate, will be given against the party over-collocated if he has not filed a *remittitur*. *Marois vs. Bernier and Larivière*, S. C., 12 L. C. R., p. 174.

27. Court may exercise a legal discretion as to costs. Costs refused in this case. *The Agnes*, p. 57, S. V. A. R.

28. If a suit be brought by a seaman for wages, a settlement, without the concurrence of the promoter's proctor, does not bar the claim for costs. The Court will inquire whether the arrangement was or was not reasonable and just, and relieve the proctor if it were not so. *Ib.*

" :—*Vide* CERTIORARI.
" :— " CURATOR.
" :— " DISTRACTION DE FRAIS.
" :— " EXHIBIT.
" :— " EXPERTISE.
" :— " HYPOTHÈQUE.
" :— " PLEADING & PRACTICE.
" :— " PEREMPTION D'INSTANCE.
" :— " PROCTOR.
" :— " SECURITY FOR COSTS.
" :— " WITNESS.

COUPE DE BOIS :—*Vide* SERVITUDE.

COURT HOUSES :—*Vide* SHERIFF.

COURT MARTIAL :—*Vide* HABEAS CORPUS.

COURT OF APPEAL :—*Vide* ENQUETE.

CREDITOR :—*Vide* JOINT CREDITORS.
" :— " RESILIATION.

CRIMINAL INFORMATION :—In an application for a criminal information for libel, the court is placed in the same position as a Grand Jury, and must have the same amount of information laid before it as will warrant a Grand Jury in returning a true bill; and a Grand Jury would not be warranted in returning a true bill for libel unless the libel itself were laid before them; and the criminal information must be rejected unless the libel be filed with the affidavit upon which the application is founded. Ex parte *Gugy*, 8 L. C. R., p. 353. And 9 L. C. R., p. 51.

CRIMINAL LAW :—1. The Statute, 14 Geo. III., c. 83, [Con. St. C., c. 13], has introduced into this Province that portion of the Criminal Law of England only which was of universal application

CRIMINAL LAW :—

there, and not such parts as were merely municipal and of local importance. By that statute, the 9 Geo. I., c. 19, and 6 Geo. II., c. 35, which impose certain penalties on persons selling foreign lottery tickets, have been made to form part of the law of Lower Canada. Ex parte *Rousse*, S. R., p. 321.

2. In criminal cases, American authorities will not be received. R. V. Creamer, Q. B., in appeal, Crown side, 10 L. C. R., p. 404.*

3. The punishment prescribed by the Ord. 4 Vic., c. 30, s. 1. [Con. St. L. C., cap. 37, sec. 113], is cumulative, and sentence of imprisonment and fine is to be awarded upon the conviction had against the defendant, in manner and form as enacted by the ordinance. *Reg. vs. Palliser*, Q. B., in appeal, Crown side, 4 L. C. J., p. 276.

4. Trial of *Carroll* for murder. 3 Rev. de Lég., p. 225.

5. Autrefois convict. *Reg. vs. Webster*, C. Cr. Ap., 9 L.C.R., p. 196.

6. Obtaining goods under false pretences. *Reg. vs. Robinson*, C. Cr. Ap., 9 L. C. R., p. 278.

CROSS :—1. A promissory note signed by a cross, in presence of one witness, is good. *Collins vs. Bradshaw*, C. C., 10 L. C. R., p. 366. Also *Anderson vs. Park*, S. C., 6 L. C. R., p. 102. And an endorsement by cross, before witnesses, is valid. *Noad vs. Chateauvert et al.*, 1 Rev de Lég , p. 229.

2. A confession of judgment to which the defendant has set his cross, countersigned by his attorney, *ad litem*, is invalid and insufficient; the defendant must attach his signature to the confession, and, if unable to sign, the confession must be made by a notarial instrument. *McKenzie vs. Jolin*, S. C., 5 L. C. R., p. 64.

3. The payment of money in a non-commercial case may be proved by witnesses who witnessed a receipt signed by the party receiving the money, with a cross, in their presence; and in the examination of such witnesses it is irregular to begin by asking whether the amount had not been paid. *Neveu, père, et al. vs. DeBleury*, S. C., 3 L. C. J., p. 87. And in the same case it was subsequently held, that the payment of a sum of money may be proved by the attesting witness to a receipt, signed with a mark made by the party receiving the money. Q. B., 6 L. C. J., p. 151; also 12 L. C. R., p. 117.

4. A cross or mark may be a *commencement de preuve par écrit*. *Ib.*

CROWN :—*Vide* DAMAGES.

CROWN LANDS :—*Vide* LANDS.

CULLERS: The appointment of a Board of Examiners, under the 6 Vic. c. 7, is dependent upon the appointment of a Supervisor of Cullers under the same act. *The Queen vs. The Quebec Board of Trade*, 3 Rev. de Lég., p. 89.

A labourer counting and sorting deals for his employer is not liable to the fines imposed upon persons culling without being duly authorized to do so. *The Supervisor of Cullers vs. Gagnon*, 3 Rev. de Lég., p. 241.

* V. Ib. p. 450, for rectification of an error in the report of Mr. Justice Aylwin's remarks in this case.

CUMULATION OF ACTIONS:—The cumulation of actions cannot be pleaded by a preliminary plea or exception *à la forme*. *Hunter vs. Dorwin*, S. C., 1 L. C. J., p. 287.

" :—*Vide* ACTION PETITOIRE.

" :— " ACTION POSSESSOIRE.

CURATOR:—1. No action *en revendication* can be maintained by the presumptive heir to the estate and succession of an absentee if he be not curator to the estate of such absentee, or entitled to the possession by an *envoi en possession* or final deliverance of the estate and succession. *Gauvin vs. Caron*, S. R., p. 136.

2. The curator to the vacant estate of an absentee cannot be impleaded, in his quality of curator, for debts due by the absentee. *Whitney vs. Brewster*, S. C., 3 L. C. R., p. 431.

3. A creditor who has obtained a judgment against the curator to a vacant estate can lawfully direct a personal action against the curator to compel him to render an account of his administration. *Valleau vs. Oliver*, S. C., 2 L. C. R., p. 462. But a curator to a vacant estate cannot be sued by a third party to whom he has assigned his claim against such vacant estate, inasmuch as the curator cannot sue himself or be sued by his own assignee. *Tessier vs. Tessier*, S. C., 2 L. C. R., p. 63.*

4. In an action to account, brought by plaintiff as curator to a vacant succession, against the defendant as being in possession of the estate, a plea is unfounded in law which sets forth that the deceased died in the United States and that the estate devolved upon her heirs, there being no vacant succession in this country, and that the plaintiff was named curator without notice, upon a petition of a party not a relative or a creditor of the deceased, nor on the advice of the relatives or creditors of the deceased or of those interested in the estate, and without necessity being shown for such appointment. The defendant in such a case has no right or interest in contesting the quality of the curator on the ground of the objections above mentioned. *Sexton vs. Boston*, S. C., 6 L. C. R., p. 180.

5. A plaintiff who has obtained a judgment against a defendant as curator to a substitution will not be allowed to take supplementary conclusions by petition, setting up a *nulla bonâ* against the defendant *ès qualités* and praying for judgment against the defendant personally. *Warner vs. Gerrard*, S. C., 6 L. C. R., p. 485.

6. A curator to the estate of an absentee, who contests and defends, is *personally* liable for the costs of the plaintiff's action. *Whitney vs. Brewster*, S. C., 4 L. C. J., p. 298.

7. There is no *contrainte par corps* against a curator to a vacant estate who has been ordered, by an interlocutory judgment, to pay into Court what the curator admits to be due, for failing so to do. The Ordinance of 1667 only grants the remedy *par corps* after final judgment. *Wood vs. McLennan*, S. C., 5 L. C. J., p. 253.

" :—*Vide* DECHÉANCE.

" :— " INTERDICT.

* The reporter seems to be at a loss to understand the *motive* of this judgment. It is not obscure. If a curator were allowed to sue himself, as such, there would be no *légitime contradicteur*.

CURATORSHIP:—*Vide* EVIDENCE.

CURÉ:—1. A *curé* who celebrates the marriage of a girl during her minority, without publication of banns and without the consent of her parents, in virtue of a dispensation from his Bishop, is liable for damages for so doing. *Larocque et vir and Michon*, S. C., 1 L. C. J., p. 187. Q. B., 2 L. C. J., p. 267.

2. A *curé* who refuses to baptize the child of one of his parishioners without any just cause will be ordered to do so by the Court; and further, will be condemned to pay damages. *Harnois & Rousse*, C. C., Montreal, No. 1021. Judgment 7 December, 1844.

3. A Bishop of the Roman Catholic Church may name a priest as missionary in a regularly constituted parish, reserving to himself the right of revoking the appointment, in spite of the *arrêt* of the *Conseil d'Etat* of 1679, rendering the *Curés* in Canada *inamovibles*. And a letter from the Bishop to the effect following will not create such priest *curé* of the parish named in such letter, and *inamovible*:—

" Monsieur,—Conformément à l'avis que je vous ai déjà
" donné par ma dernière lettre du 22 Mars dernier,—je vous
" nomme par la présente, jusqu'à révocation, de ma part ou
" de mes successeurs, à la desserte de la cure et paroisse de
" St. Jean Baptiste de Rouville, dont vous percevrez les
" dixmes et oblations, et où vous exercerez les pouvoirs dont
" jouissent les autres curés du diocèse. Vous serez rendu à
" votre nouveau poste au plus tard pour le 27 du présent
" mois, qui sera le dernier dimanche d'Avril courant.

" (Signé,) † Jos. Ev. DE QUEBEC.

" A Monsieur LOUIS NAU, Prêtre."

Nau and The R. C. Bishop of Montreal. Judgment 19th June, 1838. (Not reported.)

" :—*Vide* DIXMES.

" :— " FABRIQUE.

CURRENCY:—By the statute 14 Geo. III., c. 88, duties on importation of goods into Lower Canada are payable in sterling money of Great Britain, and the uniform standard of value at which foreign coins are to be received is their contents in pure silver, at five shillings and sixpence per ounce. *Gillespie vs. Perceval*, S. R., p. 365. But a tender of the Spanish dollar, at four shillings and sixpence sterling, the value fixed by the Provincial Statute, 48 Geo. III., c. 8, for the payment of all debts and demands, is not a legal tender in payment. *Ib.* The value of the Spanish dollar in sterling money is four shillings and four pence. *Ib.* [Con. St. C., cap. 15, governs the currency.]

No silver coin of the United States of America is legal current money of the Province of Canada. [But see Con. St. C., cap. 15, sec. 10.] *Sauvette vs. Scott*, S. C., 5 L. C. R., p. 337.

A draft drawn in New York and accepted in Montreal, payable generally, the consideration for which is certain goods purchased in New York, is payable in current Canada funds. *Copcutt et al. vs. McMaster*, S. C., 7 L. C. J., p. 340.

CUSTOMARY DOWER:—*Vide* DOUAIRE.

CUSTOM OF TRADE:—A custom of trade is not binding if it be against law. *Jones & al. vs. Young*, S. C., L. R., p. 83.

CUSTOMS DUTIES:—1. By the first or sterling cost in the Provincial Statute, 53 Geo. III., c. 11, imposing duties on the importation of certain goods, is to be understood the price paid for them at the place from whence they were exported, less the discount. And an action on the case might be maintained against a collector of customs who refuses to admit the goods until duties, as calculated upon the price of the goods, without a deduction of the discount, had been paid. *Patersons et al. vs. Perceval*, S. R., p. 215.

2. The *ad valorem* duties chargeable on goods imported into this Provin e shall be charged according to the actual market value thereof in the country where purchased. *Moffatt et al. vs. Bouthillier*, S. C., L. R., p. 48. Confirmed in appeal, 5 L. C. R., pp. 235 and 305.

3. Pure grain spirits, imported from Holland into this country, where it can be proved that they were so imported with the necessary ingredients to manufacture Holland gin, and for that purpose, are subject to the same duty as gin, and the importation of the same as whisky or grain spirits is, in such a case, a fraud upon the Revenue. *Torrance and Bouthillier*, Q. B., 7 L. C. R., p. 106.*

4. An entry at customs, by invoice, in which goods are undervalued is presumed to be a fraudulent entry. *Lyman et al. vs. Bouthillier*, Q. B., 7 L. C. J., p. 169.

And where the owners benefit in any way by the entry, as by taking possession of part of the goods, they cannot question the validity of the entry. *Ib.*

And when the invoice mentions in effect that the goods are consigned to the party making the entry, he will be held to be the consignee of such goods within the meaning of the Customs Acts, even although the bills of lading of such goods affirm that the goods are to be delivered to other parties (the owners) or their assigns. *Ib.*

And when goods have been undervalued in the invoice and entry, for the purpose of avoiding payment of part of the duties payable thereon, they are so completely forfeited that the owners are debarred from disputing the legality or proof of the seizure and sale of the goods. *Ib.*

5. But in estimating for duty at the market value of the place of importation, such value will be taken to be the value of such goods by a gold standard. *Atwater et al. vs. Bouthillier*, S. C., 7 L. C. J., p. 285.

DAM:—*Vide* WATER POWER.

DAMAGES:—1. Where both parties are mutually blameable in not taking measures to prevent accidents, the rule is to apportion equally the damages between the parties, according to the maritime law, as administered in the Admiralty Court. *The Sarah Ann*, p. 294, S. V. A. R.

2. Where a wharf is damaged by the fault of the master of a ship who has brought his vessel in collision with a wharf, the rule of two-thirds new for old may be taken as a guide

* The words of the report—"Day, J., dissenting in favor of the respondent," is evidently an error, respondent being used for appellant.

DAMAGES :—

to the Court in estimating the damages, if the wharf be not in good repair. *The Harbour Commissioners and Grange*, Q. B., 10 L. C. R., p. 259.

3. In an action of damages for breach of a contract to supply hops, payable on delivery, the defendant having refused to accept the hops tendered, the proper measure of damages is the difference of the price stipulated and the market price at the time fixed for delivery; and in such a case the Court cannot order the contract to be executed. *Boswell and Kilborn & al.*, P. C., 6 L. C. J., p. 108, and 12 L. C. J., p. 161.

4. Damages cannot be recovered for the non-execution of a contract for the delivery of certain specific goods which have been destroyed by *vis major*, and which cannot be replaced. *Russell and Levey*, Q. B., 2 L. C. R., p. 457.

5. At the dissolution of a co-partnership A. gave B. two promissory notes, on condition that if B. returned said notes within three weeks he might have his selection of goods to the value of the notes. It was held that B. was not restricted to any description of goods, nor obliged to allege or prove, in an action of damages for the non-delivery thereof, what kind of goods he would have selected. *Foley and Elliott*, Q. B., 9 L. C. R., p. 349.

6. In the case of the non-execution of a contract of lease, the lessee can only recover such damages as are the immediate result of such non-execution, and not the consequential damages which the parties could not have foreseen; and the plaintiff cannot recover as damages, what he might have gained in consequence of an unforeseen event, by sub-letting the building for a purpose foreign to its legitimate use. So the plaintiff having leased a theatre cannot claim in the shape of damages what he might have received from Government for giving up his lease, the Legislative buildings having since such lease been destroyed by fire, and the theatre being the only building fit for the sitting of the Legislature. *Lee vs. The Music Hall Association*, S. C., 5 L. C. R., p. 134.

7. The master of a vessel is responsible for damages to effects carried as a deck load. *Gaherty and Torrance & al.*, Q. B., 13 L. C. R., p. 401. And there is no need that the consignee who sold the damaged goods should give notice of the sale, unless the master alleges and shews that he has suffered by the want of notice. *Ib.*

8. For delay in transmitting cargo to its place of destination. *Orvis vs. Voligny*, S. C., L. R., p. 35.

" :—*Vide Read and Lefebvre*, S. C., L. R., p. 80.

9. Damages cannot be recovered against the proprietor of a farm by reason of explosion in quarrying carried on by his tenant. *Vannier & ux. vs. Larche dit Larchevêque*, S. C., 2 L. C. J., p. 220.

10. A party setting fire to his land at an improper and unfitting time, is liable for damages for the destruction of a thrashing machine, which had been brought on to his land to thrash his grain. *Hynes and McFarlane*, Q. B., 10 L. C. R. p. 502.

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11. Defendants are liable to plaintiff for damages done by water to goods in plaintiff's cellar, the water having entered by means of a hole for a service pipe left open during repairs made by defendants to the street. *Belireau vs. The Mayor &c. of the City of Montreal*, S. C., 6 L. C. J., p. 487. And so where the flooding and damage result from a stoppage in the city drain. *Walsh vs. The Mayor &c. of the City of Montreal*, S. C., 5 L. C. J., p. 335.

12. Damages may be recovered from the proprietor of a toll-bridge for not keeping the road which leads to it in repair. *Grenier vs. Leprohon*, Q. B., 3 L. C. J., p. 295.

13. Damages cannot be recovered by a shareholder in the Grand Trunk Railway Company against the company for refusing to register, during a period of several months, a transfer made by him of his shares as collateral security, and thereby causing him great pecuniary loss, although such transfer be prepared in the form required by the company's charter. *Webster vs. The Grand Trunk Railway Company*, S. C., 2 L. C. J., p. 291. Reversed in appeal, where it was held that such action would lie. Q. B., 3 L. C. R., p. 148. And in the same case it was subsequently held that the true measure of damage is the difference between the price of the stock at the time of such refusal and its price at the time of the subsequent registration of the transfer. Q. B., 6 L. C. J., p. 178.

14. All damages are not personal wrongs under the Stat. 12 Vic. c. 42, [Con. St. L. C., cap. 87, sect. 24,] so as to give *contrainte par corps*. *Whitney vs. Dansereau*, 4 L. C. R., p. 211.

Damages claimed for mutilating a person's horse, are not considered personel wrongs entitling a party to trial by jury. *Durocher vs. Meunier*, S. C., 1 L. C. J., p. 290.

15. Damages for false imprisonment will be allowed although no malice be proved. *Wilson vs. Morris and Bavaria*, S. C., 1 L. C. J., p. 237.

16. In an action of damages, for the improvident issue of a *saisie-arrêt* before judgment, where justification or sufficient probable cause is not made out, but where the conduct was such as to create serious distrust, only nominal damages will be awarded. *Dalpé dit Pariseau vs. Rochon*, S. C., 2 L. C. J., p. 120.

17. In an action of damages, for an illegal arrest, plaintiff has no right to adduce evidence of the pecuniary circumstances of the defendants. *Jordeson vs. McAdams*, S. C., 13 L. C. R., p. 229.

18. An agent who, in that capacity for a third party, caused the illegal seizure of defendant's property may be personally liable in an action of damages therefor. *Warren vs. Noad*, S. C., 8 L. C. R., p. 177.

19. A contractor for the erection of a building is liable to a person for damages, for injuries sustained by such person by a beam failling on him from such building, while he was passing in the public street. And such contractor is liable for the negligence of his workmen employed there; and the

DAMAGES :—

onus probandi that there was no negligence will lie on the contractor. *Holmes vs. McNiven*, S. C., 5 L. C. J., p. 271.

20. And so also a railway company will be held liable for the vice in the construction of the road by which a passenger is killed or injured, and the giving way of the roadway will be *primâ facie* proof of improper construction ; but the defendant may plead and put in issue that the road was constructed by competent engineers and that the damage to the roadway was occasioned by a storm of unusual violence. *The Great Western Railway Company vs. Fawcett and Braid*, P. C., (an appeal from U. C.) 7 L. C. J. p. 141.

21. It is no answer to an action of damages for injury done by the bite of defendant's dog, that plaintiff, at the time he was bitten, was on defendant's property, there being no evidence that plaintiff was a trespasser. *Dandurand & ux. vs. Pinsonnault*, S. C., L. R., p. 80, and 7 L. C. J., p. 131.

22. In an action for damages in consequence of plaintiff's child being severely bitten by defendant's dog, which was trained and kept as a fighting dog, and suffered to go unmuzzled, exemplary damages will be awarded. *Falardeau vs. Couture*, S. C., 2 L. C. J., p. 96.

23. The Mayor and Corporation of Montreal are not liable in an action brough by a person who has been beaten during a riot, to recover damages for bodily injuries received and for loss of wearing apparel on his person at the time. *Drolet vs. The Mayor &c. of the City of Montreal*, S. C., 1 L. C. R., p. 408. But in the case *Carson & al. vs. The Mayor &c. of the City of Montreal*, S. C., 9 L. C. R., p. 463, it was held that the defendant is liable for damages occasioned by a mob riotously entering into the house of the plaintiff in the city, and breaking furniture and windows, and spilling liquor. And the Corporation of the City of Montreal is liable for loss occasioned by the burning of property within the city by persons riotously assembled therein. *Watson and The Mayor &c. of the City of Montreal*, Q. B., 10 L. C. R., p. 426.

24. Parties present in the midst of a tumultuous assembly congregated by plot, are responsible for the damages caused by such assembly, even although they take no active part in the trespass. *Nianentsiasa and Akwirente & al.*, Q. B., 4 L. C. J., p. 367.

25. Damages cannot be recovered from a magistrate, for injuries caused by the firing of troops under the order of such magistrate, if it be made to appear that though there was no necessity for firing, yet the circumstances were such that a person might have been reasonably mistaken in his judgment as to the necessity of such firing. *Stevenson vs. Wilson*, S. C., 2 L. C. J., p. 254.

26. Damages awarded to a steward for assaults committed upon him by the master of the ship without cause. *The Sarah*, p. 89, S. V. A. R.

Those who have the command of ships are not, under the colour of discipline, to inflict unnecessary, wanton, and unlawful punishment upon those under their control. *Ib.*, p. 81, (in note.)

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27. Responsibility of master for any abuse of his authority at sea. *The Friends*, p. 118, S. V. A. R.

Suit for personal damage by a passenger against the master. *Ib.*

28. Suit for personal damage by a cabin passenger against the master for attempting to exclude him from the cabin. *The Toronto*, p. 170, S. V. A. R.

29. Suit for, by a mariner against the master, dismissed. *The Coldstream*, p. 386, S. V. A. R.

30. Damages for bodily injury cannot be recovered *in futuro*, without a specific proof of the extent to which the person of the party to make a livelihood has been thereby impaired. *Marshall vs. The Grand Trunk Railway Company*, S. C., 1 L. C. J., p. 6. But in another action of damages against a railway company for negligence by which a man was killed, the jury may accord the widow and the next of kin damages as a *solatium* for the bereavement although there be no evidence of the value of the life of the person killed. *Ravary & al. vs. The Grand Trunk Railway Company of Canada*, Q. B., 6 L. C. J., p. 49.

31. In an action of damages, defendant may appear and plead even after a delay of five months and after service of interrogatories *sur faits et articles* and although his failure to appear was attributable to his own fault. *Hayden vs. Fitzsimmons*, S. C., 1 L. C. J., p. 9.

32. In an action for rent brought by the Crown, the defendant may set up in compensation damages for non-fulfilment of the contract inasmuch as he did not get possession of the premises at the time promised. *Belleau and The Queen*, Q. B., 12 L. C. R., p. 40.

33. In an action of damages by A., for delivering stores to B., the latter cannot offer in compensation damages alleged to have been incurred, on the buildings of B.'s house by A. as a sub-contractor under C. *Saucisse & al. vs. Hart*, S. C., 1 L. C. J., p. 190, and confirmed in appeal, 1st March, 1858.

34. The limitation of six months referred to in the statute 7 Vic. c. 44, sec. 26, is applicable to an action of damages brought against the Corporation of Montreal owing to the not having fenced in a strip of land taken from the plaintiff to construct a canal for the purposes of the water works. *Pigeon vs. The Mayor, &c. of Montreal*, Q. B., 9 L. C. R., p. 334, and 3 L. C. J., p. 294.

35. Damages claimed from the Grand Trunk Railway Company, by reason of the alleged negligence of their servants in destroying the rubbish collected on the line of road, being the final act of the construction of a portion of the line of railway, are subject to the prescription of six months under the 8 Vic. c. 25, s. 49, and such prescription is available to the company under the general issue. *Boucherville vs. The Grand Trunk Railway Company*, S. C., 1 L. C. J., p. 179.

36. And in an action for damages by a tutrix to minors in consequence of the death of their father through the negligence of the defendant, the demand is subject to the pres-

DAMAGES :—
cription of one year. *Filiatrault vs. The Grand Trunk Railway Company*, S. C., 2 L. C. J., p. 97.

37. Damages for personal wrongs are not liable to seizure *Chef vs Leonard & al. and Decary & al.*, S. C., 6 L. C. J., p. 305, also 13 L. C. R., p. 74. Nor can the defendant set up in compensation in an action of damages for an illegal arrest moneys due him by plaintiff for rent. *Jordeson vs. McAdams*, S. C., 13 L. C. R., p. 229.

" :—*Vide* ACTION EN GARANTIE.
" :— " APPRENTICE.
" :— " BILL OF EXCHANGE.
" :— " CARRIERS.
" :— " COMPENSATION.
" :— " CORPORATION.
" :— " CURÉ.
" :— " PRESCRIPTION.
" :— " PRIVILEGED COMMUNICATION.
" :— " SAISIE-GAGERIE.
" :— " SLANDER.
" :— " TRESPASS.
" :— " VENDEE.

DEBENTURES :—HYPOTHÈQUE.

DEBITEURS SOLIDAIRES :—1. Joint and several debtors, sued under the same writ, are not liable for the litigious costs created by one of them, against their common creditor, and the others although represented by the same attorney are not supposed to be aware of the incidents and proceedings of one of them, unless they are signified to them, and the signification of an appeal to their common attorney is not sufficient. *Boucher and Latour & al.*, Q. B., 6 L. C. J., p. 269.

2. Joint debtors, sued under one writ, may be condemned jointly and severally in costs. *Perkins vs. Leclaire*, S. C., 7 L. C. J., p. 78.

" :—*Vide Laberge vs. de Lorimier*, S. C., L. R., p. 87.

DEBT NOT DUE :—*Vide* SAISIE-ARRÊT.

DECHÉANCE :—Where an estate is claimed *à titre de déchéance* or *à titre de bâtardise* by the Crown, the creditors of the estate have a right to make good their claims, by proceedings for an account against the curator of the estate, before it can be placed beyond their reach by a transfer to the Crown. *The Attorney General, pro Reginâ, vs. Price and McGill & al.*, S. C., 9 L. C. R., p. 12.

DECLARATION :—In case of an attachment under the 177th article of the custom, the declaration may be served at the Sheriff's office. *Sinclair vs. Ferguson*, S. C., 2 L. C. J., p. 101.

" :—*Vide* PLEADING & PRACTICE.
" :— " TIERS-SAISI.

DECLARATIONS IN ARTICULO MORTIS :—*Vide* EVIDENCE.

DECLINATORY EXCEPTION :—*Vide* PLEADING & PRACTICE.

DÉCONFITURE :—The transfer of notes delivered by a party *en déconfiture* is valid. *Huchinson vs. Gillespie*, 3 Rev. de Lég., p. 427, 4 Moore's R. p. 378.

" :—*Vide* HYPOTHÈQUE.
" :— " LEASE.
" :— " PROMISSORY NOTE.

DÉCRET:—1. A petition *en nullité de décret* filed by a plaintiff on a sale of immoveables, will be dismissed on exception *à la forme*, by an *adjudicataire*, considering that the *adjudicataire* is not a party in the *instance*, and that he could not legally be brought into the cause by a notice. *Joseph vs. Brewster and Huldane*, S. C., 6 L. C. R., p. 486.

2. The deficiency in extent of land sold by *décret* gives a right to the *adjudicataire* to require a diminution in the purchase money but not to seek the nullity of the sale. This diminution will be in proportion to the price. *Grey vs. Todd & al.*, 2 Rev. de Lég., p. 57. But it would be otherwise if the lands were described as having buildings on them, when in reality there were none. *Lloyd vs. Clapham*, 2 Rev. de Lég. p. 179.

3. When, at a sale of property taken in execution, the sale is stopped by the Sheriff, the last and highest bidder at the period does not become the *adjudicataire* of, or acquire any right to, the property put up, although the Sheriff may have acted illegally in discontinuing the sale. Nor can there be any sale unless the bidding has been accepted, by the knocking down of the hammer or some act equivalent thereto; nor can a defendant, by opposition, stop the sale of his property, on the ground that the sum bid was not near the value of the premises, unless the plaintiff and the opposants, *à fin de conserver*, consent thereto. *Baker vs. Young & al. and Blackwood*, P. R., p. 26.

4. An action by an *adjudicataire* of real property against a party as plaintiff, *poursuivant le décret*, to recover the value of a deficiency in the extent of land sold, cannot be brought *de plano*, until such deficiency shall have been established in an action to reform the Sheriff's title granted to the *adjudicataire* and correct the description of the quantity of land, to which action the *poursuivant* and the *saisi* must be parties. And until such deficiency be so ascertained, the title granted by the Sheriff operates as a bar to any action merely personal against the plaintiff, *poursuivant le décret*, as having received the proceeds of the sale, and is conclusive evidence of the quantity of land sold and conveyed, as between the plaintiff and the defendant, until it be legally set aside or reformed. *Desjardins vs. La Banque du Peuple*, S. C., 3 L. C. J., p. 75, also 9 L. C. R., p. 108. Reversed in appeal, where it was held that the *saisi* need not be put in the case, and that the creditor who has received the money is obliged to refund the excess. Q. B., 10 L. C. R., p. 325.

DEED:—*Vide* INTERPRETATION OF DEEDS.

DEFAULT:—1. When the defendant in an action begun by *capias ad respondendum* has failed to appear, and default has been entered against him, owing to an accident whereby instructions for the defence of said action were not communicated to defendant's attorney until after the said default, the said default will be taken off and defendant allowed to plead, on motion, supported by affidavit, showing the facts, and that the defendant has a good defence, and on payment by defendant of 50s. costs. *Brisson vs. McQueen*, S. C., 7 L. C. J., p. 70.

2. In the Court of Vice Admiralty proceedings were discontinued where on return of warrant, first default made,

DEFAULT :—

but no prayer for a second default at the expiration of two months from the return of the warrant. *The Friends*, p. 73, S. V. A. R.

" :—*Vide* NEW CONCLUSIONS.

DEFENDANT :—*Vide* ABSENTEE.

" :— " DEFAULT.

" :— " EVIDENCE.

DÉGUERPISSEMENT :—A party who contracts to pay a ground rent for ever "*de payer la rente, à toujours et à perpétuité*," deprives himself of the power of making a *déguerpissement ;* that stipulation being equivalent to the obligation *de fournir et faire valoir*. *Dubois & al. vs. Hall*, S. C., 7 L. C. R., p. 479, and *Hall and Dubois & al.*, Q. B., 8 L. C. R., p. 361.

DELAISSEMENT :—1. The *délaissement* in an hypothecary action may be made at the office of the prothonotary, and notice thereof need not be given to plaintiff. *Greaves vs. Macfarlane*, Q. B., 3 L. C. R., p. 426.

2. A purchaser of immoveable property who has accepted an assignment of the price of sale, cannot set up in answer to the claim of the assignee, a demand *en délaissement* made against him, so long as he is not judicially dispossessed. *LaCombe and Fletcher*, Q. B., 11 L. C. R., p. 38. *

3. A purchaser of real estate who is obliged to *délaisser* property under an hypothecary action may recover back the money paid by him to the vendor ; *Hutchins vs. Dorwin*, S. C., L. R., p. 64, and damages against his *garant* from the period of the abandonment, although the immoveable be not yet seized and although such *garant* was not called in upon original demand. *Dorwin & al. and Hutchins*, Q. B., 12 L. C. R., p. 68.

4. A *délaissement* filed after the expiration of 15 days from the service of the judgment, will not be rejected on motion to that end. *Bélanger vs. Durocher*, S. C., 2 L. C. J., p. 283 ; Q. B., 9 L. C. R., p. 430.

5. A *délaissement* filed with a special condition attached is null ; but in case of appeal the *délaissement* may be properly put in after judgment in appeal confirming the judgment in the Court below. *Metrissé dit Sansfaçon and Brault*, Q. B., 2 L. C. J., p. 303.

DELAY :—*Vide* CORPORATION.

DELIVERY :—1. If property after a sale perfected, but before delivery is burned by accident, the loss falls on the purchaser. *McDouall vs. Fraser*, S. R., p. 101.

2. The actual possession by the purchaser of a certain quantity of timber amounts, in law, to a delivery, though the timber has not been culled and counted. *Levey vs. Turnbull & al.*, 1 L. C. R., p. 21. But on the sale of goods by admeasurement, which goods happen to be destroyed by fire, the loss is upon the seller ; stipulations of admeasurement at a certain place and time render the sale conditional and incomplete until the occurrence of these events, and in the meantime, the risk (*periculum rei venditæ*) must be borne by the vendor. *Lemesurier & al. vs. Logan & al.*, 1 Rev. de Lég., p. 176, also 6 Moore's Rep., p. 116. And so where the

* An hypothecary action is not a *trouble de droit*.

DELIVERY :—

defendant undertook to deliver, and the plaintiff agreed to receive, 14,000 feet birch timber, merchantable and averaging a certain size, the said timber to be piled on the defendant's wharves during the winter of 1844-5, and to be delivered as required by the plaintiff, during the ensuing season of navigation. To meet such order a quantity of timber was piled upon the wharves of the defendant and was destroyed by fire, during the winter, before it had been measured as between the plaintiff and the defendant, and it was held, that there had been no delivery of timber to plaintiff, because there had been no measurement, and because it was not ascertained that the timber was of the proper size or quality. *Levey and Lowndes*, S. C., 2 L. C. R., p. 257.

3. Merchandize imported from abroad is delivered to the consignee when placed on the wharf, and is from thence at his own risk, provided notice of the arrival of his goods has been given him. *Rivers vs. Duncan*, S. R., p. 139. And where goods deliverable to "order or assigns" are landed from a vessel after the expiration of the delay allowed by law to the importer to land the same, the captain is not liable for any damages that may accrue thereto, after they have been placed on the wharf. *Scott vs. Hescroff*, S. C., 2 L. C. R., p. 477; Q. B., 5 L. C. R., p. 274.

4. Where it is agreed that a raft is to be delivered to the advancers at a boom and by the laches of the contractor an actual delivery takes place before its arrival there, a sufficient possession is established to destroy the lien of the raftsmen for their wages. *Ruel vs. Henry and Anderson & al.*, C. C., 12 L. C. R., p. 149.

5. Where three chains are attached together for the purpose of delivery, they compose one whole, and delivery of any one will not be held made until all three shall have been delivered. *McMaster and Walker & al.*, Q. B., 8 L. C. R., p. 171.

6. The placing goods on board of a schooner addressed to his creditor without a previous sale or agreement to that effect, does not transfer the property nor the possession to the consignee, and such goods may be legally seized as the property of the consignor, notwithstanding the bill of lading signed by the master of such schooner, if such seizure take place before the goods reach the hands of the consignee. *Frechette vs. Corbet*, S. C., 5 L. C. R., p. 211.

A. sells a quantity of timber to B., a part of the price only to be paid on delivery of the timber, A. makes a delivery and B. omits to pay any part of the price. Thereupon A. brings an action to rescind the contract of sale and by process of *saisie revendication* attaches the timber. This action was maintained, and the timber so far as it could be identified was ordered to be restored. *Moor & al. vs. Dyke & al.*, S. R., p. 538.

7. It is not competent for the vendor of goods, bargained and sold for cash and not delivered in consequence of the non payment of the purchase money, to sue for the price. *Gordon vs. Henry*, S. C., 3 L. C. J., p. 166.

DELIVERY :—

8. Merchandize, weighed, measured and paid for, may be seized as the property of the vendor. *Nesbitt and the Bank of Montreal*, Q. B., 9 L. C. R., p. 193.

" :—*Vide* DONATION.

" :— " FREIGHT.

" :— " SALE.

" :— " TIMBER.

DÉLIVRANCE DE LEGS :—1. A common legacy vests in the heir at law, on the principle that "*le mort saisit le vif*," and he is not divested of the same until *délivrance de legs* has been obtained. *Campbell vs. Shepherd*, S. R., p. 138. And so also it was held in *Holland vs. Thibaudeau*, S. C., 4 L. C. R., p. 121. But in the case of *The Royal Institution vs. Desrivières* it was held, that to maintain a petitory action against a residuary legatee, a *délivrance de legs* from the heir at law is not required; the Quebec Act and the Provincial Statute, 41 Geo. III., c. 4, s. 1, [Con. St L. C., cap. 34 sec. 2,] having, as respects testementary donations, in cases where the heir at law has been entirely excluded from the succession by will, abrogated the rule of the French law *le mort saisit le vif*. S. R., p. 224.*

2. When a universal legatee has possession of the whole of the testator's estate as executor and the executorship is finished, it is not competent for a debtor of the testator, sued by such universal legatee, to plead that there has been no *délivrance de legs*. *Duclos vs. Dupont*, S. R., p. 236 in note.

And the *non délivrance de legs* is only a plea in the mouth of the heir. *Ib.*

3. In the case of *Robert et al vs. Dorion et al.*, it was held by the majority of the Court, that the effect of a universal legacy is to render *délivrance de legs* unnecessary. S. C., 3 L. C. J., p. 12.†

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* It is suggested by the reporter, that the exception of *non-délivrance de legs* is only a good plea in the mouth of the heir. But this suggestion does not reconcile the different *arrêts*; indeed, in rendering judgment in the case of *Holland and Thibaudeau*, Mr. Justice Day expressly condemned the dictum of Mr. Justice Pyke in this case. The subsequent judgment in *Robert et al. vs. Dorion* establishes another distinction, which differs as much from the suggestion of the reporter of this case as it does from the admitted rule of the old law. It, however, agrees with the holding of this case, as reported; the want of necessity of the *délivrance de legs* turning completely on the will establishing a universal legacy.

† Mr. Justice C. Mondelet, while agreeing with the result of the judgment as to the necessity of *délivrance*, said that he thought it was immaterial whether the *legs* was *universel* or *particulier*. It should be remarked that, by "universal legacy," the Court evidently intended to express a legacy of all the property of the testator, so that there should be no room for the *légitime*, and not any technical distinction between the *titre particulier* and the *titre universel*. Of course, the argument which Mr Justice Badgley draws from the absence of *légitime* would not apply where there is only a *legs partieulier*, for, in such a case, the *légitime* would still subsist for the remainder, unless it be admitted that the case of *Quintin Dubois et al and Girard et al.* (as reported in the vol. 8, L. C. R., for the holding of the report in the *Jurist* is evidently inexact) decides, that where there is a will at all the *légitime* is excluded.

This varying jurisprudence it is impossible to reconcile. It indicates merely an extreme hostility to the law of *délivrance*, and this hostility takes its rise in the occasional inconvenience caused by the frivolous exception that there has been no previous *demande en délivrance de legs*. This sentiment is natural enough; but if felt so strongly when this exception is set up, how much more strongly should it manifest itself in the endless objections to procedure which are urged in the practice court? Is it not notorious that nine-tenths of the objections there raised are so solely for the purposes of delay? Still, no one would propose to make the rules of practice merely arbitrary, or to reverse the rule "*la forme emporte le fond*." That this is the real explanation of the diversity of opinions expressed on the Bench becomes clear when we look at the unsubstantial reasons urged to defeat the exception. In the case last mentioned, for instance, one of the Judges says: that the unlimited right to bequeath by will leaves us in the same position as in the *pays de droit écrit*; and, therefore, he concludes that *délivrance* is no longer necessary. Now, without stopping

DÉLIVRANCE DE LEGS :—

4. But in the case of *Blanchet and Blanchet* it was held, in the Q. B., that since the passing of the Act 41 Geo. III., ch. 4, *délivrance de legs* has ceased to be necessary. 11 L. C. R., p. 204.

DEMURRAGE :—Without an express agreement, demurrage cannot be charged by the master of a vessel for delay in unloading by consignee. The proper remedy is an action of damages, but such damages must be specially proved. *Marchand vs. Renaud*, S. C., 6 L. C. J., p. 119.

DEPLACEMENT :— *Vide* LEASE.

" :— " MOVEABLES.

DEPOSITION :—1. The deposition of a witness, not certified by the Prothonotary, cannot be read. *La Banque du Peuple vs. Gugy*, S. C., 9 L. C. R., p. 484.

2. Marginal notes, not certified, do not annul the deposition ; but the omission that the witness is not allied to either of the parties, within the prohibited degrees, does. *Lauzon vs. Stuart*, S. C., 4 L. C. J., p. 126.

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to enquire whether the Statute 41 Geo. III. and the Quebec Act have put us exactly in the same position, as regards wills, as those who lived *en pays de droit écrit*, it does not seem to me to be a necessary consequence of that legislation, that all our law, depending on our previous position, but not mentioned in the Acts of the Legislature by which it was changed, should be abrogated. That only can be deemed abrogated, by implication, which is incompatible with the more recent legislative Act. Again, the rest of the Judges in this case seemed to think that the *demande* was unnecessary, there being no *légitime* where the testator had bequeathed all his property, and the rule, *cessante causa cessat effectus*, was invoked. The rule is a sound one ; but it must be borne in mind that . . . . . *quæ simul cum in aliquo vitiata est, perdit officium suum*. Now the question is, simply, has the cause ceased, that is, the whole cause, or all the causes? It may at once be admitted, that where there was a *légitime* there was necessarily and evidently an additional reason for requiring the *délivrance* ; but I cannot so readily admit that it was the only one. *Le mort saisit le vif*—one of the fundamental principles of our customary law—a rule for which considerations of public order plead most eloquently, is not incompatible with the unlimited right to bequeath ; it is not, therefore, abolished or in any way modified by the statute above mentioned. It would not be difficult to suggest fanciful cases, resulting in breaches of the peace, which might arise from the disuse of the *demande en délivrance de legs*, but I shall only allude to one. It is where the terms of the will raise a doubt as to whom the testator indicates. The following case, which I found in manuscript in an old folio, furnishes an example of a case of this kind. It has no date, but I copy the whole ;

" ROLLE DU LUNDI."

" La Dle. Dubreuil avait fait un legs aux pauvres de la paroisse St. Sulpice.

" Le Curé forma la demande en délivrance de legs ; mais l'Hôpital-général le lui disputa.

" Les moyens des administrateurs étaient que par l'Edit de la fondation de l'Hôpital-général tous legs faits aux pauvres lui appartenaient : ils invoquèrent plusieurs arrêts confirmatifs de ce privilége.

" Mr. Doucet repoussa ce système en soutenant que ce n'était pas dans l'espèce présente les pauvres en général qui étaient légataires, mais les pauvres de St. Sulpice : c'est-à-dire, les pauvres quêteux et malades.

" M. Segnier adopte ce dernier système. Les Curés, dit-il, sont les canaux par lesquels les âmes compatissantes font circuler leurs libéralités dans le sein de leurs frères indigents. Combien de tarit les la charité ingénieuse ne soutient-elle pas par ce moyen, qui n'oseraient, sans cette voye, ni demander ni recevoir : tarir une source, si précieuse, ce serait, porter le coup le plus funeste à la société, un cri général s'élèverait de tous les cœurs, et la patrie éplorée gémirait sur les désordres qu'un système aussi bizarre ferait éclorre . . . .

" Arrêt du 2 Mai qui ordonne la délivrance de legs aux pauvres de St. Sulpice."

It is always advantageous to trammel the litigious suitor, but even that may be accomplished at too great a cost. In making these remarks, it must, of course, be understood that the object is not to criticise the judgment in the case of *Robert* and *Dorion*, as a whole, which appears from other considerations to be correct, but the motive of the particular holding as reported.

In a case of *Blanchet et al.* and *Blanchet*, being an action by a legatee of the whole succession of a testator, *en délivrance de legs*, against the heirs at law, the defendants pleaded that the action was idle, no *délivrance* being necessary ; but the Superior Court, sitting at Quebec, was against them. The respondents, Plffs. en del. de legs in their *factum*, have, with much aptness, thus placed the question ; " . . . . *il ne s'agit pas seulement de l'envoi en possession, mais de la preuve de la validité du titre du légataire, de la reconnaissance du testament, contradictoirement avec l'héritier.*" But in appeal this judgment was reversed. *Vide Vbo.* DÉLIVRANCE DE LEGS, No. 4.

DEPOSITION :—

3. The omission of the words "*y persiste*" at the end of a deposition is not fatal. *Carden et al. vs. Finley et al.*, S. C., 3 L. C. J., p. 232.

DEPUTY-SHERIFF :—The children of the Deputy-sheriff are not liable to the sheriff in an action to account for moneys received by their father, in his capacity of deputy-sheriff. *Perry & Guay*, P. C., 2 Rev de Lég., p. 327.

DESAVEU :—1. One of two co-executors cannot bring an action for the estate, either in his own name or in the names of both, without concurrence of the other *Clement vs. Geer*, L. R., p. 23, and 4 L. C. R., p. 103.

2. A party who excepts in the form of a *désaveu*, must express that the *désaveu* is made by himself personnally, with the aid of his attorney, or by his *fondé de procuration*. *Hart vs. Hart*, S. C., 1 L. C. R., p. 307.

3. The action *en désaveu* may not be returned before the regular day of return, unless notice be given to the defendant *en désaveu*; and the action *en desaveu* will not be received if the principal cause to which it refers be *en délibéré*. *La Société de Construction Canadienne vs. Lamont gne*, and the said plaintiff *en désaveu vs. Lafrenaye*, S. C., 3 L. C. J., p. 235.

" :— *Vide* SUBSTITUTION OF ATTORNEY.

DESCENT :— *Vide* DOUAIRE.

DESCENTE SUR LES LIEUX :— *Vide* Robert vs. Danis, 11 L. C. R., p. 74.

DESTITUTION DE TUTELLE :— *Vide* ACTION.

DESUETUDE :—The mode of abrogating or repealing statute law by desuetude, or non-user, is unknown in the English law. *The Mary Campbell*, p. 222, S. V. A. R.

DETENTION :— *Vide* WAGES.

DEVISE :— *Vide* ALIEN

" :— " CORPORATION.

DISCRETION :—What is understood by the term "discretion" which Courts are said to exercise. *The Agnes*, p. 53, S. V. A. R.

DISCUSSION —In an action against sureties on a bail bond in appeal the absence of any allegation to the effect that the goods of the principal debtor have been discussed, cannot be raised by a *defense en droit*. *Thorn vs. McLennan & al.* 9 L. C. R., p. 403.

DISRATING :—1. The power of the master to displace any of the officers of the ship is undoubted, but he must be prepared to shew that he had lawful cause for so doing. *The Sarah*, p. 87, S. V. A. R.

2. The party discharged from his office is not bound to remain with the ship after her arrival at the first port of discharge. *Ib.*

DISTRACTION DE FRAIS :—1. When *distraction de frais* is prayed by the action, the plaintiff and defendant cannot settle as to costs without the consent of the attorney. *Stuguy vs. Stuguy & al.*, 2 Rev. de Lég., p 120. But in *Ryan and Ward & al.*, Q. B., 6 L. C. R., p. 201, it was held (the Court being equally divided) that plaintiff may personally withdraw an action without the intervention of the attorney, although he may have prayed distraction of costs. And

DISTRACTION DE FRAIS :—
demand for *distraction de frais* in an action not returned, can produce no legal effect in favor of the attorney. *Rolland vs. Larivière*, S. C., 1 L. C. J., p. 82. But it is otherwise if the action have been returned. *Charlebois vs. Coulombe*, S. C., 7 L. C. J., p. 300.

2. If *distraction* be not demanded when the judgment is pronounced, it cannot be so afterwards, without the presence of the parties. *Ireland vs. Stephens*, 2 Rev. de Lég., p. 62.

3. A motion made in the Court of Appeal for *distraction* of the costs incurred in the S. C., will be granted. *Converse and Clarke*, Q. B., 12 L. C. R., p. 402.

" :—*Vide* COSTS.

DISTRIBUTION :—1. In preparing a report of distribution, the prothonotary is bound to assume that the allegations of an uncontested opposition are true, and frame the report accordingly. If there is error, the report may then be contested ; but if the report be wrong, owing to unfounded allegations of fact in the opposition, then the opposition must be contested. *Doutney vs. Mullin*, Q. B., 13 L. C. R., p. 245.

2. In certain cases the Court may overlook the mistake as to form in contesting the report instead of the opposition. *Ib.*

3. The report of distribution cannot be contested after the delay fixed by rules of practice, even where a special case is shewn, supported by affidavits. *Forsyth vs. Morin & al. and others* oppts., S. C., 2 L. C. J., p. 59. But in the case of *Woodman vs. Letourneau and Letourneau*, S. C., 3 L. C. J., p. 27, it was held that with the permission of the Court, on cause shewn, an opposition *afin de conserver* might be filed at any time before the homologation of the report of distribution. And in the case of *Prevost vs. Delesderniers and Frothingham*, S. C., 3 L. C. J., p. 165. it was held, that the contestation of a judgment of distribution will be permitted at any time before its homologation, on cause being shewn and payment of costs. And so also in *Clapin vs. Nagle and Nagle*, S. C., 4 L. C. J., p 286. But in *Ramsay vs. Hitchins and Ramsay*, S. C., 4 L. C. J., p. 285, it was held that where the omission was not due to the oversight of the attorney, the Court will not allow the opposition to be filed so as to disturb the parties collocated, but will admit it so as to give the new opposant the moneys not distributed.

4. It is not necessary for an opposant who contests a collocation to the prejudice of another opposant, to set up in his *moyens* of contestation, his own title or interest to or in the proceeds of the sale of the lands, collocation of which proceeds has been made in favor of the other opposant. *Walker & al. and Ferns, and the Montreal Permanent Bdg. So. et al.*, 6 L. C. J., p. 299.

5. When in any contestation of an item of collocation or distribution, the title on which the opposant has been collocated, is contested, costs are given as if the opposition had been contested. And the class of costs is governed not by the amount collocated, but by the amount claimed by the opposant, who is considered as plaintiff, the contesting party being looked upon as defendant. *Doutre vs. Gosselin and Gabouriault*, S. C., 7 L. C. J., p. 290.

DIXMES:—1. In Canada *dixmes* are not subject to the prescription of a year. *Blanchet vs. Martin et al.*, 3 Rev. de Lég., p. 73. And so it was in *Brunet vs. Desjardins*, 3 L. C. R., p. 81. But in *Théberge vs. Vilbon*, S. C., 3 L. C. R., p. 196, it was held, that tithes do not run in arrear—that the action claiming is prescribed by a year, and that the defendant cannot be held to tender the oath that he has paid them.

2. Township lands are not subject to *dixmes*. *Refour vs. Senecal*, C. C., L. R., p. 104.

3. A simple letter missive addressed to the *curé* of a parish by a former *paroissien*, informing the former that the latter had ceased to belong to the Church of Rome, is sufficient to liberate such person from the payment of tithes thereafter. *Gravel vs. Bruneau*, 5 L. C. J., p. 27.

4. *Dixmes* are to be divided between two *curés* in proportion to the time in any year of the incumbency of each. The succession of *curés* is subject to the same division. The ecclesiastical year, as regards *dixmes*, counts from St. Michel, and the *dixmes* are payable at Easter. *Filiatrault vs. Archambault*, S. C., 4 L. C. J., p. 10.

DIVISIBILITY:—*Vide* SERVITUDE.

DOL:—*Vide* ACTION RESOLUTOIRE.

DOMAINE SEIGNEURIAL:—The cultivated domain may be taxed for the purposes of elementary schools. *Caldwell and Les Commissaires d'École de St. Patrice de la Rivière du Loup*, 3 Rev. de Lég., p. 364.

DOMICILE:—1. Service at the house where Defendant, who had gone to California, lived a month before, is bad. *Kelton vs. Manson*, S. C., L. R., p. 79.

2. Service at an hotel where a party, who has no other domicile, generally resides, is not sufficient. *McDonald vs. Seymour*, S. C., L. R., p. 79.

3. Service at the place of business of a co-partnership of an action for lease of business premises is sufficient. *Berthelet vs. Galarneau et al.*, S. C., L. R., p. 109.

4. The domicile of a husband is where he usually resides and carries on his business, notwithstanding his family resides elsewhere. In Lower Canada, the law only recognizes one domicile. *Kay and Simard*, S. C., 1 L. C. J., p. 167.

5. Plaintiff must allege the domicile where he resides and not that of his place of business. *Dinning vs. Bell et al.*, S. C., 6 L. C. R., p. 178. But plaintiffs who are merchants and co-partners, may allege their domicile as being where they carry on their business, and they are not obliged to allege their domicile as being at their place of residence. *Janvrin et al., vs. Lemesurier*, S. C., 6 L. C. R., p. 177.

6. An opposition made through the ministry of an attorney, will not be dismissed on motion, on the ground that it does not contain an election of domicile. The proper way to attach an opposition on the ground that it does not contain an election of domicile, if objectionable, is by exception *à la forme*, and not by motion. *Murphy vs. Moffat and Levey et al.*, S. C., 8 L. C. R., p. 477.

7. Where a defendant is sued in a district other than that of his domicile, on the pretext that the cause of action arose

DOMICILE :—
in such district, the *whole* cause of action must have arisen in the district in which the action is brought. *Senecal and Chenevert*, Q. B., 6 L. C. J., p. 46. Also *Ricard vs. Leduc*, 6 L. C. J., p. 116. So where goods are sold in one district and delivered in another, the purchaser cannot be sued in the district where brought, if it be not the district in which he is domiciled. *Ib.*

" :—*Vide* CERTIFICATE.

" :— " INSCRIPTION DE FAUX.

DONATION :—1. Constant and habitual drunkenness is a good cause for the resiliation of a donation. *Couture vs. Begin*, 2 Rev. de Lég., p. 60. A donation cannot be revoked for ingratitude against a third party, *cessionnaire* of the donee, although the third party have assumed the payment of the charges of the donation. *Martin vs. Martin*, S. C., 3 L. C. J., p. 307.

2. Neglect to pay the arrears of a *rente viagère* is not a cause for the resiliation of a donation subject to such rent. *Ib.*

3. All the parties to a deed of donation must be before the Court before such deed will be set aside. *Ib.*

4. A donation *à titre onéreux* containing charges equal to the value of immoveable property thereby given, cannot be rescinded by reason of the subsequent birth of a child, such donation being in the nature of a sale. *Sirois vs. Michaud*, S. C., 2 L. C. R., p. 177.

5. A donation *onéreuse* gives rise to the payment of *lods et ventes*. *Lamothe et al. vs. Talon dit Lespérance*, Q. B., 1 L. C. J., p. 101.

6. A donation *inter vivos* of real estate, by a father to his minor children tainted with fraud towards the creditors of the donor, is inoperative. *Marrion and Ferrin*, Q. B., 6 L. C. R., p. 404. And a donation from a father and mother to their son, of all their property will be set aside as in fraud of creditors, notwithstanding that the donation is subject to the maintenance of the donors during their lifetime. *Lavallé vs. Laplante and Laplante*, S. C., 10 L. C. R., p. 224.

7. Donation *en fraude V. Desbarats vs. de Sales Laterrière*, 1 Rev. de Lég., p. 417.

8. A donee bound to pay the debts of the donor, may be condemned to pay the amount of a judgment rendered against the vacant estate of the donor, posterior to the date of the passing of the donation, upon the mere production of such judgment, and without it being necessary to prove that the debt existed prior to the passing of the donation, otherwise than by what is stated in such judgment. *Aylwin vs. Allsopp*, S. C., 5 L. C. R., p. 367.*

9. A right reserved by donation *entre vifs*, to be furnished " *avec des vêtements suffisants et convenables pour chaque saison de l'année*," if left in abeyance, cannot afterwards be converted into a demand for money. *McGinn and Brawders*, S. C., 1 L. C. J., p. 176.

* Contrà *Meredith*, J., who was of opinion that the existence of the debt was not proved.

DONATION :—

10. A plaintiff made a deed of donation of real and personal property in favor of his son, subject to a *rente viagère*, and afterwards made another donation of other real property to the donee for life, subject to a *rente viagère*, with a clause that the donation should avail to the donee's wife, so long as she remained a widow, but no longer, and in the latter donation the donor gave a discharge for the rent due and to become due under the first donation. The donee having died, and his widow having remarried, it was held that the donations must be read together, and that the second having become void, the discharge contained in it did not take away the plaintiff's recourse for the rent stipulated by the first donation. *Dalpé dit Pariseau vs. Brodeur et ux*, S. C., 9 L. C. R., p. 56.

11. A *droit d'habitation* stipulated by donation *inter vivos* in favor of donor, on another property to be acquired subsequently by the donee, cannot be invoked by such donor against the purchaser of such other property from the donee. *Verdon vs. Groulx*, S. C., 1 L. C. J., p. 184.

12. A donation can legally and rightfully be revoked before acceptance. *Lalonde and Martin*, S. C., 6 L. C. R., p. 51.

13. A deed of retrocession of a donation made to a minor, and accepted on his behalf by a stranger, is a sufficient ratification of a donation, and the covenants contained in the donation in favor of the donee must be fulfilled. *Judd and Esty*, Q. B., 6 L. C. R., p. 12.

14. A deed of donation of moveables by a marriage contract, does not require an actual delivery. *White vs. Atkins*, S. C., 5 L. C. R., p. 420.

15. The heirs of a donor can invoke the nullity arising out of the want of insinuation of the deed of donation. *Leroux et al., vs. Crevier et al*, S. C., 7 L. C. J., p. 336.

16. A donation *onéreuse* need not be insinuated nor registered. *Lafleur vs. Girard*, S. C., 2 L. C. J., p. 90. *Leroux et al., vs. Crevier et al.*, S. C, 7 L. C. J., p. 336.

17. A donation *onéreuse* of which the charges exceed the value of the thing given, is not null from want of insinuation. *Rochon et ux, vs. Duchêne et ux*, S. C., 3 L. C. J., p. 183. *Poirier vs. Lacroix*, 6 L. C. J., p. 302.

18. The resiliation of a donation of immoveables, of which the donee remains in possession, cannot be opposed as a reason for not paying certain sums of money to the creditors of the donor. *Poirier vs. Lacroix*, S. C., 6 L. C. J., p. 302.

19. A draft of a deed of ratification of a donation, filed by plaintiff as an exhibit, and which (or one to the like effect) it is demanded that the defendant do execute, may be taken cognizance of, and adjudged upon by the Court without the said draft being detailed at length in the declaration or other pleadings, and a deed of donation being valid, a promise therein contained to ratify the same at a certain time is obligatory and cannot be avoided on the ground of there being no consideration for such promise. *Easton vs. Easton*, S. C., 7 L. C. J., p. 138.

DONATION :—

20. A third party who is enriched by a deed of donation may sue on the contract although not a party to it. *Durand vs. Durand*, L. R., p. 59.

21. The donation of moveables made by a husband to his wife, still a minor, by contract of marriage establishing *séparation de biens* is a fraud with respect to a person having a claim against him at the time of his marriage for seduction, and the wife cannot have *main-levée* of such moveables made upon the husband, in satisfaction of such claim. *Chaput cs. Berry and Sans Cartier*, S. C., 12 L. C. R., p. 172.

" :— *Vide* LEGITIME.

" :— " PLEADING AND PRACTICE.

" :— " PROHIBITION TO ALIENATE.

" :— " REGISTRATION.

" :— " REMISE.

DOT :—The *dot* consisting of a sum of money is alienable, the wife *séparée de biens* from her husband and by him duly authorized. *Gauthier vs. Dagenais*, C. C., 7 L. C. J., p. 51.

DOUAIRE :—1. The decease of the husband before his wife, gives opening to the wife's dower, unless there be a formal stipulation, renouncing expressly to the dispositions of the custom. *Mercier vs. Blanchet*, *Bignell vs. Henderson*, 1 Rev. de Lég., p. 122.

2. The performing an *acte d'héritier* by the sons prevents them afterwards renouncing the succession of their father and taking their share of the dower created by their father. *Filion & al. vs. DeBeaujeu*, S. C., 5 L. C. J., p. 128.

3. The stipulation of *ameublissement* in a contract of marriage excludes the legal or customary dower on the *immeubles ameublis*. *Toussaint & al. vs. Leblanc*, S. C., 1 L. C. R., p. 25.

4. A widow who has been condemned as *commune en biens*, to pay a debt of the community, may claim her dower in preference to the creditors of the community, although she has not renounced thereto, on the principle that she is only bound to pay the debts out of what she receives from the community. *Delisle vs. Richard*, S. C., 6 L. C. R., p. 37.

5. An *acquet*, the price of which has been paid by the community, is nevertheless subject to customary dower, and the dower is not liable for the improvements made upon such immoveable by the community. *Archambault and The Syndics of the Bankrupt estate of Martigny*, 2 Rev. de Lég., p. 210-1.

The 4 Vic. c. 30, ss. 35, 37, [Con. St. L. C., cap. 37, ss. 52 and 53.] does not exempt from dower the lands and tenements which, under the custom, would have been subject to it, and which are at the decease of the father in his possession, nor on those which have passed out of his possession, but on which the wife has not barred or released the dower. *Adams vs. O'Connell*, S. C., 11 L. C. R., p. 365.

6. *Douaire coutumier*, as regulated by the Coutume de Paris, was at all times claimable on lands in Lower Canada, held under the tenure of free and common soccage before

DOUAIRE :—

the passing of the Imperial Statute of 6 Geo. c. 59,* commonly called the Canada Tenures Act. *Wilcox & ux. vs. Wilcox*, Q. B., 2 L. C. J., p. 1. And the English law of dower, as well as the English law of descent and alienation, as regards lands held in free and common soccage, was introduced into Lower Canada for the first time, by the Imperial Statute 6 Geo. 4, c. 59, commonly called The Canada Tenures Act. *Ib.*, and 8 L. C. R., p. 34.

7. The tutor of a minor cannot oppose *afin de charge* the sale of an immoveable hypothecated for customary dower not yet open. *Robertson & al. vs. Perrin and Perrin*, 1 Rev. de Lég., p. 288; *Vide* also *Stuart vs. Bowman*, S. C., 2 L. C. R., p. 369.

8. The dower of children of a second marriage only consists in the quarter of the immoveable property acquired during the first community, although by the effect of the partition of the first community, made after the second marriage, the husband have become proprietor of the totality of the immoveable affected to the dower.

9. The article 279 of the Custom of Paris, does not apply to the customary dower of a second wife and of the children of a second marriage. *Filion vs. DeBeaujeu*, S. C., 5 L. C. J., p. 128.

10. A voluntary re-union to the domain owing to the non fulfilment of the clauses of a deed of concession has not the effect of purging the land of the customary dower with which it was charged. *Ib.* But see the case of *Lynch and Hainault*, Q. B., 5 L. C. J., p. 306, where it was held that the hypothec created in favor of a third party by the donee, during his possession, is extinguished by a voluntary resolution although not caused by the resolutory clause, but in the form of a *retrocession*, for good and valid consideration.

11. The exclusion of "*douaire préfix et coutumier*" by an antenuptial contract passed in Lower Canada will not exclude dower in Upper Canada. *Fisher vs. Jameson*, Court of C. P., U. C., 7 L. C. J., p. 154.

12. In an hypothecary action for the recovery of *douaire préfix*, defendant cannot demand that the previous purchasers be sued first, such an exception applying only to the case of the *douaire coutumier*. *Benoit vs. Tanguay and Tanguay*, plaintiffs en gar. *vs. Boutillier*, defendant en gar., S. C., 1 L. C. J., p. 168.

" :—*Vide* HYPOTHÈQUE.
" :— " LICITATION.
" :— " WIDOW.

DOUBLE INSURANCE :—*Vide* INSURANCE.

DROIT D'AINESSE :—1. The *droit d'ainesse* in a testamentary succession cannot exist except in the cases where it is made the object of special legacy; and where the will creates a substitution; such *droit d'ainesse* bequeathed to the eldest of the children charged with substitution and by him accepted, not having been bequeathed to the eldest of those called to the substitution, cannot be claimed in the subdivision between the

* But see Con. St. L. C., cap. 35.

DROIT D'AINESSE :—

appelés. And supposing the *droit d'ainesse* could be claimed in the subdivision between the *appelés*, it could only be by the eldest son taking the quality of heir of the party charged with sub titution, his father or mother. *DeBellefeuille vs. DeBellefeuille & al.*, S. C., 3 L. C. R., p. 161.

2. In matters of testamentary succession, the *droit d'ainesse*, in the partition of *biens nobles* can only subsist in virtue of a special pro ision; and the provision of a testator to the effect that the overplus of his *biens nobles* shall be divided between his two children in such a way as to give the elder two-thirds and one-third to the other children according to the law of Fiefs, charging them nevertheless with debts in proportion to their legacies, the whole subject to substitution, does not contain a legacy of a *droit d'ainesse*, and cannot give rise to the exercise of that right in any of the parties claiming under the substitution. *Globensky and Lacolette & al.*, Q. B., 4 L. C. R., p. 384.

3. The *droit d'ainesse* being a proprietary right, cannot be claimed under a will, by the eldest son of the testator as usufructuary legatee; but only as *héritier ab intestat. Cuthbert vs. Cuthbert*, S. C., 6 L. C. J., p. 128.

DROITS HONORIFIQUES :—The use of a pew in churches, was only granted to seigniors in their quality of *Haut Justiciers*, as one of the attributes of the power they held and of the jurisdiction they exercised; and by the effect of the conquest, the jurisdiction they exercised, having ceased, and their judicial power having become extinct, they have ceased to be entitled to such rights, and more particularly to pews in churches. *Larue & al. vs. La Fabrique de St. Pascal*, S. C., 1 L. C. R., p. 175. And so also in the case of *Le Curé et Marguilliers de la Paroisse de St. Ignace vs. Beaubien*, S. C., 4 L. C. R., p. 321.

DUTIES :—*Vide* CUSTOMS DUTIES.

DYING DECLARATIONS :—*Vide* EVIDENCE.

EASTER :—*Vide* DIXMES.

EJECTMENT :—*Vide* LOYERS.

" :— " SAISIE-GAGERIE.

ELECTION :—1. In a contestation of election, a Commissioner appointed by a select committee of the House of Assembly to take evidence, has no right of action if by the dissolution of Parliament the committee is precluded from making its report, the statute enacting that "the Commissioner shall, immediately after the select committee shall have made their final report to the House on the merits of the petition, be entitled to demand and receive from the parties upon whose application to the Select Committee such Commissioner shall have been appointed, fifty shillings for every day which such Commissioner shall have been engaged on such commission, and his travelling expenses. *Power vs. Bezeau*, S. C., 5 L. C. R., p. 253. But under the recent Election Petition's Act, 14 & 15 Vic. c. 1, [Con. St. C., cap. 7, sect. 131.] a Commissioner employed under it, has a right of action against the party or parties on whose applica-

ELECTION :—

tion he was appointed, for the fees due him as such Commissioner. *McCord vs. Bellingham & al.*, S. C., 1 L. C. J., p. 174. And the fees allowed to such Commissioner are assignable and may be recovered as well from party contesting as from sitting member, who may be sued jointly and severally, where they both have joined in applying for the appointment. *McCord vs. Bellingham & al.*, S. C., 2 L. C. J., p. 42.

2. The appeal given by the 6th sub-section of the 22 Vic. c. 82, sect. 5, [Con. St. C., cap. 6, sect. 13.] is not given to electors qualified to vote whose names are entered in the amended list of voters, unless a complaint shall have been filed by such electors before the Board or authority for revising such list, as required by such sub-section. *Cleroux & al. vs. Lavoie & al.*, S. C., 9 L. C. R., p. 415.

ELECTION AGENT :—An election agent has no action against his principal to recover a sum of money as the value of his services, as an election agent, without a special undertaking by the principal to pay. *Girouard vs. Beaudry*, C. C., 3 L. C. J., p. 1.

ELECTION OF DOMICILE :—*Vide* DOMICILE.

ELECTIONS :—*Vide* MUNICIPAL ELECTIONS.

ELECTORS :—*Vide* ELECTION.

EMPHYTHÉOSE :—1. The sale of the unexpired period of an emphiteotic lease, described as such in the Sheriff's advertisement, imposes upon the purchaser the obligation of paying the stipulated rent of such lease, although this is not made the express condition of the sale in such advertisement, and although there be no opposition, *afin de charge*, for the preservation of such rent. *Methot & al. vs. O'Callaghan*, S. C., 2 L. C. R., p. 331.

2. A proprietor who has allowed his property to be seized and sold, upon an execution against a defendant who held the property under an emphiteotic lease, can claim an indemnity for the loss of his property upon the price of the sale of such property. *Murphy vs. O'Donovan*, S. C., 2 L. C. R., p. 333.

3. Immoveable property, held by the lessee after the expiration of an emphiteotic lease, may be legally seized as belonging to the lessor to whom it must revert. *Huot and Danais*, Q. B., 8 L. C. R., p 235.

" :—*Vide* LODS ET VENTES.

ENDORSATION :—*Vide* PROMISSORY NOTES.

ENDORSER : *Vide* COMPENSATION.

ENGLISH CIVIL LAWS :—The English civil laws were not introduced into Lower Canada by the proclamation of 1763, nor by the Imperial Act (Quebec Act) of 1774; and by the Imperial Act, 6 Geo. IV., c. 59, the English laws have only been introduced into Lower Canada in respect of lands held in free and common soccage, in the particulars of conveyance, descent or inheritance, and dower. *Stuart vs. Bowman*, S. C., 2 L. C. R., p. 369.

ENGLISH LANGUAGE :—The writ of Mandamus should be in the language of the defendant. *Hamel vs. Joseph*, 3 Rev. de Lég., p. 400.

* In so far as regards language, this Statute was amended by 7 Vic., cap. 16, sec. 31.

ENQUETE :—1. The Court of Appeals can order an *enquête* on a *reprise d'instance* or on other analagous proceedings. *McKillip & al. vs. Kountz & al.*, 1 Rev. de Lég„ p. 152.

2. In the absence of the return to a *commission rogatoire*, issued at the instance of the plaintiff, a defendant cannot be compelled to proceed with his *enquête*. *Macfarlane vs. Bresler*, S. C., 2 L. C. R., p. 238. And it is not competent for the plaintiffs to compel the defendants to go on with their *enquête* in the absence of certain of plaintiff's exhibits, attached to a *commission rogatoire*. issued at the instance of the plaintiff, and not returned; and defendants are, under any circumstances, entitled to adduce evidence after the return of the commission. *Foster & al. vs Chamberlain & al.*, S. C., 2 L. C. J., p. 285.

3 That where a plaintiff, during his *enquête*, has been allowed to amend his declaration, he will not be allowed to proceed further with his *enquete* until he has amended his declaration and defendant has been allowed to plead *de novo*. *Mann & al vs. Lambe*, S. C., 6 L. C. J., p. 301.

4. The Court will not compel a party to proceed to *enquête* during the weekly sittings. *Quesnel vs. Donegani*, S. C., 1 L. C. R., p. 475.*

5. In the absence of any restraining power in the rules of practice, or of any order confining *enquête* days in term to cases *ex parte*, the Court has no power to prevent a party from proceeding with a contested case during the *enquête* days in term. *La Banque du Peuple vs Roy*, S. C., 2 L. C. R., p. 239.

6. The Court cannot order that in any particular case the defendant shall be allowed to proceed with his *enquête* from day to day until the same shall be completed, the law requiring that the matter of *enquêtes* shall be regulated by rules of practice applicable to all cases. *Brown vs. Gagy*, 4 L. C. R., p. 46.

7. When an objection has been taken at *enquête* and maintained, and the opposing attorney has proceeded with the examination of the witnesses, and the deposition has been closed without any reserve, the Court will not afterwards entertain a motion to revise the ruling of the Judge at *enquête*. *Wrigley vs. Tucker*, S. C., 3 L. C. R., p. 89. Also *Benjamin vs. Gore*, L. R., p. 31. But in the case of *Fahey et al., and Jackson et al.*, Q. B., 7 L. C. R., p. 27, the Court revised the ruling of the Judge at *enquête*, although it had not been objected to in the S. C.

8. It was held at *enquête* that a party who had given notice of appeal from an interlocutory judgment, will not be forced to continue his *enquête*. *Scott & al. vs. Scott & al.*, S. C., 3 L. C. J., p 132. But motion having been made to revise this ruling it was reversed by the Court in term. S. C., 3 L. C. J., p. 134.

9. A deposition closed after the rising of the Court, and in the absence of the plaintiff's attorney will be rejected as irregularly closed. *McDougall vs. McDougall*, S. C., 6 L. C. R., p. 478. And there must be a Judge on the bench when a party is foreclosed. *Vide Vbo.* FORECLOSURE.

* The weekly sittings, introduced by the Judicature Act of 1859, are now abolished.

ENQUETE :—

10. A foreclosed party is entitled to one juridical day's notice of the inscription at *enquête*, under the 12 Vic. c. 38, sect. 25, [Con. St. L. C., cap. 83, sect. 13, s. s. 2.] *Renaud and Gugy*, Q. B., 8 L. C. R., p. 246.

11. By the 43rd Rule of Practice the inscription for *enquête* is general, so when plaintiff has finished taking his evidence, if defendant be not present the *enquête* will be closed if plaintiff requires it. *Bowker vs. McCorkill and Graham*, S. C., L. R., p. 1.

12. At *enquête* sittings a judge cannot set aside a foreclosure and inscription at *enquête* in order to allow the defendant to plead. *Macnamara vs. Meagher*, S. C., 5 L. C. J., p. 48.

ENVOI EN POSSESSION :—*Vide* CURATOR.

ERASURES :—Words struck out and marginal notes in a return or certificate of seizure, not noticed therein, do not always make such return void, and the Court, according to circumstances, may maintain its validity. *Demers and Parant & al.*, Q. B., 5 L. C. R., p. 36. And marginal notes not certified do not annul a deposition. *Lauzon vs. Stuart*, S. C., 4 L. C. J., p. 126.

ERREUR DE DROIT :—1. The *erreur de droit* which entitles a party to be relieved of his act is such an error as makes him do something because he believes he is compelled so to do, when in reality he is not. *Boston vs. Lerigé*, S. C., L. R., p. 91.

2. *Erreur de droit* may give rise to an action for the recovery back of money paid. So a party who has voluntarily paid a tax imposed by the by-law of a municipal corporation, which by-law is declared by the Court to be void, has a right to recover back what he has so paid. *Leprohon and The Mayor &c. of the City of Montreal*, Q. B., 2 L. C. R., p. 180. But a transaction will not be set aside for *erreur de droit*. *Trigge & al. vs. Lavallée*, S. C., L. R., p. 87.

3. *Erreur de droit* must be pleaded by exception and not by *défence en droit*. S. C., 4 L. C. R., p. 404.

ERROR :—Amendment in the warrant of attachment not allowed, for an alleged error not apparent in the acts and proceedings in the suit. *The Aid*, p. 210, S. V. A. R.

EVIDENCE :—1. By the old law of France evidence could not be taken of any matter of a value greater than a hundred francs,* without a *commencement de preuve par écrit ;* but by the Act 25 Geo. III, c. 2, sect. 10, C. St. L. C., cap. 82, sect. 17, it is enacted, that in proof of all facts concerning commercial matters, recourse should be had in the Civil Courts, to the rules of evidence laid down by the laws of England. *McKay vs. Rutherford*, P. C., Moore's Rep., p. 414.

2. The 17th section of the Statute of Frauds, (29, Car. 2, c. 3,) is in force in Canada in commercial cases, as being part of the laws of England, to which in such cases recourse

* By the 23 Vic c. 57, sect. 39, [C. St. L. C., c. 82, sect. 21,] this is extended to $25, limit of jurisdiction of Commissioners' Courts, 7 Vic. c. 19, sect. 3, and for which parol evidence could be received, sect. 6. The 23 Vic. c. 57, has therefore cleared away the anomaly of having different amounts above which parol evidence could not be received, dependent on the court in which the suit was brought. If this $25 were changed into £10 stg., almost all distinction, in so far as regards evidence, between commercial and non-commercial cases would disappear.

EVIDENCE :—

must be had, under the Ordinance 25 Geo. III, c. 2, sect. 10, [Con. St. L. C., cap. 82, sec. 17,] and therefore a sale of goods, for more than £10 sterling, is not good, if no part of the goods contracted for has been delivered, no earnest given, nor any memorandum thereof in writing made. *Hunt vs. Bruce & al.*, P. R., p. 8.

3. An agreement entered into by a contractor to share in the profits of the undertaking, although the contract was not capable of being completed within a year, is not such an agreement, as by the Statute of Frauds, 29, Car. II., c. 3, s. 4, is required to be in writing, but may be proved by parol evidence. *McKay vs. Rutherford*, P. C., 6 Moore's Rep., p. 414.

4. In the case of the purchase of a cargo of salt on board a vessel lying in the river without a memorandum in writing, the resale of such goods is a sufficient acceptance to take the case out of the Statute of Frauds. *Jackson vs. Fraser*, S. C., 12 L. C. R., p. 108.

5. The transactions of tradesmen and citizens in the way of their trade, are to be considered as commercial matters; and in all actions brought upon such transactions, recourse must be had to the English rules of evidence under the Ordinance 25 Geo. III., c. 2, sec. 10, [C. St. L. C., cap. 82, sect. 17] and generally in all cases which, by the law of France, were cognizable by the consular jurisdiction. *Pozer vs. Meiklejohn*, S. R., p. 122, and P. R., p. 11.

6. The English rules of evidence are applicable in a contract entered into by persons in Canada with the government, to supply stone for making a canal. *McKay and Rutherford*, P. C., 6 Moore's Rep., p. 414.

7. And the English rules of evidence are applicable in an action on a contract for building a house and furnishing materials. *McGrath vs Lloyd*, S. C., 1 L. C. J., p. 17. And the sale of a waggon and a harness by a hotel-keeper (plaintiff's *cédant*) to the defendant, described as *cultivateur* and *commerçant*, is a commercial fact, and may be proved by parol evidence. *Vandal vs. Grenier*, S. C., 6 L. C. R., p. 475.

8. And in a commercial case verbal testimony may be adduced in explanation of the contents of a written document, the meaning of which may not be perfectly clear. *Garth vs. Woodbury et al.*, S. C., 1 L. C. J., p. 43. Confirmed in Appeal, 1st March, 1858. And in a case of *Fahey et al., and Jackson et al.*, Q. B., 7 L. C. R., p. 27, *Fahey* and another, bricklayers and masons, having undertaken to make certain masonry, under a written agreement, for Jackson & Co., on the Quebec and Richmond Railroad; and having, during the progress of the work been employed with their men at some extra work, by the day, they brought an action against Jackson & Co., and produced their brother as a witness to prove such extra work. His evidence was held to be inadmissible by the Judge at *enquête*. The ruling was not submitted for revision to the Superior Court; but other parol evidence was admitted by the Judge at *enquête de bene esse*. The action was dismissed in the Superior Court,

EVIDENCE :—

and on appeal to the Q. B. it was held, that the case was a commercial one, and that the evidence was to be governed by the English rules of evidence, and the ruling of the Judge at *enquête*, althought it had not been objected to in the Superior Court, was revised. But in the case of *Carden et al., vs. Finley et al.*, S. C., 3 L. C. J., p. 232, it was held that the payment of a promissory note payable to order, as between parties not traders, cannot be proved by witnesses.

9. The proof of a contract made in a foreign country, ought to be made before our Courts, according to the law of the country where the contract was made. *Wilson vs. Perry and Perry*, T. S., S. C., 4 L. C. J., p. 17.

10. Although a different rule obtained formerly, (*Routhier vs Robitaille*, S. R., p. 440,) it is now well established, that a notary, or the notaries, who have received, or the *témoins instrumentaires*, who have witnessed the execution of a will or other authentic instrument, are competent witnesses upon an *inscription de faux*, impugning the validity of such will or other authentic instrument. *Welling vs. Parant*, S. C., 4 L. C. R., p. 228. And so also in *Taillefer et al., vs. Taillefer et al.*, S. C., L. R., p. 32. And *Lavallée et al., vs. Demontigny*, S. C., 4 L. C. J., p. 47. And the certificate of a notary, as to the state of mind of a party at the time of making her will, that she was *saine d'entendement*, is mere matter of style, and may be contradicted by parol evidence, and the notary is not bound to write the minute of the will with his own hand. *Clarke vs. Clarke et al.*, S. C., 2 L. C. R., p. 11. But the *témoins instrumentaires* to an act against which there is an *inscription en faux*, are not sufficient of themselves to establish the *faux*. *Meunier vs. Cardinal*, S. C., L. R., p. 28, and *Lavallée et al., vs. Demontigny*, S. C., 4 L. C. J., p. 47.

11. Even in a case where the relations of a party within the prohibited degree,* are admitted to prove facts which have occurred in the interior of a family, if any of the other facts can be established by witnesses who are not so related, and such witnesses are not called, the proof will be deemed insufficient. *Caron vs. Michaud*, S. C., 2 L. C. R., p. 192.

12. Relations within the prohibited degree are not *témoins nécessaires* and admissible to prove seduction in an action *en déclaration de paternité*. *Stewart vs. McEdward*, S. C., 4 L. C. R., p. 422. But the cousin german may be examined to prove *actes d'héritier*. *Fillion et al., vs. Binette*, S. C., 4 L. C. J., p. 36.

13. In an action of revendication of moveables, the son of the plaintiff is not a competent witness for the father. *Hearle and Date*, Q. B., 11 L. C. R., p. 290.

14 In a non-commercial case, the father of a party's daughter-in-law is a competent witness. *Macpherson vs. The Bank of British North America*, S. C., 1 L. C. R., p. 306.

15. A party has the right to re open his *enquête* in order to examine his relations as witnesses, the adverse party

* The only relations or connections of parties who cannot now give evidence are the husband and wife for one another. C. St. L. C., cap. 82, sec. 14.

EVIDENCE :—

having had that advantage under the Act 23 Vic. c. 57, s. 51, which had become law during the *enquête*. *Vanier vs. Falkner*, S. C., 6 L. C. J., p. 251.

16. A similarity of interest only affects the credibility of a witness, not his competency. So members of a corporation of a parish, or a *fabrique*, [C. St. L. C., cap 82, sec. 14, ss. 2,] are competent witnesses in suits in which the *fabrique* is a party or is interested. *The Quebec Fire Insurance Co., vs. Molson et al.*, S. C., 1 L. C. R., p. 236. Also the case of *Moss vs. Carmichael, and the Railroad Car Company*. S. C., 3 L. C. J., p. 166. And a party who is to be paid for services rendered to a company, out of the shares of such company, which shares have not been delivered to him, is a good witness on the part of the company, in an action brought against hem to enforce a commercial contract, his interest being contingent, not absolute. *Kennedy vs. The Aylmer Mutual Steam Mill Company*, S. C., 4 L. C. R., p. 86.

17. Letters written by the agent of an insurance company to his principal, the defendant, after the loss had accrued, cannot be used in evidence against the company. But the contemporaneous representations made by the insured to other insurers of the same subject, may be legally proved by the defendants. *Grant vs. The Ætna Insurance Co.*, 11 L. C. R., p. 128. Def ndant may be a witness for his co-defendants, if he be not interested, or if his interest be removed by his discharge. *The Bank of British North America vs. Curillier et al.*, S. C., 2 L. C. J., p. 154. But in the case of *Ouimet et al. vs. Senecal et al.*, S. C., 3 L. C. J., p. 179, it was held, that a party to the record cannot be a witness, although not interested in the issue sought to be proved. But in the same case, (*ib.* p. 182,) the contrary was held.* And in the case of *Brown vs. Mailloux et al.*, S. C., 9 L. C. R., p. 252, it was held, in the Superi r Court, on an action on a promissory note, that the evidence of one of the several defendants, although insolvent, is inadmissible to prove that he subsequently gave the plaintiff a note in payment of the one sued upon, on the ground that he is a party to the issue. But in the case of *Woodbury and Garth*, decided in the Q. B., 9 L. C. R., p. 438, the signer of a promissory note sued with the endorser, may be a witness in favor of the endorser. And in an action on a promissory note, where defendant pleads usury, a party also liable to plaintiff on the same note, is a competent witness to prove such usury. *Malo vs. Nye*, S. C., 1 L. C. J., p. 11. But a person who receives money from the maker of a note before its maturity, and undertakes to pay it, is not a competent witness for the defendant in an action against the maker, to prove that he did so ; for in the event of a judgment for the plaintiff, he would be liable over to the defendant for the costs of such action, as damages for the non-fulfilment of his undertaking. *Fraser vs. Bradford*, S. C., 2 L. C. J., p. 110.

18. A defendant may now be a witness for his co-defendant, 23 Vic. cap. 57, sect. 51, [Con. Sts. L. C., cap. 82, sect. 14, s. s. 2.]

* Since the passing of the 23 Vic. c. 57, this case suffers no difficulty.

EVIDENCE :—

19. The existence of a co partnership cannot be proved by the admission on *faits et articles* of one of the alleged partners as against the other. *Bowker et al. vs. Chandler*, S. C., L. R., p. 12. Also *Chapman vs. Masson*, S. C., 2 L. C. J., p. 216 ; and 8 L. C. R , p. 225. Confirmed in Q. B., 9 L. C. R., p. 422.

20. A pilot of a raft may be a witness for his employer in an action against the latter for damages to a wharf by the raft coming in contact with it. *Laurin vs. Pollock & al.*, S. C., L. R., p. 43. But persons who have the control and direction of vessels, or who are interested in clearing themselves of fault, and throwing it upon the other party, are incompetent to give evidence. *The Mary Campbell*, p. 222, S. V. A. R. And so in an action against the master of a ship for damages done to a wharf by collision of the vessel with the wharf, the branch pilot in charge is not a competent witness. *The Harbour Commissioners of Montreal vs. Grange*, Q. B., 10 L. C. R., p. 259.

21. As to the evidence of the master in suits with seamen, or in a case of pilotage. *The Sophia*, p. 96, S. V. A. R.

22. In the Vice-Admiralty Court the testimony of the bail of the defendant will be rejected, he being an incompetent witness. *The Sophia*, p. 219, S. V. A. R.

23. An agreement varying the contract of wages in the ship's articles cannot be proved by parol evidence. *The Sophia*, p. 219, S. V. A. R.

24. In a suit for wages, service and good conduct are to be presumed till disproved *The Agnes*, p. 53, S. V. A. R.

25. In a suit for personal damage brought by a passenger against the master of a vessel, the Court will look to the education and condition in life of the persons who give the evidence, not only as entitling them to full credit for veracity, but also to greater accuracy of observation, and a greater sense of the proprieties of life. *The Toronto*, p. 170, S. V. A. R.

26. In cases of collision it is necessary to prove fault on the part of the persons on board of the vessel charged as the wrong-doer, or fault of the persons on board of that vessel and of those on board of the injured vessel. *The Sarah Ann*, p. 294, S. V. A. R.

27. More credit is to be attached to the crew that are on the alert than to the crew of the vessel that is placed at rest. *The Dahlia*, p. 242, S. V. A. R.

28. In an action by the endorser of a Bill of Exchange against the acceptors, the plaintiff cannot at the hearing on the merits move to reject the evidence of the drawer who proves the Bill to have been accepted for his own accommodation ; the interrogations proposed by the defendants, and annexed to a *commission rogatoire* for the examination of the drawer having been allowed by consent, and the witness swearing he has no interest in the event of the cause. *Taylor vs Arthur et al.*, S. C., 4 L. C. R., p. 215. But now mere interest is no longer a bar to the examination of a witness. *David vs. McDonald et al.*, S. C., 5 L. C. J., p. 164. Also 11 L. C. R., p. 116.

EVIDENCE :—

29. A power of attorney executed, *sous seing privé*, in Upper Canada and duly attested by a notary public of Upper Canada under his seal of office, with a certificate of the administrator of the Government of this Province annexed, does not prove itself. *Nye vs. McDonald*, S. C., 2 L. C. J., p. 109.

30. The copy, certified by a Registrar, of an authentic deed, registered at length, is not evidence. *Dessein vs. Ross*, 2 Rev. de Lég., p. 58. Also *Nye and Colville et al*, Q. B., 3 L. C. R., p. 97.

31. In an action brought by a curator to the vacant estate and succession of a party deceased, the filing of an *acte* of curatorship will be sufficient evidence of the death of the party, more particularly if the defendant has not expressly denied the quality assumed by the plaintiff, or the fact of the death of the party deceased. *Pemberton et al. vs. Demers*, S. C., 1 L. C. R., p. 308.

32. And a partition among co-heirs, duly homologated, is evidence, as against third parties, of the quality assumed by such heirs, and it is not necessary that certificates of baptism and of marriage should be produced. *Mallory and Hart*, Q. B., 2 L. C. R., p. 345.

33. It is not necessary to prove, by parol evidence, the identity of real estate if such identity is established by the similarity of the descriptions in the deeds. *Moreau vs. Riches*, S. C., 1 L. C. R., p. 106.

34. A mortgagor who undertook to effect an insurance for a mortgagee, in order to secure the mortgage, is admissible as a witness, to prove that the insurance was effected when no policy had issued; and evidence of the admission of the manager, about the time that an insurance had been effected and of his promise to grant a policy, is admissible. *The Montreal Assurance Company and McGillivray*, Q. B., 2 L. C. J., p. 221.

35. The parol testimony of an agent of an insurance company is sufficient evidence that a misdescription in a policy of insurance is due to his, the agent's, fault. *Somers vs. The Athenæum Insurance Society*, S. C., 3 L. C. J., p. 67.

36. The payment of money in a non-commercial case may be proved by witnesses who witnessed a receipt signed by the party receiving the money, with a cross, in their presence; and in the examination of such witnesses it is irregular to begin by asking whether the amount had not been paid. *Neveu, père et al. vs. DeBleury*, S. C., 3 L. C. J., p. 87. And in the same case it was subsequently held, that the payment of a sum of money may be proved by the attesting witness to a receipt signed with a mark, made by the party receiving the money. Q. B., 6 L. C. J., p. 151; also 12 L. C. R., p. 117. See *Infra*, No. 57.

37. Parol testimony cannot be admitted to prove a verbal warranty, where there is a memorandum of sale which appears to set up the transaction; as such evidence would tend to control the written contract. *Fry and the Richelieu Co.* Q. B., 9 L. C. R., p. 406.

EVIDENCE :—

38. Parol evidence is admissible to establish that an endorser agreed to waive protest. *Johnston et al. vs. Geoffrion*, S. C., 13 L. C. R., p. 161.

39. The books of a Bank are not evidence in its favor to prove payments made by such Bank. *Brooke vs. The City Bank*, S. C., 1 L. C. R., p. 112. But a written statement furnished by a bank to a depositor will be taken as evidence against the bank, where there is no evidence to show error. *Morris et al. vs. Unwin et al.*, S. C., 4 L. C. R., p. 235.

40. A clerk is incompetent to prove that a receipt given by him, for his employer, to a customer for a sum of money, was given by error, and that he did not actually receive the money acknowledged by the receipt. *Whitney vs. Clarke*, S. C., 3 L. C. J., p. 89. But this case was reversed in appeal, Q. B., 9 L. C. R., p. 339; and 3 L. C. J., p. 318,—where it was held, that a clerk is competent to prove that a receipt given by him, for his employer, to a customer for a sum of money, was given by error, and that he did not actually receive the money acknowledged by the receipt.

41. The return of the vouchers and evidence of debt by the creditor on signing a deed of *atermoiement*, does not necessarily imply that he has made novation of the original debt, so as only to be able to recover on the composition in case of the debtor failing to pay the instalments stipulated by the composition.

On an action for the whole original debt, the deed of composition and the parol evidence of the debtor's bookkeeper, that the balance mentioned in the composition was really that due, will be sufficient to maintain the action. *Brown et al. vs. Hartigan*, S. C., 5 L. C. J., p. 41.

42. The former deposition of a witness may be used or read to him upon a subsequent examination, though in a different proceeding, to refresh his memory. *The City Bank vs. Coles*, S. C., 2 L. C. R., p. 16.

43. A witness who has been examined orally, before a Judge who took notes of the evidence, and it became necessary to proceed, *de novo*, with the evidence, the witness having died in the mean time, it was held to be competent to the party who had produced such witness to prove what he had stated under oath upon the occasion of his examination. And what such witness stated can be proved by any person present upon the occasion of his examination, and the Judge who had taken notes ought not to be called upon to testify as to what the deceased witness had declared. *Savard vs. Vallée*, S. C., 4 L. C. R., p. 85. And if a witness be beyond the jurisdiction of the Court, his deposition taken in a former suit between the same parties, the matters in issue being the same, may be produced. *Roe vs. Jones*, S. C., 3 L. C. R., p. 58.

44. In a petitory action, where the defendant pleads possession of 30 years by himself and his *auteurs* without title, it is only necessary for him to produce parol evidence to connect the possession of defendant with the parties previously in possession as his *auteurs* and predecessors. *Stoddart, vs. Lefebvre*, S. C., 11 L. C. R., p. 286.

EVIDENCE :—

45. All documentary evidence relative to the issues raised between two opposants must be filed by such opposants, and it is not sufficient that such evidence be already filed by other parties to the record. *Kelly vs. Fraser*, S. C., 2 L. C. R., p. 368.

46. A defendant cannot be compelled to appear, before the return of a writ of summons to show cause why a certain witness, about to leave the province, should not be examined; depositions taken under such circumstances are illegally taken, and the Inferior Court, before adjudicating upon the merits of the action, ought to have determined as to the validity of such evidence, so as to afford the party an opportunity of substituting legal evidence in lieu thereof, under such circumstances the party whose evidence has been rejected will be allowed to re-open his *enquête*. *Malone and Tate*, Q. B., 2 L. C. R., p. 99. But in *Supple and Kennedy*, Q. B., 10 L. C. R., p. 458, it was held that a witness about to leave the province can, under the 25th Geo. III, c. 2, sec. 12, [Con. St. L. C., cap. 83, sect. 101, s.s. 2,] be examined before the return of the action.

47. If there are several issues, such as a plea to the action, and a special answer to such plea, and a general inscription for the adduction of evidence, although the proof of the special answer, alleging *chose jugée* as to the matters contained in the plea to the action, if made out, would be a bar to any further proceedings upon such plea, a Judge in Chambers has no power to restrict and limit the proof, in the first instance, to the special answer, and such limitation can only be ordered by the Court. *Brush & al., vs. Wilson & al.*, S. C., 4 L. C. R., p. 454.

48. Defendants sued as co-partners, carrying on trade under the name of "The Montreal Railroad Car Company," may prove, under the general issue, that the company was incorporated, and that the debt sued on was a debt of the corporation. *Edmonstone & al vs. Childs & al.*, S. C., 2 L. C. J., p. 192.

49. When a *gardien* in answer to a rule for *contrainte par corps*, pleads that the property is only worth a particular amount, the *onus probandi* falls on him. *Leverson & al. and Boston*, Q. B., 2 L. C. J., p. 297.

50. In an action for slander where the plaintiff, in answer to a plea of prescription, pleads that the slanderous expressions did not come to her knowledge until within a year and a day before commencement of such action, the *onus probandi* is on the plaintiff. *Ferguson and Gilmour*, Q. B., 1 L. C. J., p. 131.

51. The *onus probandi* of the death of a legatee, previous to that of the testator falls on the party alleging it. *Bonacina vs. Bonacina and McIntosh*, S. C., 10 L. C. R., p. 79. Confirmed in appeal, 11 L. C. R., p. 327.

52. The description given by a person of his sufferings, while laboring under disease and in pain, is not deemed hearsay evidence, and may be admitted in a criminal case. The prisonner Césarée Thérinult was arrested by the constable C. and while in his custody and in his house, G., a magistrate,

EVIDENCE :—

came in, and said in her presence, "She had better turn Queen's evidence?" to which C. answered—"There are some preliminary proceedings to be adopted before." It was held that confessions made subsequently, on the same day or the next, by the prisonner to C., to his wife and to another constable, were not admissible in evidence, as such, as the prisoner was in the custody of these people, when G. spoke to him, and inasmuch as she might be under the influence of the hope held out to her by G.; but a confession made to the physician, who had no authority over her, and out of the presence of a peace officer, was admitted.

53. To render the proof of a declaration admissible as a dying declaration, there must be positive proof that the person who made it was, at the time, under the impression of almost immediate dissolution, and entertained no hope of recovery. And vague and general expressions such as "I shall die of it"—"I shall not recover"—"It is all over with me," are insufficient to allow the proof of the declarations of the deceased person. *Regina vs. Peltier*, S. C., 4 L. C. R., p. 3.

54. A child, whatever be his age, if he can distinguish between good and evil, may be examined as a witness. *Regina vs. Bérubé & ux*, Q. B., 3 L. C. R., p. 212.

55. On a plea of fraud, general evidence may outweigh the positive testimony of witnesses, where the evidence of these witnesses is not consistent, and where the presumptions adduced are against its truth. *Grenier & vir vs. The Monarch Life Assurance Company*, S. C., 3 L. C. J., p. 100.

56. In an action for breach of promise of marriage a *commencement de preuve par écrit* is required. *Asselin vs. Belleau*, 1 Rev, de Lég. p. 46. And a contract of an executory nature cannot be proved, even under the empire of the French law without a *commencement de preuve par écrit*. *Trudeau & al. vs. Ménard*, S. C., 3 L. C. J., p. 52.

57. An admission on *faits et articles*, in an action for money lent, that the money was paid for money due, there being no plea in the record to that effect, is a sufficient *commencement de preuve par écrit*. *Ford vs. Butler*. S. C., 6 L. C. J., p. 132. And a cross or mark may be a *commencement de preuve par écrit*. See *Supra*, No. 36.

58. On the 23rd October 1855, R. acknowledged a transfer as made to him by N., of his rights in a certain lot of land, and agreed to take N.'s interest in the lot and "allow him upon debts" due to R. whatever two persons named "shall appraise it worth."

On the 19th June, 1856, the persons so named estimated the value of N.'s interest in the lot, and awarded "that R. shall allow N. $300 upon the debts he now holds against N. or pay him the money."

On the 29th March, 1859, N. instituted an action against R. for the sum of $300, setting up the submission and appraisal, alleging that R. had refused to deduct or allow the $300 from the debts due, and had compelled him to pay the debts in full.

EVIDENCE :—

The defendant pleaded payment, and set up a claim on notes filed, to the extent of $1573 53 and that a settlement had been made and deduction allowed of the $300 on the 8th September, 1856, he also pleaded compensation and the general issue. The plaintiff produced with his answer R.'s receipt for $650 of the 8th September, 1856, in full of all obligations, judgments, notes, executions and book accounts, and alleged that this amount was more than was due on the notes referred to, and that the whole of the notes were paid in cash.

And it was held that parol evidence was inadmissible to prove conversations between the plaintiff and defendant as to the settlement and deduction of the $300, or that N. had admitted such deduction and settlement at the date of the receipt. *Rowell and Newton*, Q. B., 10 L. C. R., p. 437.

59. Parol evidence is inadmissible to prove that an indorser of a promissory note, indorsed in blank, agreed to take such note solely on the credit of the maker, without recourse against the indorser. *Chamberlin vs. Bull*, Q. B., 5 L. C. J., p. 88.

60 In an action of assumpsit, if it be proved that the plaintiff has a partner who was a party to the contract, and who is not joined in the suit, the action will be dismissed, although the defendant has not pleaded the facts specially. *Pozer vs. Chapham*, S. R., p. 122.

" :—*Vide* APPEAL.
" :— " BROKER.
" :— " INSURANCE.
" :— " MASTER AND SERVANT.
" :— " NOTARY.
" :— " PRESCRIPTION.
" :— " PROMISSORY NOTES.
" :— " PROTEST.
" :— " SLANDER.
" — " TRANSFER.

EVOCATION :—An evocation will be allowed in a suit for a *rente viagère* brought in the Circuit Court. *Dalpé dit Parizeau vs. Brodeur & ux.*, S. C., 9 L. C. R., p. 56.

EXCEPTION A LA FORME :—*Vide* PLEADING AND PRACTICE.

EXCEPTION DÉCLINATOIRE :—*Vide* PLEADING AND PRACTICE.

EXCEPTION DILATOIRE :—*Vide* PLEADING AND PRACTICE.

EXCHANGE :—*Vide* LODS ET VENTE.

EXECUTION —1. Under the 40th section C. S. L. C., c. 83 a defendant, opposant, is bound to allege and prove that he has property in the district where the judgment was rendered, in order to suspend the execution of the writ in another district. *Rose vs. Coutlée*, S. C , 12 L. C. R., p. 403. *Massue vs. Crebass and Crebassa*, S. C., 7 L. C. J., p. 225.

2. It is not competent for the sheriff, in case of *saisie-arrêt en main tierce*, to seize corporeally as the property of the defendant, effects in the hands of a third party, and a seizure so made is null and void, and will be quashed and set aside, on motion made to that end by any party legally interested. *Fleck vs. Starnes et al., and St. Cyr and Brown*, S. C., 7 L. C. J., p. 256.

EXECUTION:—MOVEABLES:—1. The execution of a moveable, such as a floating dock, is null and void if the party upon whom it was seized was not previously requested to pay, if a copy of the *saisie* was not left with the party seized upon, if the bailiff who gave the notice was not authorized by the sheriff so to do, if such notice did not indicate the place of sale, and if the purchaser was the agent of the party seized upon, and as such subject to the imputation of fraud. *Longmuir and Ross et al.*, Q. B., 1 L. C. R., p. 71. And when by a *saisie mobilière* the bailiff, by his *procès-verbal* declares that he elects his domicile in a particular parish, without specifying in what part of it, the *saisie* will be declared null, and a notice of sale, at the foot of the *procès-verbal*, for a specified day of the month, without mention of the year, is null, although such *procès verbal* be fully and correctly dated. *Beaupré vs. Martel and Martel*, S. C., 2 L. C. J., p. 276. But in the case of *Lee vs. Lampson*, 2 L. C. R., p. 148, it was held, that upon the seizure of moveables under a writ of *fieri facias*, no demand of payment is necessary. Also, *Massue vs. Crebassa and Crebassa*, S. C., 7 L. C. J., p. 225.

2. On a *venditioni exponas* against moveables, it is not necessary to have a *procès verbal de récollement*. *Lespérance vs. Langevin and Langevin*, S. C., 1 L. C. R., p. 279.

3. The seizure of moveables under a writ of *fieri facias* in the hands of the plaintiffs, is bad,—the manner of proceeding is by *saisie-arrêt*. *Morris et al., vs. Antrobus and Antrobus*. S. C., 1 L. C. R., p. 114.

4. Books of account, *titres de créance*, and papers belonging to defendant, and in his possession, are *insaisissables*. *Fraser vs. Loiselle*, S. C., 5 L. C. R., p. 299. And the sword of a military man is exempt from seizure, as being part of his necessary military equipment. *Wade vs. Hussey and Hussey*, S. C., 8 L. C. R., p. 511. And money payable by the revenue to an informer under the Statute 14 and 15 Vic., c. 100 [C. St. L. C., cap. 6], is not liable to seizure. *Leclerc vs. Caron*, S. C., 8 L. C. R. p. 287. And damages for personal wrongs are not liable to seizure. *Chef vs. Lemard & al., and Decary, & al.*, S. C., 6 L. C. J., p. 305, also 13 L. C. R., p. 74. And the salary of a teacher cannot be seized. *Roy vs Colère et les Commissaires d'Ecole de St. Ours and Meilleur*, T. S., S. C., L. R., p. 59.

5. Shares in the stock of an incorporated company cannot be taken in execution in the manner provided by the Statute 12 Vic. c. 23, [C. St. C., cap. 70.] *Bruneau vs. Fosbroke and Fosbroke*, S. C., 1 L. C. R., p. 92.

6. In order to render the seizure and sale of a registered vessel valid, the formalities pointed out by the Act 8 Vic. c. 5, sect. 16, [C. Sts. C., c. 41, sect. 16.] must be complied with. *Cusack & al. vs. Paton*, S. C., 3 L. C. R., p. 471.

7. A vessel which had been fraudulently sold by an insolvent debtor, subsequently to the institution of an action against him, could not nevertheless be seized *de plano*, inasmuch as the vessel had passed into the hands of the purchaser, and that it was in the first place necessary that the contract should be annulled, as fraudulent by means of a revocatory action. *Chaillé and Brunelle*, Q. B., 6 L. C. R., p. 489.

EXECUTION:—IMMOVEABLES:—1. Moveables and immoveables may be seized simultaneously under one and the same writ of execution. *Kierzkowski vs. Lespérance and Lespérance*, opposant, 1 L. C. J., p. 193, and 7 L. C. R. p. 359.

2. And the immoveable property of a defendant may be seized at the same time as his moveables; but his moveables must be first sold. And when the return of the bailiff sets forth that he has no moveables, proceedings to set aside this return must be taken before an opposition can be filed to set aside the seizure, on the ground that the moveables should be first seized and sold. *Paige vs. Savard*, S. C., 11 L. C. R., p. 3.

3. Upon the seizure of real estate, the absence of a witness (*recor*) to the seizure, the want of an election of domicile by the party seizing and by the bailiff, the omission to state whether the seizure was effected before or after twelve o'clock, and that a demand of payment was made, when such execution is directed against the moveables only, are not sufficient grounds to impugn the validity of such seizure. The return of the sheriff that the advertisements and publications of the sale have been made is conclusive until such return is declared false. A party against whom execution has issued, and who has failed to make opposition within the period prescribed by the 44 Geo. III., c. 7, sect. 11, [Con. St. L. C., cap. 85, sec. 15,] is for ever precluded from the right of availing himself of any irregularities in the seizure of his immoveables and of the proceedings thereon. *Boyer vs. Slown & al.*, 2 L. C. R., p. 53. And in the case of *Gadfoyle vs. Tate et al., and Tate et al.*, opposants, S. C., 1 L. C. J., p. 188, it was held that the presence and co-operation of *recors* is wholly unnecessary for the validity of the seizure. And in the case of *Lespérance and Allard et al.*, Q. B., 1 L. C. R., p. 154, it was held—that an opposition to annul the seizure of real estate cannot be received within the fifteen days preceding the day fixed for the sale, even with the order of a Judge.

4. If a plaintiff have, by his own fault and neglect, caused an immoveable property to be seized under an inaccurate description, the party seized, having an interest that such description be correct may demand the nullity of such seizure, with costs against such plaintiff. *Dupuis vs. Bourdages*, S. C., 4 L. C. R., p. 227.

5. In the case of the seizure of real estate it is not necessary to mention in the *procès-verbal* and notices, the contents of the property seized; and the respondent having sold the real estate in question without mentioning its contents, cannot urge the absence thereof in the *procès-verbal*. *Berthelet and Guy et al.*, Q. B., 8 L. C. R., p. 299. Also 2 L. C. J., p.p. 164-166.

6. When the boundaries of a lot are given with minuteness, and the extent of the boundary line so as to render it impossible to be in doubt as to the identity of the property seized, the seizure will not be set aside although a building forming two houses is described as "a house." *Anderson et al., and Lapensée*, S. C., 9 L. C. R., p. 69; also, in another case of *Palmer vs. Lapensée*. *Ib.*

EXECUTION :—IMMOVEABLES :—

7. A writ *de terris* issued generally in satisfaction of an hypothecary judgment for an amount less than £10 Cy., is illegal ; such writ being only allowed *specially* against the lands declared to be hypothecated. *Gorrie vs. Herbert, and Herbert* opposant. S. C., 1 L. C. J., p. 173.

8. When a defendant has paid sums of money on account of a judgment, the seizure of his lands afterwards on a writ of execution issued for the whole amount of the judgment is illegal, and the defendant has a right to have the writ stayed till the exact amount due on the judgment be determined. *Banque du Peuple vs. Donegani*, S. C., 3 L. C. R., p. 478. And so also in *Fournier and Russell*, Q. B., 7 L. C. R., p. 130. And likewise an opposition may be filed to a *venditioni exponas*, if credit be not given on the face of the writ for sums paid since the judgment. *Esty vs. Judd et al., and Judd et al.*, S C., 3 L. C. J., p. 73. And a creditor suing out execution must give credit upon the writ for any amount he may have received, and an opposition of the defendant founded upon this omission must be maintained with costs. *Fournier and Russel*, Q. B. 10 L. C. R., p. 367.

9. An execution issued on a judgment against several defendants jointly, directed against one of them for the whole debt, is illegal, and will be set aside on opposition, without even a tender of the amount really payable by such defendant. *McBean vs. DeBartzch and DeBartzch et al., mis en cause, and Drummond*, opposant, S. C., 3 L. C. J., p. 118.

10. The signification of a *saisie-arrêt* by a creditor of the plaintiff, to a defendant, against whom execution has issued, has not the effect of stopping proceedings under the execution, and to produce that effect, the defendant must deposit the amount of the judgment obtained against him, in principal interest and costs. *Duvernay vs. Dessaulles*, S. C., 4 L. C. R., p. 142.

11. An opposition cannot be maintained on the ground that the bailiff making the seizure was not a sheriff's bailiff, the writ of execution having been delivered to him by the sheriff. *Freligh vs. Seymour*, S. C., 8 L. C. R., p. 256.

12. Execution of a judgment *en séparation de biens*, is sufficiently affected, by the renunciation of the wife to the community, duly insinuated. *Seneeal and Labelle*, S. C., 1 L. C. J., p. 273.

13. Execution cannot be issued against any of several defendants, if one of them have appealed, and if such appeal be still pending. *Brush et al., vs. Wilson et al.*, S. C., 6 L. C. R., p. 39.

14. Where two executions issue at the suit of different parties against the same defendant, the sheriff cannot unite both seizures in one *procès-verbal*. *Sanderson vs. Roy dit L pensée, and Roy dit Lapensee* opposant, S. C., 3 L. C. J., p. 119. And also in a case of *Palaiser and Roy dit Lapen ée*, Q. B., 9 L. C. R., p. 456, and 4 L. C. J., p 208.

15. A *saisie* which is not acted on for two months ceases to exist. *Scholefield et al. vs. Rodden et al*, S. C., 5 L. C. J., p. 332.

" :—*Vide* ASSIGNMENT.

" :— " *Garnishee* :—*Vide McFarlane vs. Draper*, 1 L. C. R., p. 94.

EXECUTOR:—1. An action may be rightly brought by a party as executrix of a will made in Ireland, without alleging in the declaration that by the law of Ireland an action accrued to her as such executrix. *Grainger et al. and Parke*, Q. B., 10 L. C. R., p. 350.

2. An action lies by the makers of a promissory note against the executors of the payee, to get possession of the note paid by one of them in part to the payee thereof, and in part to the executors. And in such an action the evidence is to be regulated by the law of England. *Carden et al. and Finley et al.*, Q. B., 10 L. C. R., p. 255.

" :—*Vide* HYPOTHÈQUE.

" :— " WILL.

EXHIBIT:—1. The insufficiency of an exhibit is not a legal ground for its rejection from the record. *Strother vs. Torrance*, S. C., 1 L. C. J., p. 83.

2. An exhibit filed by a party in a cause becomes common to all the parties. *La Banque du Peuple and Gugy*, Q. B., 9 L. C. R., p. 484.

3. The 76th section of the Judicature Act of 1857, 20 Vic. c. 44 [Con. Stat. L. C., cap. 83, sec. 88], has virtually repealed the 24th rule of practice of the Superior Court requiring the filing of exhibits, on which a declaration or other pleading is founded at the time such pleading is filed. *Denis vs. Crawford*, S. C., 4 L. C. J., p. 147.

4. Copies of old plans, produced by party in support of his pretensions, will be considered as exhibits and taxed as such. *Brown vs. Gugy*, S. C., 12 L. C. R., p. 413.

5. Papers in support of a contestation need not be filed with the contestation. *Bonneau vs. Moquin & Moquin*, S. C., L. R., p. 29.

EXHIBITION DE TITRES:—In consequence of the passing of the Seigniorial Act of 1854, *Exhibition de titres* can not now be claimed. *Dumont et al vs. Chaurette*, S. C., 1 L. C. J., p. 186.

EXPARTE:—When the defendant has not appeared in an action, and the default has been duly recorded, a motion to proceed *ex parte*, is not necessary. *Kershaw vs. Desliste & al.*, S. C., 1 L. C. R., p. 494.

EXPERTS:—1. The costs of *expertise* are in the discretion of the Court, and in the exercise of such discretion, the Court will at least divide them between the parties, when the report has the effect of materially reducing the plaintiff's demand. *Gardner vs. McDonald*, S. C., 2 L. C. J., p. 208.

2. The Court will order the report of *experts* or arbitrators to be opened before the costs of making such report be paid notwithstanding the prohibition of the *experts* or arbitrators. *Duchesnay vs. Giard*, S. C., 4 L. C. J., p. 9.

3. An *expert* appointed by the Court, though at the suggestion of one of the parties, has an action against both, for remuneration of his services. *Wallace vs. Brown*, S. C., 10 L. C. R., p. 189. But in appeal it was held, that an *expert* named by a party or by the Court on the selection of any party, has no recourse for the payment of his disbursements, costs and charges, but against such party, the other party

EXPERTS :—

or parties to the suit not being obliged jointly and severally in favor of such *experts*. *Brown and Wallace*, Q. B., 5 L. C. J., p. 60; and 11 L. C. R., p. 182.

4. A person who has acted as an *expert* in a cause, in which the *expertise* was set aside and a new one ordered, may be recused as *expert* at the second *expertise*. *Auclaire vs. Lo[illegible]*, S. C., 5 L. C. J., p. 223.

5. A report of *experts* will be set aside it appearing that one of the parties, the defendant, was not notified of the day fixed for the *expertise*, and that the *experts* heard the plaintiff's witnesses and proceeded *ex parte* against the defendant. *Waters vs. Veronneau*, S. C., 6 L. C. R., p. 482. Also in the case of *Lamarche vs. Johnston and Johnston*, S. C., 5 L. C. J., p. 336.

6. The reference to an accountant is not sanctioned under the Judicature Act of 1857, 20 Vic. c. 44, see 92. [Con. St. L. C., cap. 83. sec. 80.] in a case not involving the settlement of accounts, and under this section reports of accountants must be acted upon and homologated in the same way as reports of *experts*. *Elliott and Howard*, Q. B., 10 L. C. R., p. 317.

7 In the case of *Hutchinson and Gillespie & al.*, decided in 1838, the Privy Council, pursuant to the powers contained in the 3 & 4 Wm. IV, c. 41 s. 17, and notwithstanding the dissent of the respondent's counsel, ordered a reference to take accounts, &c. 2 Moore's Rep., p. 243. Also 3 Rev. de Leg. p. 427.

8. *Experts* have no right to name a third *expert* before proceeding, and before any disagreement has taken place. *Brodie & al., vs Cowan*, S. C., 7 L. C. J., p. 96.

EXPROPRIATION.—The Court cannot be called upon to inquire as to the validity or invalidity of the proceedings had in the special jurisdiction of the Justices of the Peace, or of the report or verdict of the Jury therein summoned, in a matter of land taken for public use under the authority of the Act of 1851. (14 & 15 Vic. c. 128.) *Beaudry and The Corporation of Montreal*, S. C., 6 L. C. R. p. 328. This case went to the Queen's Bench, where it was held that on the proceedings taken by the Corporation of Montreal for the taking of the land for public use under the said Provincial Statute ss. 66, 68 and 69, the Justice of the Peace could not refuse to swear, nor the jury to hear, the witnesses produced before them. That such refusal invalidated the verdict or assessment by the said jury. That the appearance and attendance of the proprietor at the proceedings, had subsequently to such refusal, cannot be taken as a waiver of his right to complain of the illegal decision, there being no express act of acquiescence. That in such a case recourse should be had to a direct action to prevent the ground being taken owing to the illegality and nullity of the verdict. Also P. C., 8 L. C. R., p. 104; and 11 Moore's Rep., p. 399.

" :—*Vide Beaudry vs. Guenette and Corporation of Montreal*, S. C., L. R., p. 46.

EXTRADITION :—*Vide* FUGITIVES.

FABRIQUE:—1. At meetings of the *fabrique*, the *Curé* has no right to preside, the *marguillier en charge* being the proper officer so to do; and any such meetings presided over by the *Curé* are null. And when the *marguillier en charge* cannot read nor write, a minute of the deliberations of the meeting ought to be drawn up by a Notary. *Damour et al., vs. Guingue*, S. C., 1 L. C. J., p. 94. But in the case of *Senecal and Beauregard*, Q. B., 4 L. C. J., p. 213, it was held that the *Curé* has the right to preside at meetings of the *fabrique*, [*Vide* C. St. L. C., cap. 18, sec. 45.]

2. A workman who has contracted with the parish as *corps et communaute d'habitants*, represented by Syndics, cannot bring his action against the *Fabrique*. *Comte vs. Le Curé et Marguilliers de la paroisse de St. Edouard*. 2 Rev. de Lég. p. 127.*

A *fabrique* has a collective or corporate name in which it should sue and be sued. Exp. Lefort, for *Certiorari*, S. C., 6 L. C. J., p. 200.

" :—*Vide* INSURANCE.
" :— " MANDAMUS.
" :— " MARGUILLIER.

FACTUM:—An appeal will not be dismissed for want of a factum, if the factum be produced at the time the motion to dismiss is made. *Dawson and Belle*, Q. B., 3 L. C. J., p. 256.

FAITS ET ARTICLES:—1. The answers of a party to interrogatories *sur faits et articles* can only make proof against himself. *Crego y vs. Henshaw and Fowke et al.*, 3 Rev. de Lég., p. 98. But the admission of one of several co partners on *faits et articles* binds the firm. *Maguire and Scott*, Q. B., 7 L. C. R., p. 451. And this even after the dissolution of the partnership. But the existence of a partnership cannot be proved by the admission of one of the alleged partners. *Chapman vs. Masson*, S. C., 2 L. C. J., p. 216, and 8 L. C. R., p. 225. And also *Bowker vs. Chandler*, L. R., p. 12.

2. In the case of *Oakley vs. Morrogh et al.*, P. R., p. 19, it seems to have been held, that in a commercial matter, a party may examine his adversary on *faits et articles*. And in an action in the nature of *quo warranto*, a party is obliged to answer interrogatories on *faits et articles*. *Lynch vs. Papin*, S. C., L. R., p. 71.

3. And a refusal to answer interrogatories on *faits et articles*, or the answers thereto, supply, in commercial cases, the place of the memorandum in writing required by the Statute of Frauds. *Levey and Sponza*, Q. B., 6 L. C. J., p. 183.

4. A director of a company is bound to answer interrogatories *sur faits et articles*, which may be asked him touching the diver transactions of the directors. *Lacroix vs. Perrault de Linière*, L. C., 3 L. C. J., p. 136.

5. Interrogatories *sur faits et articles* and rule need not be served personally in a default case, when the writ of summons and declaration have been personally served. *Turgeon vs. Hogue et al.*, S. C., 1 L. C. J., p. 270. But where plaintiff has gone out of the limits of the jurisdiction of the Court, and is domiciled on an island in Lake Huron, the Court will

* This case was only confirmed in Appeal—the Judges being equally divided.

FAITS ET ARTICLES :—

not allow service of interrogatories *sur faits et articles* to be made on him at the Prothonotary's office. *Bro vs. Bureau*, S. C., 4 L. C. R., p. 140.

And in the case of an absentee, the service of a rule for the examination of the absentee upon interrogatories *sur faits et articles* made at the office of the Prothonotary is insufficient. *Fenn vs. Bowker*, S. C., 7 L. C. J., p. 297.

6. The service and the return of a rule for *faits et articles*, may be made before the inscription of the case on the *rôle d'enquête*. *Moreau et al., vs. Léonard*, S. C., 3 L. C. J., p. 168.

7. A party summoned to answer interrogatories on *faits et articles* has no right to demand to have his expenses paid before he is sworn. *Mireau vs. Ratelle et al.*, S. C., 1 L. C. R., p. 277.

And so also in the case of *The Unity Insurance Fire Company vs. Hickey et al.*, S. C., 7 L. C. J., p. 299.

8. Where a party interrogated on *faits et articles* answers evasively, to the effect that he does not remember, when the matters inquired of must be presumedly within his knowledge, the interrogatories will be taken *pro confessis*. *Nye and Malo*, Q. B., 2 L. C. J., p. 43. And where defendant was asked if he owed the debt and he answered that he did not know, without giving any reason for his ignorance, his answer was taken as being equally to a confession and he was condemned. *Benninger et al. vs. Gates*, S. C. M., No. 748. Judgment 31st October, 1857.

9. A party interrogated upon *faits et articles*, and required to give in detail the consideration furnished to the defendants, by reason of which an obligation had been given by the latter, and to produce a detailed account of the goods and merchandize, if such was the consideration, is bound to do so, and upon default, the interrogatories will be taken *pro confessis*. And such party having refused to answer, when called upon to do so, cannot at the hearing upon the merits obtain permission so to do. *Lantier and D'Aoust et al.*, Q. B., 10 L. C. R., p. 497.

10. A motion for a rule *sur faits et articles* to be served on defendant's wife, is not a motion of course. The motion must assign special grounds. *Jamieson et al. vs. Boswell et al.*, S. C., 6 L. C. R., p. 430.

11. In a contract in writing for the building of a house, and the stipulation that no charge for extra work shall be made, unless the order for such extra work shall have been given expressly and in writing cannot exempt the proprietor from answering on *faits et articles* as to verbal orders given for the said works. And such a contract being of a commercial nature, oral evidence will be admitted. *Kennedy et al., and Smith*, Q. B., 6 L. C. R., p. 260.

12. The default to appear and answer interrogatories on *faits et articles*, on the part of the plaintiff, will be taken off and the rule and interrogatories set aside, where such rule was issued during the pendency of a former rule, in the same cause. *Cumming vs. Dickey and the School Commissioners of Durham and Winchester*, S. C., 4 L. C. J., p. 131.

FAITS ET ARTICLES :—

13. A case is not concluded on the default of the defendant to answer interrogatories, *sur faits et articles*, if it is susceptible of further testimony. *Guyon dit Lemoine vs. Lionais*, S. C., 7 L. C. J., p. 294. And a party to whom interrogatories, *sur faits et articles*, have been submitted may answer them at any time before the case is concluded. *Ib.* But see Rules of Practice of 4th January, 1854.

14. An authentic copy of defendant's answers on *faits et articles* in another case may be used to prove facts alleged, without the necessity of interrogating defendant anew, either as to his identity or as to the answers in question. *Clairmont et al. vs. Dickson*, S. C., 4 L. C. J., p. 6, confirmed in Q. B.

15. In an action *en séparation de biens* the *aveu* of the husband, *sur faits et articles*, is inadmissible. *Maloney and Quinn*, Q. B., 10 L. C. R., p. 454.

16. Where a party interrogated on *faits et articles* whether he has not received the originals of certain letters addressed to him by the adverse party in the suit, it is irregular to produce other letters not inquired of. *Hearle and Date*, Q. B., 11 L. C. R., p. 290.

17. A party called upon to answer *faits et articles, vivâ voce*, under 20 Vic. c. 44, s. 86 [C. St. L. C., cap. 83, sec. 100], will not be allowed to read his answers from a paper previously prepared. *Colman et al vs. Fairbairn*, S. C., 4 L. C. J., p. 127. *Vide* also *Moss and Douglas et al.*, Q. B., 10 L. C. R., p. 248.*

18. But in the case of *Fenn vs. Bowker*, S. C., 7 L. C. J., p. 28, it was held, that a party in a cause who has been ordered to answer interrogatories, *sur faits et articles, vivâ voce*, under 20 Vic., c. 44, sec. 86, *may* read his answers from a paper previously prepared.

19. A party who has been examined on *faits et articles* may be afterwards examined as a witness. *Bailey vs. McKenzie et al.*, S. C., 5 L. C. J., p. 223. As to sufficiency of answer,—Q. B., 12 L. C. R., p. 467.

" :—*Vide Leblanc and Delvecchio*, 12 L. C. R., p. 467.

FALSE IMPRISONMENT :—*Vide* DAMAGES.

FALSE PRETENCES :—Two shareholders of a joint stock company paid a protested draft of the Company for $200, and agreed to pretend to the stockholders that they had been obliged to discount a note for $250 to pay it, by which they obtained $250 from the Company. In reality they had not discounted any such note but had themselves furnished the money. It was held that these misstatements were not sufficient to maintain an indictment for obtaining money under false pretences, and that persons could not commit a larceny of the moneys of the Company of which they were shareholders. *The Queen vs. St. Louis et al.*, Q. B., 10 L. C. R., p. 34.

FAUX :—*Vide* INSCRIPTION DE FAUX.

FEES :—1. No fee of office can be exacted by a public officer unless established by legislative enactment, or by ancient usage which presupposes the sanction of the legislative authority. *Price vs. Perceval*, S. R., p. 189.

* In this case it is difficult, from the report, to say if anything, and what, was decided.

Fees :—

2. All fees of office, properly so called, are presumed to have a legitimate foundation in some act of a competent authority, originally assigning a fair *quantum meruit* for the particular service. *The John and Mary*, p. 64, S. V. A. R.

Where the fee is established by or under the authority of an Act of Parliament, the statute is conclusive as to the *quantum meruit*. *Ib.*

Where settled by the authority of the Court, the subject is not concluded thereby, but one may try the reasonableness of the sum claimed as a *quantum meruit* before a Court of competent jurisdiction and obtain the verdict of a jury thereon, when, and when alone they become established fees. *Ib.*

Since the passing of the Act of the Imperial Parliament, 1 Will. 4, c. 51, the establishment of fees in the Vice-Admiralty Court is exclusively in the King in Council; and the table of fees established under the statute having been revoked without making another, it is not competent to the Court to award a *quantum meruit* to its officers. *Ib.*

3. By the ancient law of England, none, having any office concerning the administration of justice, shall take any fee or reward of any subject for the doing of his office. *The London*, p. 140, S.V. A. R.

All new offices erected with new fees, or old offices with new fees, are within the Stat. 34 Edw. I., for that is a tallage upon the subject which cannot be done without common assent by an Act of Parliament. *Ib.*

Officers concerned in the administration of justice cannot take any more for doing their office than has been allowed to them by Act of Parliament. *Ib.*

Or by immemorial usage, referred to by Lord Coke, in this instance, as in so many others, considered as evidence of a statute or other legal beginning of the fee. *Ib.*

These principles have at all times been recognized as fundamental principles of the law and constitution of England. *Ib.*

The Order in Council of the 20th of November, 1835, passed to repeal the table of fees established under the authority of the 2 Will. IV., c. 51:—1st. Had the effect of repealing the same; 2nd. Did not give force or validity to the table of fees of 1809; 3rdly. Nor did it authorize the Judge to grant fees as a *quantum meruit*. *Ib.*

4. The action for money had and received will lie for exorbitant fees paid to custom house officers, and the action may be brought in the name of the owner, although the money may have been paid by the master. *Ib.*

5. The Imperial Statute, 5 Geo. III., c. 45, enacts: that when no fees have been established in a colony of Great Britain, the custom house officers there shall be entitled to receive such fees as were received by the like officers in the nearest port in any British colony, before the 29th September, 1764, and it was held that the Court will take notice of the relative geographical position of countries to ascertain that port. *Ib.*

6. All fees to be taxed in cases instituted previously to the promulgation of the new tariff, are governed by the provi-

Fees :—

sions of the old tariff. *Cherrier and Titus*, Q. B., 1 L. C. R., p. 402; also *Tunstall vs. Robertson*, S. C., 1 L. C. R., p. 476. And the date of filing an opposition in the Sheriff's office governs the costs; and when the filing was before the coming into force of the new tariff, though the return was afterwards, the costs are taxable under the old tariff. *Delery vs. Quig and de Beaujeu & al.*, S. C., 1 L. C. R., p. 493.

7. The 100th section of the 12 Vic., c. 38 [Con. St. L. C., cap. 83, sec. 148], which empowers the judges of the Superior Court to make a tariff for the advocates and officers of justice, speaks only of uniformity in the practice and proceedings and not in the fees of office. And the uniformity spoken of in the preamble to the section in question, directs a general and not such an absolute uniformity to be maintained, that the slightest variance would produce a nullity in the whole. The tariffs relating to the fees of the several officers of justice may be promulgated in different documents, and the order containing the tariffs of the Prothonotaries (complete and distinct by itself), valid or invalid, could not affect the tariffs of the sheriffs, bailiffs and other officers. *Chabot & al. vs. Sewell*, S. C., 1 L. C. R., p. 436. And this case going to appeal, it was held in the Queen's Bench, that a practising attorney cannot recover back from a sheriff a fee of office received under and by virtue of a tariff of fees promulgated by six of the judges of the Superior Court, in obedience to the 100th section of the 12th Vic., c. 38 [Con. St. L. C., cap. 83, sec. 148], and that the receipt of such fee in the present case was perfectly justifiable. Q. B., 1 L. C. R., p. 466.

8. Fees of office and taxes payable to the Clerk of Appeals, Queen's Bench, belong to and form part of the revenue of the Crown, and the action for the recovery thereof is vested in the Clerk of Appeals, who is only the agent for their collection. *Regina vs. Holt & al.*, S. C., 13 L. C. R., p. 306.

" :—*Vide* Judge.

" :— " Registers.

Felony :—An action under 10 & 11 Vic., c. 6 [Con. St. C., cap. 78], disclosing circumstances amounting to a felony, may be instituted, although no indictment has preceded. *Clarke & al. vs. Wilson*, S. C., L. R., p. 22. And so also in an action for assault and battery, even when the assault charged would amount to a felony, the action will be maintained, although then no criminal proceedings have been instituted. *Lamothe and Chevalier & al.*, Q. B., 4 L. C. R., p. 160.

Ferry :—A conveying or crossing of persons, &c. over a river, within the limits of another's exclusive right of ferryage and transport, although done gratuitously, if it ultimately produces gain to the person working the unauthorized ferry or crossing, is a crossing for hire and gain within the meaning of the Statute, and an infringement of the exclusive rights created thereunder. *Leprohon vs Globensky*, S. C., 3 L. C. J., p. 310; also L. R., p. 90. Confirmed in appeal, *Globensky & ux. & Lukin*, Q. B., 6 L. C. J., p. 145.

" :—*Vide* Partnership.

FIDEJUSSEUR :—A *fidejusseur* has his action against a *co-fidejusseur* for his proportion of the sum which he has paid for their common principal; but if there be no convention to the contrary in the deed by which he became security, his action is only for money paid, and consequently he can have no mortgage upon the property of his *co-fidejusseur* until he has obtained a judgment, and then only from the date of that judgment. *Jones vs. Laing*, S. R., p. 125.

FIERI FACIAS :—*Vide* SHERIFF.

FIGURES :—*Vide* ASSIGNMENT.

" :— " BAILIFF.

" :— " CAPIAS.

" :— " PLEADING & PRACTICE—Declaration.

FILING OF TITLES WITH OPPOSITION :—*Vide* OPPOSITION.

FIRE DEBENTURES :—*Vide* HYPOTHÈQUE.

FIRE INSURANCE :—*Vide* INSURANCE.

FISC :—A claim of the Crown founded on a fiscal right is privileged over proceeds of sale of the moveables of an insolvent debtor. *Benjamin vs. Brewster and the Attorney General, pro Reginâ*, S. C., 7 L. C. J., p. 281.

FLOATING LIGHTS :—In a case of collision against a ship for running foul of a floating light vessel, the Court pronounced for damages. *The Miramichi*, p. 237, S. V. A. R.

FLOGGING :—By an Act of Congress, passed 28th September, 1850, flogging in the navy of the United States of America and on board vessels of commerce was abolished from and after the passing of that act. p. 390, S. V. A. R.—(note.)

FOLLE ENCHÈRE :—1. Any opposing creditor may move for *folle enchère* against an *adjudicataire* who has neglected to pay his purchase money. *Guenette vs. Blanchette*, S. C., 2 L. C. R., p. 64. But it was held in Quebec that an opposant should not be permitted to move for a *folle enchère* until the creditor has had time so to do.

2. The husband of a married woman *séparée de biens adjudicataire*, should have notice of motion for *folle enchère* against his wife. *Clouthier vs. Clouthier*, S. C., 10 L. C. R., p. 457. And so also in Queen's Bench, in the case of *Jordan and Ladrière*, 12 L. C. R., p. 33. And where the rule has been served on the wife alone the judgment declaring it absolute will be set aside. *Jarry & vir. and The Trust and Loan Company of Upper Canada*, Q. B., 12 L. C. R., p. 421.

3. And no motion for an order to re-sell real estate at the *folle enchère* of the *adjudicataire* can be granted, unless notice thereof has been given to the *adjudicataire*. *Baker vs. Young & al.*, and divers opposants, P. R., p. 22. And the notice of motion must be served personally on the *adjudicataire*. *Jobin vs. Hamel and Hamel*, S. C., 12 L. C. R., p. 176.

4. But a rule for a *folle enchère* against an *adjudicataire*, described in Sheriff's return as residing in Upper Canada, may be declared absolute, on the single return of a bailiff, that the *adjudicataire* has no domicile in Lower Canada and that he cannot be found in the district of Montreal. *Guy vs. Clarkson and McLean*, S. C., 1 L. C. J., p. 193. But a rule for *folle enchère* against *adjudicataires*, who, on the face of the proceedings, are non-residents in Lower Canada, but

FOLLE ENCHÈRE :—

have paid the capital of their purchase, founded on a claim for interest on such capital, and served on "the agent and attorney at law" of the *adjudicataires*, will not be maintained. *Hall vs. Douglas and McDougall & al.*, S. C., 2 L. C. J., p. 276.

5. After the *folle enchère* has been ordered against a purchaser (*adjudicataire*) he may annul that proceeding by paying his purchase money, and the costs incurred on the *folle enchère*. *Langevin vs. Guron*, S. C., 2 L. C. R., p. 125. And a similar decision was given in the case of *Nye vs. Potter and Brown*, 5 L. C. J., p. 23.

6. The Court will not order the re-sale of an immoveable property at the *folle enchère* of the *adjudicataire*, pending the proceedings on an intervention by a third party to have the adjudication declared null and void; nor will it allow a *contrainte par corps* to issue against the *adjudicataire* for the non-payment of the purchase money, pending such proceedings. *Meath & al. vs. Fitzgerald, Monaghan and Charlton*, S. C., 1 L. C. R., p. 241.

7. The *adjudicataire* is only liable *par corps* on a re-sale at *folle enchère*, for the difference of price, and not for the costs of the re-sale. *The Trust and Loan Company vs. Doyle & al. and Stanley*, 3 L. C. J., p. 302.

8. A *folle enchère* cannot be ordered on terms or conditions different from those of the original sale and adjudication. *Evans and Nicholls & al.*, Q. B., 1 L. C. R., p. 151.

9. A rule *nisi* for *folle enchère* must contain a description of the lands asked to be resold. *Dickinson vs. Bourque and Blanchard*, S. C., 4 L. C. J., p. 119. And so also it was held in *Nye vs. Potter and Brown*, 5 L. C. J., p. 23.

10. A sale by *folle enchère* will be ordered at the instance of the plaintiff against an *adjudicataire* of a steamer, duly registered according to law, who shall not have paid the price of his adjudication. *Lavoie vs. Plante*, S. C., 12 L. C. R., p. 207.

11. A rule for *folle enchère* may be granted notwithstanding the death of the creditor suing out the *décret*. *Russell vs. Fournier & al., and McBain*, S. C., 7 L. C. J., p. 299.

" :—*Vide* AUCTION.

FORCIBLE ENTRY :—*Vide* INDICTMENT.

FORECLOSURE :—*Vide* PLEADING AND PRACTICE.

FOREIGN JUDGMENT :—1. A plea by which it is alleged that a suit has already been brought and decided in a competent foreign tribunal, by the same plaintiff against the same defendant, for the same cause of action, is a good plea, more especially if it sets up payment of the judgment by defendant. *Vaughan vs. Campbell*, S. C., 5 L. C. R., p. 431.

2 Letters of administration from a Court of Probate in Michigan, as well from the terms thereof, as from the principle of international law, do not extend beyond the limits of the state wherein the administration was granted. *Côté & al. and Morrison*, Q. B., 9 L. C. R., p. 424.

FOREIGN LAW :—1. The law of the country in which a contract is made and its usages govern in mercantile cases. *Allen vs. Scaife & al.*, S. R., p. 105.

FOREIGN LAW :—

2. If there be no evidence of Foreign Law, it will be held to be the same as ours. *Parker vs. Cochrane*, S. C., L. R., p. 53. And so also it was held in *Brodie & ux. vs. Cowan*, S. C., 7 L. C. J., p. 96.

FOREIGN SHIPS :—Ancient jurisdiction of the Admiralty restored by 3 & 4 Vic. c. 65, s. 6, with respect to claims of material men for necessaries furnished to foreign ships. *The Mary Jane*, p. 271, S. V. A. R.

FORFEITURE :—Forfeiture for not entering or reporting goods, may be incurred, even without such goods having been landed. *Leggett*, qui tam. v. 4 gold watches, *and Garrett*, 3 Rev. de Lég., p 252.

" :—*Vide* REGISTERS.

FORFEITURE AND PENALTIES :—Jurisdiction in the case of forfeitures and penalties incurred by a breach of any Act of the Imperial Parliament, relating to the trade and revenues of the British possessions abroad.

Jurisdiction in the case of forfeitures and penalties incurred by a breach of any Act of the Provincial Parliament, relating to the customs as to trade or navigation.

Under the Act regulating the trade of the British possessions abroad, no suit for the recovery of any penalty or forfeiture to be commenced, except in the name of some superior Officer of the Customs or Navy, or by His Majesty's Advocate or Attorney General for the place where such suit shall be commenced. *The Dumfriesshire*, p. 245, S. V. A. R.

" :—*Vide* VICE ADMIRALTY COURT.

FORMA PAUPERIS :— *Vide* FRAUD.

" :— " PLEADING AND PRACTICE.

" :— " SECURITY.

FRANC ET QUITTE :—1. The clause of *franc et quitte* will not discharge the purchaser from paying so much of the purchase money as may be in excess of an undeclared *hypothèque*. *Paquet & al. vs. Miclette*, S. C., 4 L. C. J., p. 310.

2. When the purchaser is in danger of being troubled, by reason of mortgages, in the possession of a property sold *franc et quitte*, he may retain the payment of the purchase money, until such mortgages are removed by the vendor or unless security be given by the latter, according to the provisions of Ch. 36, Con. Sts. L. C., sec. 31. And the vendor in such cases is condemned in costs. *Ib.* And no execution shall issue until either the mortgages are paid or until good security is given. *Ib.* Also *Perras vs. Beaudin*, S. C., 6 L. C. J., p. 241, and *Brunéau vs. Robert*, S. C., 6 L. C. J., p. 247, and *Bernesse dit Blondin vs. Madon*, S. C., 7 L. C. J., p. 32.

FRAUD :—Where parties have entered into an agreement with a view to defraud third persons, the agreement will nevertheless be valid and binding as between the parties thereto. *Shaw and Jeffry*, P. C., 10 L. C. R., p. 340; 13 Moore's Rep., p. 432.

" :—*Vide* ASSIGNMENT.

" :— " DONATION.

" :— " PROMISSORY NOTE.

FREE AND COMMON SOCCAGE:—*Vide* DOUAIRE.
" " :— " LANDS.
" " :— " PETITORY ACTION.
" " :— " SEPARATION DE CORPS ET DE BIENS.

FREIGHT:—Darling purchased a quantity of bar iron from Wilson's trustees in Glasgow, a part of the iron was shipped on board of the California, of which the appelant was master, the bill of lading was in the name of respondent, the agent of Wilson's trustees in Montreal. Upon the arrival of the iron at the latter place, the respondent referred the appellant, and Burns the consignee of the ship, to Darling as the owner of the iron. Darling being in possession of a duplicate bill of lading received the iron from the appellant, who delivered it notwithstanding that the respondent had not endorsed the bill of lading. It was held in the Queen's Bench, confirming the judgment of the Superior Court, that though the respondent had not endorsed the bill of lading to Darling, he, the respondent, was not liable for the freight of the iron. *Fowler and Meikleham*, Q. B., 7 L. C. R., p. 367.

" :—*Vide* CARRIER.

FUGITIVES:—The Executive Government may deliver up to a Foreign State, for trial, any fugitive from justice, charged with having committed any crime within its jurisdiction. Re *Joseph Fisher*, S. R., p. 245.

GAGERIE:—*Vide* LOYER.

GAGES:—*Vide* PRESCRIPTION.

GAMBLING:—That a bargain and sale of goods in January for delivery in the course of May following is not a gambling transaction. *Baldwin vs. Binmore*, S. C., 6 L. C. J., p. 297.

GAME LAWS:—The husband, though absent, is liable for the penalty under the act on the ground that his wife acting as his agent in the ordinary course of his business, must be presumed to have had his authority for the illegal act complained of. *Campbell, complainant, and O'Donahue, defendant*, S. C., 5 L. C. J., p. 104.

GARANTIE:—*Vide* ACTION EN GARANTIE.
" :— " REGISTRAR.
" :— " WARRANTY.

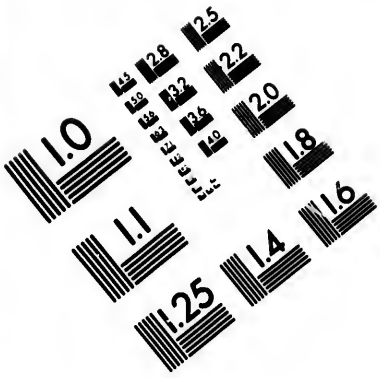
GARDIEN:—1. A *gardien* who fails to produce goods entrusted to him, must remain, *contraint par corps*, until he produce the same. *Wilson vs. Pariseau and Phillips mis en cause*, S. C., 1 L. C. J., p. 253. *Brooks and Whitney*, Q. B., 4 L. C. J., p. 279. Also 10 L. C. R., p. 244.

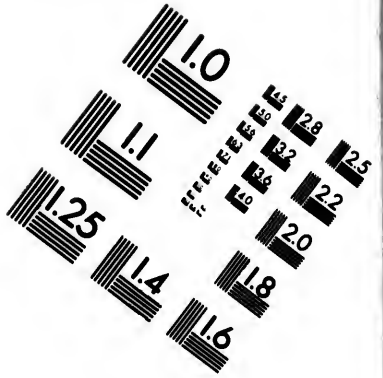
And notice for a rule for *contrainte par corps*, against such guardian is not required by the rules of practice.* *Ib.*

And a variance between the final judgment on the rule, and the terms of the rule is not a ground for setting aside the said judgment. *Ib.*

Or until he pays the value. *Ouimet vs. McCallum and Clarke mis en cause*. S. C., 1 L. C. J., p. 158. But in a rule for *contrainte par corps* against the *gardien*, it is not necessary to offer any alternative, in default of producing the

* In the case of *Leverson & al., vs. Cuningham and Boston*, it was held that the notice for a rule for *contrainte par corps* on the Sheriff *nisi causa* must be signified to the Sheriff.





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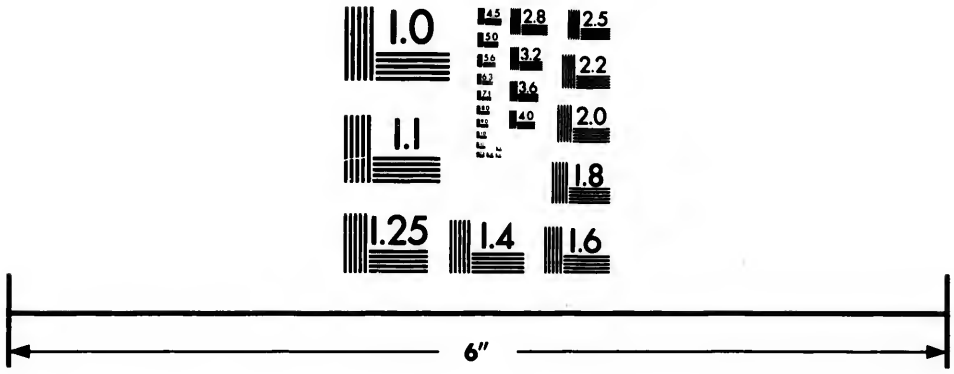

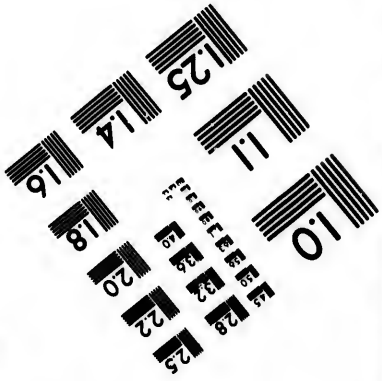

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GARDIEN :—

moveables seized. *Leverson et al., and Boston*, Q. B., 2 L. C. J., p. 297. And also in a case of *Higgins et al., vs. Robillard*, Q. B., 12 L. C. R., p. 3. Nevertheless the contrary was held in the S. C., in *Lord vs. Moir and Pratt*, S. C., 7 L. C. J., p. 80, probably through inadvertance. But the contrary jurisprudence is perfectly established.

2. The plaintiff cannot proceed by a direct action to compel the guardian to produce goods seized and confided to his charge. The proper course is by motion in the suit in which they were seized. *Berry vs. Cowan*, S. C , 11 L. C. R., p. 476.

3. A guardian of goods and chattels seized under a writ of Revendication, addressed to the Sheriff, has a right of action as well against the party at whose suit the writ issued, as against the Sheriff, for the recovery of the moneys expended by him as such guardian in and about the safe keeping and custody of such goods and chattels. *Dinning and Jeffery*, Q. B., 2 L. C. R., p. 360., thus reversing the judgment of the S. C., 2 L. C. R., p. 118. But the articles seized must have been *de facto* in the possession of the guardian, or he must prove that he expended the sums claimed in keeping the article seized. *Dinning vs. Jeffery* S. C., 5 L. C. R., p. 182.

4. A *gardien* has no *droit de retention* over a thing not actually under his charge, under process of revendication, subsequently dismissed, and the judgment notified to the *gardien*. *Poutré vs. Laviolette*, S. C., 9 L. C. R., p. 360.

5. A guardian of moveable property cannot, during the pendency of the seizure, compel the surrender to him of such moveable property by the defendant, in the absence of positive proof that the defendant is deteriorating it by improper use. *Palsgrave vs. Senecal et al., and Prieur, gardien*, S. C., 3 L. C. J., p. 116.

6. The *gardien* of goods under execution has no right to oppose the sale of the goods under a subsequent seizure by another creditor during the contestation raised on the first seizure. *Donally vs. Nagle and McDonald*, S. C., 3 L. C. J., p. 135. But in the case of *Smith et al., vs O'Farrell and Coleman*, 9 L. C. R., p. 495, it was held that the guardian had a right to oppose such sale.*

And so also it was held in *Langlois vs. Gauvreau et al., and Gauvreau*, S. C., 12 L. C. R., p. 158.

7. But in *Shelton vs. Kerns et al., and Holland*, it was held that though the *gardien* might oppose the second seizure he was not held liable for not doing so, 7 L. C. J., p. 139. And the right of a *gardien* to oppose a second seizure cannot be tested on motion. *Warren vs. Douglas and Smith*, S. C., 7 L. C. J., p. 140.

8. A rule for *contrainte par corps* taken against a guardian to effects seized, for their non production, will be discharged on his shewing that they had been sold under other executions. *Blackiston vs. Patton & Patton*, C. C., 5 L. C. J., p. 56.

* Mr. J. Chabot in giving judgment expressed his dissent from a previous judgment rendered in the S. C., at Quebec, on the 20th May, 1859, *Dastous vs. Hutton* No. 591.

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9. A *gardien* is not *contraignable par corps* if he fails to produce effects seized under an execution which has been allowed to lie dormant for more than two months. *Schofield et al., vs. Rodden et al.*, S. C., 5 L. C. J., p. 332.

10. A *gardien* to a seizure is not bound to deliver up the effects in his custody to any but to the person by whom he is so appointed. *Frechette, père, vs. St. Laurent*, S. C., 13 L. C. R., p. 20.

" :—*Vide* SHERIFF.

GARNISHEE :—*Vide* TIERS-SAISI.

GUARANTEE :—*Vide* GARANTIE.

GENERAL DAMAGES :—*Vide* RAILWAY ACCIDENT.

GENERAL ISSUE :—*Vide* EVIDENCE.

" :— " PLEADING & PRACTICE.

GOVERNMENT OFFICER :—An action does not lie upon an order, given on behalf of government by one officer to another, directing him to pay a balance due by government to the person in whose favor it is given. *McLean vs. Ross*, 3 Rev. de Lég., p. 434.

GOVERNOR :—An action cannot be maintained against a governor while in the administration of the government. *Harvey vs. Lord Aylmer*, S. R., p. 542. But the reverse was held in *Hill and Bigge et al.*, 1 Rev. de Lég., p. 76.

HABEAS CORPUS :—1. On a *habeas corpus* a judge has no jurisdiction to liberate a person found guilty of simple larceny, and sentenced to be imprisoned in the Penitentiary for life, although it might appear that the sentence was illegal; and the judge to whom an application for such writ is made, having no jurisdiction to revise the sentence, must abstain from giving his opinion on the legality or illegality of such sentence. Ex parte *Plante*, 6 L. C. R., p. 106.

2. A writ of *habeas corpus* will not be granted in case of a defendant confined in gaol under civil process. *Barber et al. vs. O'Hara*, 8 L. C. R., p. 216.

3. On an application to admit to bail, the judge will look to the gravity of the offence charged, the weight of the evidence, and the severity of the punishment, in deciding whether he will admit to bail or not. Ex parte *Corriveau*, 6 L. C. R., p. 249. And even after true bill found, he will admit to bail if, on reading the affidavits, the ground of suspicion appears to be slight. Ex parte *Maguire*, 7 L. C. R., p. 57.

4. A prisoner being tried by Court Martial, for firing without orders towards a crowd of people in the streets of Montreal, such conduct being insubordinate, unsoldierlike and to the prejudice of good order and military discipline; and a writ of *habeas corpus* being moved to discharge him from the custody of the military authorities, it was held, that the written charge against the petitioner involving one of felony, he must first be held to answer to the constituted tribunals of the colony, proceeding under the common law of England, before a military Court under the mutiny act, can legally take notice of the charge. Ex parte *McCulloch*, 4 L. C. R., p. 467.

" :—*Vide* RETURNING OFFICER.

" :— " MEMBER OF THE LEGISLATURE.

HALF PAY :—Half-pay is not assignable ; but although the assignment is null it may be guaranteed. *Dorwin vs. Waldorf*, 3 Rev. de Lég., p. 248.

HARBOUR COMMISSIONERS :—*Vide* BEACHES.

" " :— " PETITORY ACTION.

HARBOUR MASTER :—The rules of the Trinity House of Quebec empower the harbour-master to station all ships or vessels which come to the harbour of Quebec, or haul into any of the wharves within the limits of the same ; and to regulate the mooring and fastening, and shifting and removal of such ships and vessels ; and to determine how far and in what instance 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 to determine all disputes which may arise concerning the premises. *The New York Packet*, p. 325, S. V. A. R.

Owner of vessel contravening harbour-master's order, condemned in damages for a collision. *Ib.*

HARBOUR OF QUEBEC :—1. Personal torts committed in the harbour of Quebec, are not within the jurisdiction of the Admiralty. *The Friends*, p. 112, S. V. A. R.

2. Damages awarded in case of collision in the harbour of Quebec. *The Lord John Russell*, p. 190, S. V. A. R.

3. A vessel which had moored alongside of another at a wharf in the harbour of Quebec, made responsible to the other for injuries resulting from her proximity. *The New York Packet*, p. 325, S. V. A. R.

4. Declinatory exception over-ruled, in a suit for an injury done by collision in the harbour of Quebec. *The Camillus*, p. 383, S. V. A. R.

HEIRS :—1. It is not a valid objection to an action against heirs that all of them were not originally parties to the suit, if by an interlocutory judgment, rendered during the progress of the suit, they have been made parties. *Viger vs. Pothier*, S. R., p. 394.

2. The eldest son, as heir to his father deceased intestate, is seized as proprietor of lands held in free and common soccage, by the right of primogeniture, as one of the incidents of that tenure. *Stuart vs. Eaton*, S. C., 8 L. C. R., p. 113.

" :—*Vide* ACTE D'HÉRITIER.
" :— " AINESSE.
" :— " ALIEN.
" :— " CURATOR.
" :— " DELIVRANCE.
" :— " PETITORY ACTION.
" :— " RENUNCIATION.
" :— " WILL.

HIRE :—In a contract of hire, the words "your remuneration will be at the rate of £300 *per annum*," does not constitute a hiring for one year ; and such contract is determinable at the option of either party. *Lennan vs. The St. Lawrence and Atlantic Railroad Company*, S. C., 4 L. C. R., p. 91.

HONNEURS DANS L'EGLISE :—The captain of militia has a right to the presentation of the *pain béni* immediately after the seignior ; but he should occupy the pew set apart for his

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office, if there be one, otherwise he will be offered the *pain béni* in his turn with the other parishioners. *Augé vs. Le Curé de la Pointe aux Trembles*, 2 Rev. de Lég., p. 63.

HÔTELLIER :—1. An innkeeper has no claim on a piano brought into his hotel to be used at a concert there given, for the charge for the use of the room. *Brown vs. Hogan et al.*, S. C., L. R., p. 83, and 4 L. C. R., p. 414. And also in another case of *Nordheimer et al., vs. Hogan et al.*, S. C., 2 L. C. J., p. 281.

2. A hotel-keeper has no lien on the effects of a monthly boarder; such privilege only exists over the effects of a traveller. *Bleau vs. Belireau*, S. C., 4 L. C. J., p. 356. And so also in *Cooper vs. Downes*, S. C., 13 L. C. R., p. 358. Where it was held that *pélerins*, within the meaning of the 175 art. of the Custom, were only those who lived at hotels from day to day. And also in the case of *Verbois vs. Saucier*, S. C., 7 L. C. J., p. 126, where it was held that a party staying in a hotel for three weeks was not a *pélerin*, and a revendication will lie at his suit to recover his clothes detained by the *hôtellier*.

3. An inn-keeper is responsible in damages occasioned by the tail and mane of a horse having been shorn in his stables. In the absence of evidence to the contrary, it will be presumed that it was done by his servants or through their negligence. *Durocher vs. Meunier*, S. C., 9 L. C. R., p. 8.

4. A hotel-keeper has an action for drink sold to travellers who are residing in his hotel. *Mercier vs. Brillon*, S. C., 5 L. C. J., p. 337.

HUSBAND AND WIFE.
" :—GAME LAWS :—*Vide* PLEADING.

HYPOTHECARY ACTION :—1. One and the same hypothecary action cannot be brought against three proprietors of a land hypothecated, unless they be proprietors *par indivis*. *Panet et al., vs. Lorin et al.*, 1 Rev. de Lég., p. 232.

2. An hypothecary action joined to a personal one, is prescribed by the lapse of 30 years. *Délard vs. Paré et ux.*, S. C., 1 L. C. J., p. 271.

3. In an hypothecary action it is the circuit within which the *détenteur* holds possession, not the circuit where the original contract stipulating the hypothèque is made, that is the place where cause of action arose. *Morkill vs. Cavenagh*, S. C., 4 L. C. J., p. 7.

" :—*Vide* DECLARATION.
" :— " DOUAIRE.

HYPOTHECARY CLAIMS :—*Vide* PLEADING AND PRACTICE.

HYPOTHECARY DEBTS :—*Vide* IMPUTATION.

HYPOTHÈQUE :—1. An hypothec is indivisible in so far as regards the immoveable property hypothecated. *McCarthy vs. Senecal*, S. C., 11 L. C. R., p. 41.

2. A notarial deed executed *en brevet* gives no *hypothèque*. *Belair vs. Gaudreau et ux.*, P. R., p. 57.

3. A *fidejusseur* has no *hypothèque* upon the property of his *co-fidejusseur* for his share of the security which he may

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have paid, until he gets judgment, and then only from the date of judgment. *Jones vs. Laing*, S. R., p. 125.

4. A general *hypothèque* will not attach to lands held in free and common soccage. *Paterson et al., vs. McCallum et al.*, S. R., p. 429, and *Boston vs. Classon*, 2 L. C. R., p. 449.

5. General hypothecs created anterior to the passing of the registry ordinance, 4 Vic. c. 30, attach to property purchased subsequently to the passing of the said ordinance. *Brown and Oakman et al.*, Q. B., 13 L. C. R., p. 342.

6. The claim of a legacy by privilege of *hypothèque* by an ante-nuptial contract, against a fund in the hands of the sheriff, the produce of a sale under execution of real estate, belonging to the husband, who was the sole executor and residuary legatee of his deceased wife, will be dismissed ; it not appearing that the fund was the property included in the marriage contract, or that the legatee had any right of priority to a judgment creditor. *Smith and Brown*, P. C., 2 Moore's Rep., p. 35.

7. An *hypothèque* accorded during insolvency, confers no privilege as against contemporaneous chirographary creditors. *Duncan vs. Wilson, and Wilson and Wood*, opposants, S. C., 2 L. C. J., p. 253. And registration during a *saisie réelle* confers no right of *hypothèque* to the prejudice of other creditors, who have not registered their claims. *Gale vs. Griffin, and Gale and Sewell*, opposants, Q. B., 1 L. C. J., p. 266.

8. A servitude *urbaine* is not susceptible of hypothecation. *Duchesnay et al., vs. Bedard and Boisseau*, S. C., 1 L. C. R., p. 43.

9. The hypothecation of a lot of land described by its metes and boundaries, is an hypothecation of a thing certain, although the contents be less than those contained in the said lot ; and in this case the *hypothèque* covers the entire lot. *Labadie and Truteau*, Q. B., 3 L. C. R., p. 155.

10. The appellants acquired real property, on which was built the Baptist College at Montreal from one Gerard, by deed of sale, dated the 18th March, 1842 ; part of the price remained as a *rente constituée* on the property, and £2,500 also remained at interest for the lifetime of one Forsyth and M. C. Gerard, his wife, the principal to be payable after their death, to certain persons appointed to receive the same. Afterwards, on the 25th July, 1845, the appellants, by deed not registered, reciting that they had purchased merely and solely in trust for the Canada Baptist Missionary Society, until it should become incorporated, (as it was by the 8 Vic. c. 102,) assigned the property to the society, in consideration that they should be exonerated and discharged from all claims, troubles and demands whatsoever, by Gerard, under the said deed of sale, and further in consideration of 10s. ; but there was no special covenant of guarantee, nor any precise sums of money stated as remaining due to Gerard. The society afterwards specially hypothecated the property to Hoby, and Salter and to Forsyth, by deeds bearing date the 28th October, 1845, and 18th December, 1848,

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duly registered; and the property being sold by *décret* by the sheriff, Gerard forbore from making any claim upon the proceeds, under his deed of sale, and the respondent as assignee of Hoby, Sulter and Forsyth, claimed to be collocated. The appellants resisted this claim, unless security were given to refund, if the balance of the price were hereafter claimed from them. It was held, that the appellants were entitled to such security, notwithstanding the 10th and 28th sections of the Registry Ordinance, and notwithstanding that the deed of the 25th July, 1845, contained no special *hypothèque* in their favor, and was not registered. *Try et al., and the Corporation of the Roman Catholic Bishop of Montreal*, Q. B., 4 L. C. R., p. 276.

11. A special *hypothèque* is no bar to the exception of *discussion*, and the *tiers détenteur* of land, who has been sued by the original vendor, may validly plead that exception. The *tiers détenteur* has no right to hold the property until his improvements have been paid. *Price vs. Nelson*, S. C., 2. L. C. R., p. 455.

12. The registration of an *hypothèque* is not necessary as against chirography claims. *Duncan vs. Wilson and Wilson and Wood*, S. C., 2 L. C. J., p. 253. And between two hypothecary creditors, whose titles (neither of which were registered) were subsequent to the passing of the Registry Ordinance, the one of earliest date will be preferred. *Methot et al., vs. Sylvain and Gibb et al.*, 2 Rev. de Lég., p. 210.

13. The *bailleur de fonds*, who has neglected to register a deed of sale anterior to the passing of the Registry Ordinance, 4 Vic. c. 30, on or before the 1st November, 1844, the period limited for the registration of old deeds (7 Vic. c. 22, s. 12,) [Con. St. L. C. cap. 37, sec. 3,] cannot claim, to the prejudice of a subsequent hypothecary creditor, whose title has been duly registered before his. *Dionne vs. Soucy*, S. C., 1 L. C. R., p. 3; also *Poliquin vs. Belleau and Fiselle & al.*, S. C., 7 L. C. R., p. 468; also *Vondenvelden and Hart*, Q. B., 2 L. C. R., p. 353. And in rendering judgment in this case Sir James Stuart, C. J., intimated his opinion that the *bailleur de fonds*, either prior or anterior to the Ordinance of the 4 Vic. c. 30, is bound to enregister his title. But this opinion was not then generally acquiesced in. *Patton and Buchanan*, 3 Rev. de Lég., p. 56. And it prevailed in so far as regards the titles of *bailleurs de fonds* passed subsequently to the Ordinance of the 4th Vic. *Shaw vs. Lefurgy*, S. C., 1 L. C. R., p. 5; *Wilson and Atkinson*, S. C., 2 L. C. R., p. 5; *Latham vs. Kerrigan and Homerick*, S. C., 1 L. C. R., p. 489. Nor for deeds passed prior to the 7 Vic. c. 22, is it necessary to file a memorial for arrears of interest. *Ib.* And also in the case *Bouchard and Blais*, Q. B., 4 L. C. R., p. 371, and in this case, in the *Q. B.*, this was declared to have been the jurisprudence.*

* But since the passing of the 16 Vic. c. 206, [Con. St. L. C. cap. 37, sect. 9,] the *bailleur de fonds*, who does not enregister within thirty days, will lose his privilege if any hypothecary creditor registers before him.

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14. In the case of *Brown vs. Clark and Montizambert*, S. C., 10 L. C. R., p. 379, it was held that prior to the 4 Vic. c. 30, the arrears of interest upon the price of immoveable property sold, were only liable to a prescription of thirty years and not of five years. That in a distribution of moneys levied by the sale of real estate, the vendor, *bailleur de fonds*, whose claim is founded on a deed passed before the coming into operation of the 4 Vic. c. 30, is entitled to rank for all the arrears of interest due with the principal, although no memorial of such interest was ever registered. That the 7 Vic. c. 22, cannot be construed so as to have a retroactive effect, and that consequently, it does not apply to constituted rents, created before it came into force.

15. And a contract of marriage executed before the enactment of the 4 Vic. c. 30, must have been enregistered in the delay fixed by the Ordinance, to preserve the rank of the mortgage created by it. *Garneau vs. Fortin*, S. C., 2 L. C. R., p. 115. And also a marriage contract establishing a life rent to a wife. *Panet vs. Larue*, S. C., 2 L. C. R., p. 83. And in the case of *Forbes vs. Legault*, S. C., 6 L. C. R., p. 100, it was held, that a purchaser in good faith for valuable consideration, under a deed of sale, prior to the registry ordinance, and registered previous to the 1st November, 1844, is not liable hypothecarily for a *douaire prefix*, under a marriage contract passed before notaries in 1817. and not registered till the 14th February, 1853, notwithstanding that the death of the husband only took place in 1852. But it is not necessary that a marriage contract containing the stipulation of a customary dower, should be registered to confer upon the person claiming such dower, a right of preference to posterior creditors who have registered their claims. *Sims et al., vs. Evans and divers*, S. C., 10 L. C. R., p. 301, and 4 L. C. J., p. 311. And previous knowledge, in a subsequent creditor, of the existence of a previous debt, not registered, due by his debtor is not sufficient to put him in bad faith and to deprive him of the advantage by him acquired by registration of his claims, unless he be guilty of fraud or collusion. *Ross vs. Daly*, S. C., 3 L. C. R., p. 136. The words "subsequent *bonâ fide* purchaser" employed in the 4th section of the Registry Ordinance refer to the words "from and after the lapse of the said period." *Lauzon & al., vs. Belanger*, 1 Rev. de Lég., p. 146. But a married woman can claim the value of an immoveable property sold upon the representatives of her husband, such property having been given to her during the community, notwithstanding the clause of *ameublissement* in the contract of marriage, provided there be a stipulation in the contract of marriage that the wife may renounce to the community, and take back whatever she brought to it, although the marriage executed previously to the 4th Vic. was never registered,—the wife's claim being rather in the nature of a right of property than of an hypothecary claim. *Labèque vs. Boucher, Fleury and Marceux*, S. C., 1 L. C. R., p. 47. And in the case of *Nadeau and Dumon*, Q. B., 2 L. C. R., p. 196, it was held that it is not necessary to register contracts of marriage to

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preserve rights of ownership, thereby secured, and that children representing their mother, may claim, by right of community, the value of one half of an immoveable property, *propre aneubli*, which they then allowed to be sold

16. But an heir claiming his share of the immoveable property of a community in the estate of his mother, will lose his rank of *hypothèque* upon the real estate of his father, appointed his tutor, if he has not caused the registration of the marriage contract, the act of tutorship, or the deed of partition. *Girard vs. Blais*, S. C., 2 L. C. R., p. 87.

17. But a married woman whose marriage contract is anterior to the Registry Ordinance does not lose the rank of her *hypothèque*, although not enregistered before the 1st November, 1844. Ex parte *Gibb and Sheppard & ux.*, 3 Rev. de Lég., p. 478.

18. A clause in a contract by which intended husband gives to intended wife a sum of money to be enjoyed during her natural life, and then to go to her children, creates a mortgage upon the property of the husband which gives to the children a preference over subsequent creditors, notwithstanding the clause that the grant was made on condition that the husband should have the right to alienate, &c., without interruption from his wife, and property upon which she might have mortgage by reason of said clause. *Brown vs. Oakman & al.*, Q. B., 13 L. C. R., p. 342.

19. The general hypothec acquired previous to the coming into force of the Registry Ordinance, 4 Vic. c. 30, and enregistered before the deed of the *tiers détenteur* is sufficient to preserve the hypothec of the hypothecary creditor. *Mogé vs. Dupré*, C. C., 3 L. C. R., p. 138. And such hypothec attaches to property purchased subsequently to passing of said Ordinance. *Brown and Oakman & al.*, Q. B., 13 L. C. R., p. 342.

20. The party who wishes to acquire an hypothec, should specify in the deed the amount with which the immoveable is charged. Ex parte *Cazelais and Rams y* opposant, S. C., L. R., p. 34; also Ex parte *Casavant and Lemieux*, opposant, S. C., 2 L. C. J., p. 139. But *vide suprà* No. 19.

21. But the general registration of a deed, bearing date previous to the enacting of the 4th Vic. c. 30, without a memorial or claim for any specific sum for arrears of life rent, or arrears of interest which may be due upon such deed, is sufficient to preserve the rights of the creditor for the whole amount of such arrears, and it is not necessary that any memorial for such arrears should have been registered. *Pelletier vs. Michaud* and divers opposants, S. C., 1 L. C. R., p. 165; also *McLaughlin & al. vs. Bradbury & al.*, 3 Rev. de Lég., p. 340. And so also for interest accrued subsequently. *Regina vs. Petitclerc, and Derousselle and Wood & al.*, S. C., 1 L. C. R., p. 284.

22. The registration of an ordinary conventional hypothec, bearing date subsequently to the coming into force of the Registry Ordinance, is only effectual for two years and the current year, as regards interest against a subsequent hypo-

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thec duly registered, but is of no effect as to costs to recover the amount. *Morin vs. Daly*, S. C., 6 L. C. R., p. 48.*

23. But since the passing of the 16 Vic. c. 206, s. 7, [C. Sts. L. C., cap. 37, sect. 45,] an hypothec may subsist for a life rent created by a deed of gift *inter vivos*, without mention of a specific amount. *Chapais vs. Lebel*, S. C., 3 L. C. R., p. 477. But not so for a life-rent created by testament, in which case the immoveable charged must be designated and specially affected by the testament, for a sum of money, in conformity with clause 28 of the Ord., 4 Vic. c. 30, [C. Sts. L. C., c. 37, sect. 45.] *Grégoire vs. Laferrière*, S. C., 3 L. C. J., p. 184.

24. But registration by memorial of an hypothecary claim, founded upon a deed of donation, which does not state the amount of the claim, is inoperative against a subsequent *bonâ fide* purchaser who has duly registered his deed of acquisition. Such a memorial should contain the allegations necessary to disclose all the rights sought to be preserved by means thereof. *Fraser et ux. vs. Poulin*, S. C., 8 L. C. R., p. 349.

25. The revocation of a *donation onéreuse* does not affect the *hypothèques* created by the donee during the existence of the donation. *Lafleur and Girard*, S. C., 2 L. C. J., p. 90.

26. Under the 4th Vic. c. 30, all wills made and published previously to the 31st December, 1841, must be registered to enable legatees to rank according to date of hypothec. *Duchesnay vs. Bédard, and Campbell and Bédard*, S. C., 1 L. C. R., p. 435.

27. Hypothecation is only created on the real estate of an executor from the time of his acceptance, by authentic *acte* of the executorship. And his acceptance must be enregistered to enable a party claiming under the will, to rank by privilege on the estate of the executor over an ordinary mortgage creditor, whose claim has been duly registered. *David vs. Hays*, S. C., 3 L. C. R., p. 440. And also *Lamothe vs. Hutchins*, S. C., 9 L. C. R., p. 7. And in *Lamothe vs. Ross and Ross et al.*, opposants, and *The Trust and Loan Company of Upper Canada*, S. C., 2 L. C. J., p. 278, it was held, that an hypothec does not attach to the property of an executor, by reason of the registration of the will under which he is appointed.

28. The *hypothèque légale* is not exempt from registration under the 4th section of the Registry Ordinance, [C. Sts. L. C., c. 37, sect. 3.] *The Queen vs. Comte et al.*, Q. B., 2 L. C. J., p. 86.

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* See Vbo. Costs. Previously to this decision a different ruling, more in accordance with principle, had been come to. For the latter decision, however, a verbal defence based on the Statute may be offered. But the rule should not be forgotten that the accessory follows the principal, and that as the costs of recovery of a debt, are an undoubted accessory of the debt, the Statute therefore is complete in this respect. Else how could interest have been given? Its amount could not be a sum of money "specially mentioned." It is in vain to argue that it is in virtue of the 11th section of the Ordinance, for the object of that section is to restrain the right to interest to two years, not to create it. Had there been no such clause it would not have been pretended that the creditor had no right to interest, because its *quantum* had not been "specially mentioned." Such an interpretation would amount to a declaration that under the Ordinance there could be no complete and valid hypothec.

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29. The hypothecary creditor may effectually register his title, after the property hypothecated in his favor, has passed into the hands of a subsequent purchaser, who has not registered, and such registration will operate against such subsequent purchaser and his hypothecary creditors. *Pouliot vs. Lavergne, Lacorse and Roy*, S. C., 1 L. C. R., p. 20.

30. An hypothec duly created during the lifetime of a debtor may be preserved by registration after his death. *The Queen and Comte et al.*, Q. B., 2 L. C. J., p. 86.

31. A reference in a deed which has been registered, to a previous deed not registered, is not equivalent or sufficient to defeat the claim of a subsequent hypothecary creditor, whose claim has been registered. *Delesderniers vs. Kingsley*, S. C., 3 L. C. R., p. 84. And the registration of the transfer of a deed, passed prior to the carrying into force of the Registry Ordinance before the 1st of November, 1844, is not sufficient to preserve the rank of *hypothèque* of the said deed. *Wurtele et al., vs. Montminy and Girard and Paquet*, opposants, 1 Rev. de Leg. p. 231.

32. The loss of a title by a *vis major* is no answer to a third party, alleging the non-registration of such title, and registration by memorial only preserves the rights set forth in such memorial. The registration of a *titre nouvel* cannot prejudice a third party who has already registered his title. *Carrier vs. Angers*, S. C., 3 L. C. R., p. 42.

33. A copy delivered by a registrar of a deed of sale of a real estate deposited in his office for registration is no evidence of such sale. *Nye and Colville et al.*, Q. B., 3 L. C. R., p. 97. Nor the copy from the books of the registrar of a deed registered at length. Vbo. Evidence.

34. The 6 Vic. c. 15, s. 2, [C. St. L. C., cap. 37, sect. 8,] which exempts Seignorial rights from registration, does not apply to interest accrued thereon by virtue of a special subsequent agreement. Ex parte *Mailloux*, S. C., 3 L. C. R., p. 192. Also *Mogé vs. Lapré and Massue and Morrison* opposants S. C., 1 L. C. J., p. 255.

35. The *bailleur de fonds* who has not registered his deed before the 1st November 1844, may wage his hypothecary action against the *legataire universel* of the *acquéreur*, he not being a *tiers détenteur*, in the sense of the 4th Section of the Registry Ordinance, [C. St. L. C., c. 37, sect. 3.] *Larivé vs. Fontaine*, 3 Rev. de Lég. p. 33.

36. Under the provisions of the 4 Vic. c. 30, he who has first enregistered his claim will be preferred to the other, both being registered subsequently to the 1st November 1844. *Normand and Crevier et al.*, Q. B., 10 L. C. R., p. 42.

37. If two acts be enregistered at the same moment, it is not the number endorsed by the registrar that will fix the priority of the mortgage but the dates of the deeds. *Grenier vs. Chaumont*, S. C., 5 L. C. J., p. 78.

38. When the certificates of a registrar show two deeds to have been registered on the same day and at the same hour, and he gives precedence in number to one, the claims upon both deeds must, under the 4 Vic. c. 30, sect. 11, [C.

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St. L. C., cap. 37, sect. 14,] be collocated concurrently in a report of distribution. *Lenfesty vs. Renaud* and divers opposants, S. C., 9 L. C. R., p. 298.

39. Under the 4th Section of the 4 Vic. c. 30, [C. St. L. C. cap. 37, sect. 3, sub-sect. 2,] the defendants, *donataires* of the land sought by the action to be declared hypothecated, are not purchasers or grantees for or upon valuable consideration, so as to enable them to invoke, as against the plaintiff, the non-registration of his *titre de créance*; or the registration of the judgment founded thereon *subsequent* to the insinuation of the donation. *Holmes vs. Cartier et al.*, S. C., 5 L. C. R., p. 296.

40. It is not necessary to register old titles to property. *Murphy vs. Donavan*, S. C., 2 L. C. R., p. 333. But original grants and letters patent, creating a general hypothec, and made and issued before the 4th Vic., are subject to registration in order to preserve the general hypothec. *The Sollicitor General, pro. Reginâ and the People's Building Society*, Q. B., 1 L. C. J., p. 55.

41. Hypothecs resulting from deeds of lease need not be registered, according to the terms of the 17th Section of the Registry Ordinance. But upon the proceeds of a *Bail Emphytéotique* the lessor can not claim arrears due in virtue of such lease, to the prejudice of a creditor of the lessee who has duly registered before him. *Tetu vs. Martin*, S. C., 7 L. C. R., p. 42.

42. An ordinary lease not registered does not produce a general mortgage, notwithstanding the 17th section of the 4th Vic. c. 30, [C. St. L. C., cap. 37, sec. 10,] and this in virtue of the secs. 1st and 28th of the same Ordinance, [C. St. L. C. *ib.* 1 & 5 & 45,] which prescribe that the mortgage must be special and must be registered, and of the 29th section [C. Sts. L. C. *ib.* 46] which enumerates the general mortgages that will continue to subsist and must be registered. *Hillier vs. Bentley*, S. C., 7 L. C. R., p. 241.

43. The assignor of an hypothecary claim may effectually discharge the same to the prejudice of the assignee, by registering a discharge thereof. *Morrin vs. Daly et al., and Derousselle*, S. C., 7 L. C. R., p. 119.

44. Ventilation of the proceeds of an immoveable property may be ordered, in order to distribute the proceeds of the land among the creditors of the vendor, and the proceeds of the improvements among the creditors of the purchaser. *Bédard vs. Dugal and Bédard and Brunet*, S. C., 1 L. C. R., p. 173.

45. An *hypothèque générale* dating as far back as 1815, and claimed in respect of land situate in the county of Sherbrooke, and duly registered in accordance with the provisions of the Registry Ordinance cannot be affected by want of registration during the period that the 10 and 11 Geo. IV, c. 8, was in force, without averment that the debtor held the land whilst the Statute was in force. *The Queen and Comte et al.*, Q. B., 2 L. C. J., p. 86.

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46. The non-registration of a deed of conveyance under the Provincial Statute 10 and 11 Geo. IV, c. 8, 1 Wm. IV c. 3, and 2 Wm. IV, c. 7, does not operate as an absolute nullity, if the subsequent purchaser be not a *bonâ fide* purchaser for valuable consideration. *Smith vs. Terrill and Phillips* Opposant, 2 Rev. de Leg. p. 194.

47. A promise of sale, followed by possession is equivalent to an absolute sale; and an hypothecary claim, created against the vendor, subsequently to such promise of sale, is inoperative as against the property so sold. *Gosselin and the Grand Trunk Railway Company*, Q. B., 9 L. C. R., p. 315.

48. A purchaser who has registered his title deed cannot be bound to suffer a *coupe de bois*, to which the property has been subjected, and the title whereof has not been registered, although the purchaser had a knowledge of its existence. *Thibeault vs. Dupré et al.*, S. C., 5 L. C. R., p. 393.

49. A bankrupt, purchaser of real property from the trustees of his estate, the requirements of law having been duly observed, cannot revive an hypothecary claim, which had subsisted upon the property and which had been extinguished by the sale made under legal authority. And a subsequent purchaser sued hypothecarily, by reason of such claim, may urge, by way of exception, any fraud with which such claim may be tainted in consequence of its revival. A donation of the pretended arrears of a life rent to the minor children of the bankrupt, such rent being payable by the bankrupt, and the latter accepting the donation for his children, after the granting of his certificate of discharge and the sale of the property, is inoperative in relation to the purchaser, and the donation will be declared to be fraudulent, although the minors had not personally been participators in the fraud. *Cadieux and Pinet et al.*, Q. B., 6 L. C. R., p. 446. But see Exp. *Chabot*, Rev. de Lég., p. 265.

50. A *bailleur de fonds*, who has previously brought an action against his personal debtor, and caused the sale of an immoveable property acquired by such debtor in exchange for the one subject to the privilege of the *bailleur de fonds*, is not in law to be considered as having ratified the exchange, nor as having consented to the substitution of one immoveable property for the other, nor as having renounced or abandoned his privilege upon the property by him sold. *Bouchard and Blais*, Q. B., 4 L. C. R., p. 371.

51. The purchaser of a property, who has undertaken to discharge certain hypothecary claims equal in amount to the value of such property, cannot, when sued *en déclaration d'hypothèque* by a creditor, other than those he has undertaken to pay, but whose claim is posterior to those last mentioned creditors, require that such creditor will give him security that the property when brought to sale, will realize a sufficient sum to satisfy the claims he has undertaken to pay; as he would have a right to do, if he were himself an hypothecary creditor for the amount equal to the

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value of the property, or had actually paid claims to that amount, and had himself acquired the same. *Tessier vs. Falardeau*, S. C., 6 L. C. R., p. 163.

52. The vendor of real estate has a revocatory action in default of payment of the purchase money, whether such purchase be made with or without delay. The stipulation to pay a debt to a third person, becomes a perfect delegation, by the registration at length of the deed containing the same, under the 8 Vic. c. 27, sec. 6. [Effète but effect saved, C. St. L. C., Schedule B, p. 1000.] So a *bailleur de fonds*, who has not registered, can demand the resiliation of the deed of sale, in default of payment of the purchase money, to the prejudice of a subsequent purchaser, who has not undertaken to pay him, and who has caused his deed to be registered at length. *Pattenaude and Lerigé dit Laplante et al.*, Q. B., 7 L. C. R., p. 66.

53. The compulsory sale for public uses, of a real estate hypothecated for a *rente constituée*, only entitles the creditor of such *rente* to claim a proportion of the capital equivalent to the value of the proportion of the estate alienated, and not the whole of such capital. *The Montreal and Lachine Railroad Company and Seers et al., and La Banque du Peuple and Donegani*, S. C., 1 L. C. R., p. 125.

54. A *servitude réelle* created previous to the Registry Laws, need not be registered. *Dorion et al., vs. Rivet et al.*, S. C., 7 L. C. R., p. 257. And *Dorion et al., and Rivet*, Q. B., 1 L. C. J., p. 308.

55. The parties only who suffered by the fires of 1845, and were then, and are now, owners of the lots upon which they intend to rebuild, are entitled to a loan by way of debentures, conformably to the provisions of the 9th Vic. c. 62, and of the 10 and 11 Vic. c. 35, and in such cases only, the Crown has a privilege for such loan, and for a loan made to persons who have become owners of such lots subsequently to the fires of 1845. *Têtu et al. and Glackemeyer, and the Attorney General and Lemoine*, S. C., 1 L. C. R., p. 310. But in *Lavoie*, against the Queen, it was held in the Q. B., that the general hypothec given to the Crown by the 18th sect. of the 9 Vic. c. 62, for the advances under that act, attaches without registration, although the loan was made after the borrower had rebuilt, and was not applied as contemplated. 11 L. C. R., p. 63. The Corporation of the city of Quebec has no privilege upon immoveable property for the assessment imposed upon the same; such privilege not being given by the act of incorporation and having no existence at common law. *Ensor and Orkney*, S. C., 3 L. C. R., p. 289.

56. A *bailleur de fonds*, who has not enregistered his deed within the delay fixed by the 16 Vic., c. 206, [C. St. L. C., cap. 37,] is excluded by the subsequent purchaser, who has not assumed the debt due to the *bailleur de fonds*, and who has enregistered before him. *Lynch vs. Leduc and Mathieu*, S. C., 3 L. C. J., p. 120.

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57. A person who consents to the hypothecation in favor of another, of the real estate hypothecated in his own favor, will be held to have waived his priority of hypothec in favor of the creditor obtaining such subsequent hypothec. *Symes vs. McDonald and Robertson et al.*, Opposants, S. C., 9 L. C. R., p. 182.

58. Priority of cession of a part of a hypothecary claim, gives no preference to the first *cessionnaire* over the second, or any subsequent *cessionnaire*, in the distribution of moneys arising from the sale of the property hypothecated. *Giroux vs. Gauthier, and Giroux and Mongenais*, S. C., 6 L. C. J., p. 240, and 12 L. C. R., p. 439.

59. The creditor who has a hypothecary right prior to certain charges reserved in the seizure of an immoveable, may by opposition *afin d'annuler* obtain the radiation of these charges. *Limoges vs. Marsant and Labelle*, S. C., 7 L. C. J., p. 276.

" :—*Vide Smith vs. Brown*, 2 Rev. de Lég., p. 474.
" :— " BUILDER.
" :— " COMPENSATION.
" :— " FIDEJUSSEUR.
" :— " INSURANCE.
" :— " OBLIGATION.
" :— " PETITORY ACTION.

ILLEGALITY OF SENTENCE :—*Vide* HABEAS CORPUS.

IMPENSES :—*Vide* USUFRUCTUARY.

IMPOTENCY :—Impotency at the time of marriage renders such marriage null ; and the Court will order the defendant to submit to the inspection of two surgeons, and in default of his compliance with this order the marriage will be declared null and void. *Dorion and Laurent*, in appeal from Montreal, 1844.

IMPROVEMENTS.—1. A *tiers détenteur* has no right to claim to hold the property until his improvements have been paid for. *Price vs. Nelson*, S. C., 2 L. C. R., p. 455. But he may demand security that the immoveable will be sold for a sufficient sum to reimburse him. *Withall vs. Ellis*, S. C., 4 L. C. R., p. 358.

2. A defendant who has made permanent and durable improvements upon a lot of land sought to be recovered by petitory action, has a right to be indemnified to the extent of the increased value given by such improvements to the lot, before being compelled to abandon the same. And a defendant in possession of the rights of W., the original lessee of the Crown, under lease for 21 years from the 12th February, 1818, is entitled to hold possession until the expiry of the lease (12th February, 1839) ; and the plaintiff is only entitled to the rents, issues and profits of the lot from the last mentioned date, notwithstanding he holds the lot by a transfer made in 1835 of the rights of L. as patentee of the Crown under letters patent of 1827. And in such a case, the Court below should have ordered an *expertise* to ascertain the value of the ameliorations, and the amount of the rents issues and profits, such ameliorations to be valued from the

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date of the lease, and the rents, issues and profits from the expiry thereof, the *expertise* further to establish the value of the lot, apart from the increased value given to it by the ameliorations. *Lawrence and Stuart*, Q. B., 6 L. C. R., p. 294.

3. A squatter who has made substantial improvements (*impenses utiles*) upon real property occupied by him, without the consent of the proprietor, is entitled to judgment against the proprietor for the excess of the value of such improvements beyond the rents, issues and profits, and to retain possession of the real property till paid for his improvements. The value of such improvements must be established by an *expertise*. *Stuart vs. Eaton*, C. C., 8 L. C. R., p. 113. Confirmed by the Superior Court, *Ib.*, p. 120. But a possessor of land in bad faith has no *droit de retention* for improvements. *Lane et al., vs. Deloge*, S. C., 1 L. C. J., p. 3.*

4. Upon a claim for improvements upon real estate the usufruct only of which has been seized, a proportion alone of the value of such improvements will be allowed, measured upon the increased value given to such usufruct. *Fauteux and Boston*, Q. B., 9 L. C. R., p. 263.

IMPUTATION.—1. If the parties have not themselves imputed a payment to the settlement of any special account, it will be considered as imputed to the payment of interest. *Re Dumouchelle & Moffatt and Girouard*, opposants, 2 Rev. de Lég., p. 258.† And so also it was held, *Lafontaine*, C. J., dissenting, in a case of *Rice & al., and Ahern*, Q. B., 6 L. C. J., p. 201. And afterwards on a debt bearing interest. *Brooks & al. vs. Clegg*, Q. B., 12 L. C. R., p. 461.

2. But moneys paid by an hypothecary debtor to his creditor, in respect of two debts of different dates, both payable by instalments, but subject to the privilege of acquitting the more ancient one before it became due, without imputation made at the time of payment, will be imputed, 1stly. In extinction of the interest accrued on the more ancient debt; 2ndly. On the principal of that debt whether due or not; 3rdly. On the interest due on the more recent debt, and lastly, on the principal of the last mentioned debt. *Casson vs. Thompson*, S. C., 1 L. C. J., p. 156.

INCIDENTAL DEMAND :—An incidental plaintiff must shew on the face of his declaration that his demand is connected with the demand in chief; and the incidental defendant must avail himself of his omission by an exception *à la forme*, otherwise he waives the irregularity of the proceeding and admits that he is *rectus in curiâ*. *Turner & al., vs. Whitfield*, S. R., p. 46.

INCUMBRANCES ON PROPERTY :—Where a property subject by law to *lods et ventes* is sold, without mentioning such incumbrance, the purchaser is presumed to be aware of it. *Mussen vs. Philbin*, S. C., 7 L. C. J., p. 165.

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* It would be instructive to know in what the definition of a squatter differs from that of a possessor in bad faith.

† See the report for the reasons of dissent of Judge Vallières. Also for note of a contrary decision at Quebec, in the case of *Stevenson vs. Gugy*.

INDEMNITY FOR DEMOLITION OF HOUSE TO STOP FIRE:—*Vide* MANDAMUS.

IMDEMNITY:—*Vide* RAILWAY CASES.

" :— " ROAD.

INDIANS:—Indians have not by law any right or title by virtue of which they can sell and dispose of the wood growing upon their lands set apart and appropriated to and for the use of the tribe or body of Indians therein residing. Such wood is held in trust by the Commissioner of Indians Lands for Lower Canada. *The Commissioner of Indian Lands vs. Payant dit St. Onge*, 3 L. C. J., p. 313. But they may qualify as security in appeal on lands held by them according to the custom of the tribe. *Nianentsiasa and Akwirente & al.*, Q. B., 3 L. C. J., p. 316.

INDICTMENT:—1, The private prosecutor on an indictment for forcible entry and detainer, cannot be examined as a witness, if the Court may order restitution. But if, since such forcible entry and detainer, he has been restored to possession, he may be a witness. *R. vs. Hughson & al.*, 2 Rev. de Lég., p. 54.

2. Before pleading to an indictment, the defendant must submit to the jurisdiction of the Court. *The Queen vs. Maxwell*, Q. B., 10 L. C. R., p. 45.

3. Where on a conviction for forcible entry, it appears, that defendant entered by an open door but sent some one round to push in the windows, and he himself took them off the hinges, the conviction will be held good. Q. B., appeal side, *Reg. vs. Martin*, 10 L. C. R., p. 435.

INDICATION DE PAIEMENT:—*Vide* COMPENSATION.

INDORSEMENT:—*Vide* PROMISSORY NOTE.

INFORMATION:—*Vide* CONVICTION.

INFORMER:—*Vide* EXECUTION.

INIMITIE CAPITALE:—*Vide* RECUSATION.

INJUNCTION:—*Vide* MANDAMUS.

INNKEEPER:—*Vide* HOTELLIER.

INSANITY:—The action *ab irato* cannot be brought in this Province; and aversion, to be a proof of insanity, must be an aversion without cause. *Phillips vs. Anderson*, S. C., L. R., p. 71,

" :—*Vide Clarke vs. Clarke & al.*, S. C. L. R., p. 20.

INSCRIPTION DE FAUX:—1. An *inscription en faux* cannot be had against an instrument which bears none of the characteristics of authenticity. *Molson vs. Burroughs*, S. C., 2 L. C. J., p. 72. And the certificate of the attorneys of one of the parties in a cause upon a copy of judgment, to the effect that the copy of judgment certified by them is a true copy, is not a *faux*, as known and recognized by law. *Perry vs. Milne*, S. C., 6 L. C. J., p. 243. But in a cause of *Seymour and Horner & al.*, *Monk*, A. J. appears to have been of a different opinion, S. C., 12 L. C. R., p. 90. And the return of the bailiff of service made by him of such a copy of judgment, so certified as a true copy, is not a *faux*. And *moyens de faux* filed in such a case are irrelevant and inadmissible. *Perry vs. Milne*, V. *suprà*

2. And a bailiff's return that he had served two defendants, co-partners, resident in Ottawa, at their office in the city of Montreal, it being admitted that they had no office in Montreal, is not a *faux*. *Hobbs vs. Seymour & al.*, S. C., 13 L. C. R., p. 75.

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3. An *inscription en faux* can be made by means of a direct action; and in an action to have a deed declared null, the plaintiff may also inscribe against the deed filed by himself. *Perrault and Simard & al.*, Q. B., 6 L. C. R., p. 17. And in the same case, p. 24, it was held, that after closing the *enquête*, the plaintiff *en faux* was entitled to amend *moyens de faux*, by adding thereto new facts brought out by the evidence adduced.

4. In an *inscription en faux*, the *procès verbal* of the exhibit attacked may be made immediately after its deposit. *Moreau & vir. vs. Leonard*, S. C., 2 L. C. J., p. 136.

5. A petition to inscribe *en faux* will be deemed abandoned if, the case being inscribed on the merits, the petitioner neglect to move that it be discharged. *Phillipps vs. Hart & al., and Hart*, S. C., 1 L. C. R., p. 305.

6. The defendant *en faux*, plaintiff in the principal action, is not bound to answer the pleading in the main action until the inscription *en faux* has been disposed of. *Martineau vs. Karrigan*, S. C., 3 L. C. J., p. 268.

On an *inscription en faux*, the allegation that only one notary was present at the execution of the will which is impeached, is a *moyen* pertinent and admissible. *Proulx vs. Proulx*, 2 Rev. de Lég., p. 61.

8. An *inscription de faux* cannot be maintained against a notarial copy containing a slight alteration or erasure, as for instance, altering the word party so as to make it parties, the alteration being unimportant. *Halpin and Ryan*, Q. B., 5 L. C. R., p. 430. But an inscription *en faux* will be allowed where the word "mirth" has been inserted in a copy of judgment for the word "month," the sense of the sentence being totally destroyed. *Seymour vs. Horner & al.*, S. C., 12 L. C. R., p. 90.

9. The party injured by the effacing of an essential part of a judgment after it was rendered cannot proceed against the judgment *en faux*; but must apply to the Court to have the judgment entered up in the registers as it was pronounced. *Ross and Palsgrave*, Q. B., 5 L. C. J., p. 141.

10. In the case of *Routier vs. Robitaille*, S. R., p. 440, it was held that a notary could not be examined as a witness, nor compelled to give evidence on an *inscription en faux* touching the validity of any instrument executed before him. But it is now well established that a notary or the notaries who have received, or the *témoins instrumentaires*, who have witnessed the execution of a will or other authentic instrument, are competent witnesses upon an *inscription en faux*, impugning the validity of such will or other authentic instrument. *Welling vs. Parant*, S. C., 4 L. C. R., p. 228. Or to establish the truth of the facts set forth in the deed *argué de faux*. *Taillefer & al. vs. Taillefer & al.*, S. C., L. R., p. 32. And in an *inscription de faux* against the parish register, the *Curé* of the parish, by whom the entry purports to have been made, may be examined as a witness. *Languedoc & al. vs. Laviolette*, S. C., L. R., p. 63. But the *témoins instrumentaires* to a deed *argué de faux* are not suffi-

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cient to establish the *faux*. *Meunier vs. Cardinal*, S. C., L. R., p. 28.

11. Upon an *exception à la forme*, alleging the want of service of the writ and declaration in the cause, the Court will, upon consent given to that effect by the plaintiff, order proof upon such exception without the formality of an *inscription en faux*. *Charlton vs. Cary*, S. C., 6 L. C. R., p. 268. And where there was a variance between a writ of summons and the copy, it is not necessary to inscribe *en faux* against the return of the bailiff, who has certified to having served a true copy. *Théberge & Pattenaude*, S. C., 2 L. C. R., p. 110.

12. But in the *Trust and Loan Company and McKay*, Q. B., 9 L. C. R., p. 465, it was held that no proof will be admitted against the validity of such return without an *inscription en faux*. And the sheriff's return cannot be contested but by an *inscription en faux*. *Lespérance and Allard & al.*, Q. B., 1 L. C. R., p. 154.

13. On an *inscription en faux* against pleadings and exhibits, as not having been filed on the day they purport to have been filed, they may be withdrawn and others filed in their place, on payment of the costs of the procedure *en faux* and 30s. costs. *Mayer vs. Thompson & al.*, S. C., 1 L. C. J., p. 280.

14. In proceedings on *inscription de faux* it is not necessary to make election of domicile. *Martineau vs. Karrigan*, S. C., 3 L. C. J., p. 190.

15. The truth of the certificate of the prothonotary can only be attacked by *inscription en faux*. *De Beaujeu vs. Masse*, S. C., 7 L. C. J., p. 105.

16. A party will not be allowed to inscribe *en faux* against a bailiff's return later than four days after the filing of the return without cause shewn. *Perry vs. Milne and The Ontario Bank*, S. C., 6 L. C. J., p. 243. But otherwise upon cause shewn on affidavit. *Ib.* Also in the case of *Seymour vs. Horner & al.*, S. C., 12 L. C. J., p. 90.

" :—*Vide* AMENDMENT.
" :— " NOTARY.
" :— " REGISTERS OF BAPTISM.

INSCRIPTION:—*Vide* PLEADING AND PRACTICE.
INSINUATION:—*Vide* HYPOTHÈQUE.
INSOLVENCY:—*Vide* ASSIGNMENT.
" :— " DÉCONFITURE.
" :— " PRIVITY OF CONTRACT.
INSPECTOR OF ASHES:—*Vide* AGREEMENT.
INSPECTOR OF ROADS:—*Vide* NOTICE OF ACTION.
INSTANCE:—*Vide* CO-PARTNERS.
INSTITUTEURS:—The salary of a teacher cannot be seized. *Roy vs. Codère et les Commissaires d'Ecole de St. Ours and Meilleur*, T. S., S. C., L. R., p. 59.

INSURANCE:—1. The sale of injured property extinguishes the contract of insurance as between the insurer and the vendor; the profit of such insurance being vested in the vendee so

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soon as the insurer is notified of the sale and acquiesces in it. *Leclaire vs. Crapser*, S. C., L. R., p. 18.

2. Policies of insurance are to be construed by the same rules as other instruments, therefore where there is an express warranty, there is no room for implication of any kind. *Scott vs. The Quebec Fire Insurance Company*, S. R., p. 147.

3. By the clause or condition in policies of insurance, that in case of any dispute between the parties, it shall be referred to arbitration, the Courts are not ousted of their jurisdiction, nor can they compel the parties to submit to a reference in the progress of a suit. *Scott et al., vs. The Phœnix Assurance Company*, S. R., p. 152.

4. The proprietor of a house destroyed by fire, and insured, can insist strictly upon the clause contained in the policy of insurance, that the works shall be seen and examined by *experts*, and that so long as the insurance company shall not have complied with this condition, even for inconsiderable works, the proprietor is not bound to receive his house in that state, and can sue the insurance company to compel it to surrender the possession of the premises in the state in which they ought to be, and after compliance with the condition of an *expertise*. And the circumstance of the proprietor having, during reconstruction, made suggestions to the builder as to the manner of such reconstruction, or as to the division of the house, cannot be interpreted so as to deprive him of his right to an *expertise*. *Alleyn vs. The Quebec Fire Assurance Company*, S. C., 11 L. C. R., p. 394.

5. If a condition referred to in a policy of insurance against fire requires, in the event of loss, and before payment thereof, a certificate to be procured under the hands of a magistrate or sworn notary of the city or district, importing that he is acquainted with the character and circumstances of the persons insured, and verily believes that they have really, and by misfortune and without fraud, sustained, by fire, loss and damage, to the amount therein mentioned, such certificate is a condition precedent to a recovery of any loss against the insurers on the policy. And if a certificate be procured, in which a knowledge and belief as to the amount is omitted, it will be insufficient. *Scott et al., The Phœnix Assurance Company*, P. C., S. R., p. 354. And where the furnishing of a certificate, as required by the condition of a policy of insurance, of three respectable persons, to the effect that they believed that the loss had not occurred by fraud, is a condition precedent, without a compliance with which the assured cannot recover. *Racine vs. The Equitable Insurance Company*, S. C., 6 L. C. J., p. 89.*

* These decisions offer an example of the evil of using technicalities drawn from a system of jurisprudence wholly different from ours. The "condition precedent" translated into the language of the civil law, if it have a synonyme at all, is a "suspensive condition." But in addition to the "condition" and the "term," by which obligations may be affected, the civil law also knows another limitation, the "*modus*." These three limitations to obligations are subject to different rules, therefore they cannot safely be classed together. In the case before us, it would seem, that the judgment turned on the want of title, until this "condition precedent" was complied with. In fact no certificate, no obligation. This is unquestionably the rule where there is a suspensive condition, but not where the contract

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6. In the case of a policy of insurance granting permission, in the body thereof, to insure elsewhere, on giving notice to that end to the directors of the company, in order that the second insurance might be endorsed on the policy, and requiring by the by-laws of the company, printed on the back of the policy, that such notice be given and such second insurance endorsed on the policy, *à peine de nullité*, a notice of such second insurance, *after* the fire, and as a consequence not endorsed on the policy, is sufficient. *Soupras vs. The Mutual Fire Insurance Company for the Counties of Chambly and Huntingdon*, S. C., 1 L. C. J., p. 197.

7. And in *Atwell vs. The Western Assurance Company*, S. C., 1 L. C. J., p. 278, it was held, that the condition usually endorsed on policies of insurance, respecting double insurance, will be held to be waived on the part of the Insurance company, if their agent, on being notified of such double insurance, make no specific objection to the claim of the assured on that ground. But this case was reversed in Appeal, Q. B., 2 L. C. J., p. 181. But in the case of *Chalmers and the Mutual Fire Insurance Company of Stanstead and Sherbrooke Counties*, Q. B., 3 L. C. J., p. 2, it was held, that the 23rd section of the Act 4 Wm. IV, c. 33, respecting double insurance on houses and buildings, does not apply to insurances on goods. And an endorsement on a policy issued under the provisions of the said Act, consenting to the removal of the goods insured, from the building described in the policy to another building, and signed by the secretary alone, is binding on the Company.

8. But the rule endorsed on policies in some insurance companies, that the insured shall notify the company of the fire, and the circumstances attending it, is not, in every case, so fatal and *de rigueur*, that in default of its being fulfilled to the letter, the insured will for ever lose his recourse. *Dill vs. La Compagnie d'Assurance de Québec*, 1 Rev. de Lég. p. 113. And the mere substitution of one office for another, in case of Fire Insurance, does not necessitate the giving of notice, as in the case of a new or double insurance. *Pacaud vs. The Monarch Insurance Company*, S. C., 1 L. C. J., p. 284.

9. A contract of insurance may exist without the execution or issue of any policy or of any interim receipt, even with a company whose charter and by-laws manifestly contemplate the execution of a policy in all cases, and such contract may be proved by parol evidence. *The Montreal Assurance Company and McGillivray*, Q. B., 2 L. C. J., p. 221. But in the Privy Council it was held that the appel-

only stipulates a *modus*. In the latter case there is a title, but the execution as against the party bound by the contract cannot be enforced, unless the *modus* be complied with or have become impossible. Now, if the giving a certificate by a magistrate be a "condition precedent," or a "suspensive condition," and that the office of magistrate were abolished, it would be impossible for the insured to recover. But I take it that the obligation to grant a certificate is a *modus*, and that the decisions is only correct, because the insured did not shew that it had become impossible for him to perform the obligation in the way prescribed. *Et ita sæpissime conditio accipitur pro modo. Cujas. T.* 6. *col.* 401 *E.*

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lants, under the provisions of their acts of incorporation, (4 Vic. c. 37—6 Vic. c. 22,) cannot make any contracts for fire assurance except by policy. 9 L. C. R., p. 488; 11 L. C. R., p. 325; 13 Moore's Rep. p. 87. And premium taken in the shape of a promissory note of a third party, though dishonoured, is a sufficient consideration to support a contract of insurance. In such a case the evidence of the person who undertook to effect the insurance for a morgtage, is admissible to prove that he did so. And evidence of the declarations of the manager that the insurance had been effected, and of his promises of a policy, made about the date of the contract, is admissible.

10. The sale by the proprietor and mortgagor of the real estate assured, during the pendency of the contract of insurance in favor of the hypothecary creditor, does not effect such insurance, though part of the consideration of such sale be a promise by the purchaser to pay the hypothecary creditor her debt, and though she be a party to it. *The Montreal Assurance Company and McGillivray*, Q. B., 2 L. C. J., p. 221. Also, 8 L. C. R., p. 401.

11. Interest on loss may be awarded from the time of the fire. *Ib.*

An insurance note is not a promissory note, falling within the commercial code. The endorser is an ordinary *caution solidaire*. *Montreal Mutual Assurance Company vs. Dufresne et al.*, S. C., L. R.; p. 55. *Vide* Vbo. Promissory Note.

12. The interest of the vendor of real property, in a policy of insurance against fire, effected by the vendor previous to the sale, passes by operation of law to the purchaser, the sale being notified to the company. And a payment made by the insurance company to the vendor, on a loss occurring after the sale, of a sum greater than the balance of the purchase money remaining unpaid, accrues to the benefit of the purchaser as a discharge from such balance. *Leclaire vs. Crapser*, S. C., 5 L. C. R., p. 487.

13. The insurance by an hypothecary creditor of the house or building subject to his mortgage, is not an insurance of the building *per se*, but only of the creditor's security for the payment of his debt. To support an action on a policy, there must be a loss existing at the time of the action brought; and if before action brought, the premises be re-built, whereby creditor's security is restored, he cannot recover as for a loss. *Mathewson vs. Western Insurance Company*, S. C., 4 L. C. J., p. 57, and 10 L. C. R., p. 8.

14. Liability of consignee who shall have failed to insure according to the usage of trade, if any such exists, cannot be taken advantage of by seizing creditor of consignor on a *Tiers-Saisi*. *Elliot vs. Macdonald and Ryan*, S. C., L. R., p. 69. But in appeal it was held that in contesting the declaration of *tiers-saisi*, the allegations made by the contesting creditor, that the *tiers-saisi* received from the debtor goods for sale on commission, and for safe keeping and custody until public sale, according to the usage and custom of trade and merchants at a particular place, and that by the said usage and custom, the *tiers-saisi* was bound to insure the goods

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against fire, are sufficient, if proved, to render such *tiers-saisi* liable to the contesting party in case of loss by fire without insurance of such goods. So also in case an agreement is alleged between the debtor as consignor, and the *tiers-saisi* that such goods were to be insured. *Elliot et al., and Ryan et al.*, Q. B., 6 L. C. R., p. 89.

15. A Policy of Insurance, describing the premises as a house bounded in rear by a stone building covered with tin, and by a yard, in which yard there was being erected a first class store, which would communicate with the buildings insured, is not incorrect, and is not null, although it was proved that there was between the house and stone building, a brick building covered with shingles, communicating with both by doors, inasmuch as the omission of mentioning such doors in the description, was not proved to have been a fraudulent concealment, and inasmuch as it was not established that the fire had been occasioned and had extended by means of such apertures. *Casey and Goldsmid et al.*, Q. B., 4 L. C. R., p. 107. The judgment of the Superior Court, 2 L. C. R., p. 200, was thus reversed. And in a case of *Wilson vs. The State Insurance Company*, it was held in the S. C. that the failure of the assured to disclose the existence of a fulling-mill under the same roof, as the buildings insured and destroyed by fire, is not a material concealment or misrepresentation, although it appear that the rate of insurance would have been higher had it been known, provided it be shewn by the evidence adduced by plaintiff that the risk was not thereby increased. 7 L. C. J., p. 223. But in a case of marine insurance, it was held, that a wilful deviation, although the loss was not occasioned by nor attributable to it, exonerates the underwriters from liability. *Beacon Life and Fire Assurance Company and Gilb et al.*, P. C., 13 L. C. R., p. 81; and 7 L. C. J., p. 57.

16. In the action of *Somers vs. The Athenæum Insurance Company*, S. C., 3 L. C. J. p. 67, it was held, that in an action on a policy of insurance against fire, for the value of a house attached on both sides to other buildings, and inhabited for a portion of the time during which the policy was running by four tenants, is maintainable, though the house is described in the policy as detached from other buildings and inhabited by two tenants, provided it be proved that the error in the description of the house was made by the agent of the insurer, and that the increased number of tenants were not in the house either at the time of effecting the policy or at that of the fire. And the true description of the premises need not be alleged on the declaration, nor the error alluded to.

17. An answer to a plea by defendant, alleging the misdescription, may be made, admitting the misdescription but charging the error upon the plaintiff's agent; and it is no departure. The parol testimony of the agent is sufficient to support the allegations of the answer and sustain the action. And it makes no difference that the policy was for a year before the fire in plaintiff's possession, unobjected to, although

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there was a printed notice on it to examine it and see if it was correct; or that the diagram to which reference was made, both in the interim receipt and in the policy, corresponded with the description in the policy. See also 9 L. C. R., p. 61.

18. Under a clause in a policy of insurance, to the effect that if there appear fraud in the claim made for a loss, or false swearing or affirmation in support thereof, the claimant shall forfeit all benefit under such policy, the Court will reject the claim of the policy holder if the Company establish that the claim is unjust and fraudulent and far in excess of the actual loss, to the knowledge of the policy holder. And the general evidence in such a case may outweigh the positive testimony of witnesses, where the evidence of these witnesses is not consistent, and where the presumptions adduced are against its truth. *Grenier et al. vs. The Monarch Assurance Company*, S. C., 3 L. C. J., p. 100. Also *Thomas et al. vs. The Times and Beacon Company*, S. C., 3 L. C. J., p. 162.

19. In marine insurance, an endorsement upon an open policy of a cargo for insurance is incomplete, if the name of the vessel by which such cargo is shipped is in blank; but it is perfected by a a notice to the insurers of the name of the vessel, whether they fill up the blank or not. "Class, B. 1," without any reference to a special classification, will be construed, on a policy of insurance, as meaning the class of vessels recognized by mariners as class B. 1, if there be any such class.

The person who insures as agent for another cannot sue for indemnity in his own name as principal, and a consignee under a policy in his own name can only recover for his insurance agent.

The possession of a bill of lading is only *primâ facie* evidence of proprietorship. *Cusack vs. The Mutual Insurance Company of Buffalo*, S. C., 6 L. C. J., p. 97.

20. Assurers against fire have a legal right, on paying the loss covered by their policy, to be subrogated in the rights and actions of the assured against the originators of the fire and loss. And a *marguillier en charge*, having power to receive from the insurers the sum insured on the property of the *Fabrique* and to grant a discharge therefor, has also the power to subrogate the assurers in the rights and actions of the *Fabrique* against the originators of the fire and loss; although he cannot legally make an assignment, by way of sale, of any such rights and actions without special authority. And assurers subrogated, on payment of the loss in the rights and actions of the assured, for a part of the loss only, can maintain an action against the originators of the fire and loss for such part. Under a plea of general issue to the action, for a part of the loss only, the originators of the fire and loss cannot require that the other parties injured by the same fire be united in the same action, so as to save them, the originators, from the costs of more than one action for the whole loss. *The Quebec Fire Assurance Company and Molson et al.*, Q. B., 1 L. C. R., p. 222.

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21. Insurance against fire, effected upon a quantity of coals in a certain yard, covers not only the coals deposited at the time but those deposited since, and covers also risk arising from the spontaneous combustion of such coals. *The British American Insurance Company and Joseph*, Q. B., 9 L. C. R., p. 448.

22. In insurance against fire the insurers pay the whole loss which does not exceed the amount insured, although the goods insured be of greater value. *Peddie vs. The Quebec Fire Insurance Company.*, S. R., p. 174.

23. In the case of insurance of certain undetermined quantities of ashes belonging to different persons, damaged by water and subsequently destroyed by fire, each of the parties interested is bound to bear his proportion of the reduction made upon the amount insured, by reason of the loss caused by water, inasmuch as there were no means of ascertaining to whom the ashes damaged by water belonged. *Gilmour et al. vs. Dyde et al.*, S. C., 12 L. C. R., p. 337.

24. The loss under a clause in a policy, stipulating that the loss or damages shall be estimated according to the true and actual cost value of the property at the time the loss shall happen, must be ascertained from proof of the money value of the subject in the existing markets. *Grant vs. The Ætna*, S. C., 11 L. C. R., p. 128. And so also it was held in *The Equitable Fire Insurance Company and Quinn*, Q. B., 11 L. C. R., p. 170.

25. A clause in a policy of insurance, to the effect that no action can be brought after six months, is no bar to an action instituted after that time. *Wilson vs. The State Insurance Company*, S. C., 7 L. C. J., p. 223.

26. An assignee of a policy of insurance against loss by fire may recover without showing any loss whatever on his part. *Ib.*

27. The amount of a policy of insurance upon the life of a husband, the premiums on which have been paid by him, and which have been received by the curator to his vacant estate, by reason of insolvency may, nevertheless, be claimed on behalf of the wife, by two trustees who accepted the donation of the amount of such policy of insurance, made by the contract of marriage, for the purpose of paying over the interest to the wife and the principal to the children, notwithstanding that the donation and assignment were not noted on the books of the company, notification having been given in a place other than the place where the insurance was effected. Ex parte *Spiers and the Attorney General, pro Regina, et al.* claimants. S. C., 9 L. C. R., p. 450.

" :— " TRUE BILL.

INTERDICT :—A person to whom a curator has been appointed cannot bind himself in a contract while the curatorship is subsisting. *Emerick vs. Paterson*, S. C., 7 L. C. R., p. 239. But a voluntary interdiction is void, so far as a party with whom the interdict has contracted alone is concerned, if the interdiction has not been made known to the creditor and if such inter-

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diction has not been inscribed on the register kept for that purpose. *De Chantal et al. and De Chantal*, Q. B., 2 L. C. R., p. 469.

INTEREST :—1. Maritime interest at the rate of 25 *per centum* on a bottomry bond at Quebec is not exorbitant, [Con. Stat. C., cap. 58.] *White vs. The Dædalus*, S. R., p. 130.

2. The Crown can recover interest where a private person would be entitled to it. *The Attorney General and Black*, S. R., p. 324.

3. In an action for arrears of interest, interest upon the sum demanded may be awarded. *Anderson et al. vs. Dessaulles et al.*, S. C., 2 L. C. R., p. 481.

4. An obligation containing an undertaking to pay sums of money "and without interest from date till the payments become due," implies an undertaking to pay interest on the sums due from the day the payments become due. *Rice et al. and Ahern*, Q. B., 6 L. C. J., p. 201; also 12 L. C. R., p. 280. Where payments are made, both the principal and interest being due, the sum paid should be imputed first on the interest. *Ib.*

5. On dotal moneys interest runs by law. *Poirier vs. Lacroix*, S. C., 6 L. C. J., 302. But in a small case decided in the C. C., it was decided that interest only runs from the day of the demand. *Gauthier vs. Dagenais*, C. C., 7 L. C. J., p. 51.

6. On a policy of insurance, interest on loss may be awarded from the time of the fire. *The Montreal Assurance Company and McGillivray*, Q. B., 2 L. C. J., p. 221; also 8 L. C. R., p. 401.

7. Interest does not accrue on a legacy before a *demande judiciaire*. *Bonacina vs. Bonacina and McIntosh*, S. C., 10 L. C. R., p. 79.

8. Where there is a book account and also a promissory note, and accounts stated had been rendered including both, and charging interest, the Court will not strike off the interest where the defendant had not pleaded an imputation of his payments as against the note. *Torrance vs. Philbin*, S. C., 4 L. C. J., p. 287.

9. Interest will run on a condemnation for damages from the date of the judgment. *Walsh vs. Mayor, &c. of the City of Montreal*, S. C., 5 L. C. J., p. 335. But in a similar case, where the damage was caused by a mob, the corporation of Montreal was condemned to pay interest from the day of the demand. *Douglas et al. vs. The Mayor, &c. of Montreal*, S. C., 13 L. C. R., p. 71.

10. Interest will run on a promissory note payable on demand from day of date. *DeChantal vs. Pominville*, S. C., 6 L. C. J., p. 88.

11. The only effect of the 16 Vic. c. 80 is the repealing of the penalties and nullity of the contract enacted by the Ordinance 17 Geo. III., c. 3. The only legal rate of interest is 6 *per centum*, and any maker of a promissory note or other instrument in writing, wherein interest above this rate has been retained or paid, has the right to have the same deducted

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from the principal mentioned in the said note or instrument in writing. *Nye and Malo*, Q. B., 7 L. C. R., p. 405. But defendant must establish excess retained over 6 *per centum*. *Malo vs. Wurtele*, S. C., 9 L. C. R., p. 43.

12. In the case of *Beaudry and Proulx*, Q. B., 10 L. C. R., p. 236, on an obligation, the defendant pleaded that he had given the plaintiff two promissory notes for £60 each, in deduction of the amount due, and had paid them and also another note for £60, which was still in the plaintiff's hands. The plaintiff answered that the amount of the first notes had been received, and that the two last notes were given on an agreement that the defendant should pay 12 per cent interest on the obligation. The defendant, examined on *faits et articles*, admitted his undertaking to pay 12 per cent. interest, stating that he had been forced to make it by reason of his incapacity to pay the capital at the time it became due. It was held—that the amount of the second note must be deducted from the amount of the principal and interest, at 6 per cent., and that the third note did not operate as a novation and must be given back to defendant. *Belleau vs. Degourdelle*, S. C., 11 L. C. R., p. 166. But see Con. Sts. C., c. 58.

" :—*Vide* HYPOTHÈQUE.

" :— " IMPUTATION.

" :—*Vide Torrance & al. vs. Torrance & al.*, S. C., L. R., p. 95.

INTERLOCUTORY JUDGMENT :—1. The Court will refuse leave to appeal on an interlocutory judgment if the Court be against the moving party on the merits of the appeal. *Mann & al. vs. Lambe*, Q. B., 6 L. C. J., p. 75.

2. A party wishing to challenge an interlocutory judgment admitting certain evidence, must object to it at the time. *Benjamin vs. Gore*, S. C., L. R., p. 12.

So when an objection has been taken at *enquête* and maintained, and the opposing attorney has proceeded with the examination of the witnesses, and the deposition has been closed without any reserve, the Court will not afterwards entertain a motion to revise the ruling of the Judge at *enquête*. *Wrigley vs. Tucker*, S. C., 3 L. C. R., p. 89. But in the case of *Fahey et al. and Jackson et al*, Q. B., 7 L. C. R., p. 27, the Court revised the ruling of the Judge at *enquête*, although it had not been objected to in the S. C.

3. Application for leave to appeal on an interlocutory judgment should be made at the next term of the Court of Appeals after the judgment is rendered. *Le Séminaire de Québec vs. Vinet & al.*, 6 L. C. J., p. 138.

4. If a party obtain leave of the Court to appeal from an interlocutory judgment and fail to sue out a writ of Appeal, as he was bound to do in due course, the Court of Appeals will, at its next term, rescind and annul its order allowing the appeal. *Hoffnung and Porter*, Q. B., 7 L. C. J., p. *bis*. 301.

" :—*Vide* APPEAL.

" :— " RES JUDICATA.

INTERPRETATION OF DEEDS:—1. In case of ambiguity the Court will look to instruments passed subsequent to institution of action, to discover interpretation given by parties to the clause in question. *Cushing vs. Davies*, S. C., 13 L. C. R., p. 217.

2. Acts of enjoyment can only be made use of to explain the terms of a deed which are ambiguous. *Chandler & al. and The Attorney General, pro Regina*, 3 Rev. de Lég., p. 371.

3. An undertaking to "open, level, form and make" certain streets and squares in the city of Montreal, necessarily involves the making of footpaths, but not the making of fences along the line of such streets and around such squares, and the preparing of the roadway. *Anderson & al. vs. The Mayor, &c. of the City of Montreal*. S. C., 3 L. C. J., p. 157.

4. A deed of agreement entered into to defraud a third party may be binding as between the parties thereto.

Where a deed stipulates a reference to arbitration, in the event of a dispute between the parties, such clause is not to be construed so as to defeat an essential object of the parties to the deed.

Where an absolute deed of sale is made, and simultaneously with it another deed is passed, whereby the purchaser agrees to re-assign the articles transferred to him by the deed of sale back to his vendor upon the performance of a certain condition, and this condition is not complied with, the deed of sale remains in full force, and the purchaser is absolute owner and proprietor of the effects transferred to him in virtue thereof. *Shaw and Jeffry*, Q. B., 10 L. C. R., p. 340.

INTERRUPTION OF PRESCRIPTION:—*Vide* PRESCRIPTION.

INTERVENTION:—*Vide* ASSIGNEE.

" :— " PLEADING & PRACTICE.

INVENTORY:—The costs of an inventory must be borne by the surviving *conjoint* for one half, and by the representatives of the deceased *conjoint* for the other half. *Trudeau vs. DeLanaudière & al.*, S. C., 7 L. C. J., p. 118.

" :—*Vide* MARRIED WOMAN.

" :— " TUTOR.

I. O. U.:—*Vide* PROMISSORY NOTES.

JOINT CREDITORS:—Joint creditors, not co-partners, may sue together for the recovery of their debt *Trudeau & al vs. Menard*, S. C., 3 L. C. J., p. 52. And so in *Stevenson & al. vs. Bissett*, S. C., 8 L. C. R., p. 191, it was held that the joint endorsers and joint holders of a promissory note (not co-partners) might sue thereon together.

JOINT STOCK COMPANY:—*Vide* PLEADING & PRACTICE.

JUDGE:—1. The Court of King's Bench has no jurisdiction against a Judge of the Court of Vice-Admiralty to recover back money paid to him as fees in a suit determined in that Court; but the remedy is by appeal to the High Court of Admiralty in England, or to the King in his Privy Council. *Wilson vs. Kerr*, S. R., p. 341.

2. Commission of Judge of Vice-Admiralty Court, p. 376, S. V. A. R. List of Judges of the Vice-Admiralty Court from the cession. *Ib.*, p. 391.

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3. A judge of the Superior Court for Lower Canada may act as judge simultaneously for all the districts of Lower Canada. *Talbot vs. Luneau*, S. C., 7 L. C. J., p. 66.

JUDGMENT :—1. The sentence of a Court of criminal jurisdiction in a foreign state, by which the exercise of the civil rights of men may be suspended and abridged, is limited in its operation to the state itself in which the sentence was rendered, and does not deprive an individual of his natural rights beyond that state. And the enforcement of such a sentence by a foreign power would be a violation of public law and of the law of nations. A statute of limitations of a foreign state cannot be judicially noticed, but must be proved as a fact before Courts here can decide upon its nature and effect. And a plea to the effect that a judgment obtained in a foreign Court is void, inasmuch as no service of process has been made on the defendant, and that the defendant had no domicile within such jurisdiction, and was not amenable to the foreign Court, is a good plea in an action on such judgment. *Addams and Worden*, Q. B., 6 L. C. R., p. 237.

2. A judgment rendered by a Circuit Judge, in vacation, by consent of parties, is null, and no appeal can lie therefrom. *Leclair vs. Globenski and Globenski*, opposant, S. C., 4 L. C. R., p. 139.

3. The merits of a judgment can never be overruled in an original suit, either at law or in equity. Till the judgment is set aside or reversed, it is conclusive, as to the subject matter of it, to all intents and purposes. *The Phœbe* p. 63 in note, S. V. A. R.

4. Where final judgment is rendered in a cause the Court will not afterwards interfere to modify or exchange it in any way, either upon motion or otherwise. *Huot vs. Pagé*, S. C., 9 L. C. R., p. 226. Also *Bertrand vs. Gugy*, S. C., 9 L. C. R., p. 260. And a judgment dismissing a pleading, rendered by error, cannot be desisted from by the parties and re-adjudicated upon by the Court. *Clarke & al., vs. Clarke & al.*, S. C., 2 L. C. J., p. 209. But the draft of a judgment may be amended, even after the judgment has been pronounced, provided it has not been registered. *Palsgrave vs. Ross and Ross* plaintiff *en faux*, and *Palsgrave* defendant *en faux*, S. C., 2 L. C. J., p. 95. Confirmed in appeal, 1st December, 1858, but for a reason entirely different from that given by the S. C., namely because an inscription *en faux* was not the proper way to proceed, and not because a judge has the right to alter his judgment three weeks after it was rendered. *Vide supra* INSCRIPTION EN FAUX. And a judgment on confession cannot be attacked (after entry thereof in the plumitif) by motion, on the ground of alleged irregularities in the procedure apparent on the face of the record; and the fact that one of the plaintiff's attorneys appeared for the defendant and countersigned the confession, is not such an irregularity as would justify the setting aside of the judgment after entry thereof in the plaintiff. *Molson & al. vs. Burroughs*, S. C., 2 L. C. J., p. 107. Confirmed in

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appeal, 3rd September, 1858. But a judgment homologating an award of arbitrators, being an interlocutory, is susceptible of being revised. *Tate & al., vs. Janes & al.*, and *e. contra*, S. C., 1 L. C. J., p. 151.

5. After default is entered and judgment pronounced *ex parte* during term, such judgment and default may be set aside and an appearence and plea to the action permitted to be filed on motion supported by an affidavit to the effect that it was through negligence or error of defendant's attorney that appearence and plea had not been filed. *Derepentigny vs. Doherty*, S. C., 7 L. C. J., p. 287.

6. A purchaser who has obtained a judgment against his vendor reducing the amount of the price of sale by reason of a *défaut de contenance*, may bring an action *en déclaration de jugement commun* against an assignee of the balance of the price of sale, who has signified his deed of assignment. *Ryan and Idler*, Q. B., 7 L. C. R., p. 385.

7. The proceeding for rendering a judgment executory should be a proceeding in the cause, and not an independent action. *Bizaillon vs. De Beaujeu*, S. C., L. R., p. 17.

8. The husband of a woman who had obtained judgment against two other parties previous to her marriage, does not require to have the judgment declared *commun* in his favor in order to take execution. *Ib.* L. R., p. 17.

9. A judgment in an action *en reintegrande*, should describe the property, otherwise it will be reversed in appeal, on the ground of vagueness. *Renaud vs. Gugy*, Q. B., 8 L. C. R., p. 470.

10. Judgment by default, against a party sued as an absentee from Lower Canada, may be set aside by opposition *afin d'annuler*, grounded on the fact that the defendant was not such absentee, but actually resided in Lower Canada when sued. *Armstrong vs. Crochetière, and Crochetière* opposant, S. C., 1 L. C. J., p. 276.

11. A party contesting a judgment of distribution, will be collocated for any moneys accruing from the reformation of the judgment by reason of his contestation, in preference to other parties of record, who may otherwise have preferential claims, but who have not contested. *Mogé vs. Lapré and Massue and Morrison*, opposants, S. C., 1 L. C. J., p. 255.

12. The Superior Court will enter up judgment for a party under a decree of the Privy Council, reversing a judgment of the Q. B., confirming a judgment of the S. C. *Bank of B. N. A. vs. Cuvillier*, S. C., 11 L. C. R., p. 495.

" :—*Vide* CONFESSION OF JUDGMENT.

JUDICIAL SALE:—A judicial sale of moveables will be set aside, if there be fraud, by action revocatory. *Ouimet et al., and Senecal et al.*, Q. B , 4 L. C. J., p. 133. And on opposition. *Dubois and Ryan*, Q. B., 13 L. C. R., p. 21. And *McDougall vs. Dubord and Dubord et al.*, S. C.. 13 L. C. R., p. 177.

JUGES CONSULS.—*Vide* EVIDENCE.

JURISDICTION :—1. A sale effected by correspondence between the plaintiff and defendant residing in different districts, and delivery made in the plaintiff's district, payment to be

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by note payable in defendant's district, does not constitute a cause of action arising in the plaintiff's district, so as to entitle him to sue in such district. *Warren vs. Kay et al.*, S. C., 6 L. C. R., p. 492. And when R. agreed verbally with H. at Nicolet, to tow his raft from Nicolet to Quebec, upon which H. telegraphed to his agent in Quebec, to instruct R's agent in Quebec to send up R's steamboat from Quebec to perform the towage in question, which was done, and the raft towed to Quebec accordingly, it was held, that this did not constitute a cause of action arising within the district of Quebec, so as to give the Superior Court there jurisdiction to try the cause under the 12 Vic., c. 38, s. 14,—that the cause of action means the whole cause of action or all the circumstances connected with the transaction giving rise to the action. *Rousseau and Hughes*, 8 L. C. R., p. 187.

2. And when a defendant is sued in another district than that of his domicile, on the pretext that the *cause of action* arose in such other district, it is necessary that the *whole* cause of action arose there. *Senecal and Chenevert*, Q. B., 6 L. C. J., p. 46 ; and 12 L. C. R., p. 145.

3. In an action on an obligation passed in Quebec, to pay a sum of money in London, the whole cause of action arose in Quebec. *Jackson et al. vs. Coxworthy et al.*, 12 L. C. R., p. 416.

4. And in an action by a consignee for value of goods, sold by a carrier at the place of destination instead of being delivered, a question of jurisdiction will be determined by the place where such sale was made and not by the place where the original contract to carry was made. *Richer vs. Mongeau*, S. C., 1 L. C. J., p. 100.

5. That the Superior Court at Montreal has jurisdiction in an action of damages for malicious arrest, the affidavit being sworn at Three Rivers, and the plaintiff being arrested within the district of Montreal, although all the defendants be domiciled out of the district of Montreal and have not been served with process there. *Senecal vs Pacaud et al.*, S. C., 10 L. C. R., p. 419. Also *Dansereau vs. Maxham*, S. C., 10 L. C. R., p. 421, in note.

6. But in *Grenier et al. vs. Fourquin et al.*, it was held, that under the 26th section of Con. Sts. L. C., c. 82, service upon one defendant in the city of Montreal and upon the other defendants, as heirs of their father, in another district, is good ; although the obligation of their father, upon which the suit was brought, was brought in such other district. S. C., 13 L. C. R., p. 72.

7. In *Poston et al. vs. Hall et al.* it was held, that service of an action at the place of business of a firm or partnership in a different district from that in which the writ issues, even when one of the members of such firm is domiciled in the district in which the action was brought, is insufficient. S. C., 13 L. C. R., p. 127.

8. Jurisdiction is governed by the amount demanded and not by the amount recovered. *Généreux vs. Leroux*, S. C., 1 L. C. J., p. 285. But under the lessor and lessees act, it is

JURISDICTION :—

the amount of the rent, and not of the action of damage by which it is accompanied, that decides as to the jurisdiction. *Barbier vs. Verner*, S. C., 6 L. C. J., p. 44.

9. A question of jurisdiction cannot be tried by motion. *Elwes vs. Francisco*, S. C., 1 L. C. J., p. 188.

10. A judge of the Superior Court for Lower Canada, at Montreal, has no jurisdiction, either to receive the affidavit of the subscribing witnesses to a will or to grant probate thereof, it appearing that the testator died in the district of Beauharnois. The application must be made to a judge, or to the Prothonotary of the Court within the limit of the district where the testator died. Ex parte *Sweet*, S. C., 10 L.C.R., p. 451.

11. An action begun by a *saisie arrêt*, the defendant domiciled in Upper Canada, is legally summoned, being called in under the 12 Vic., c. 38, sec. 94 [C. Sts. L. C., c. 83, sec. 61], if the garnishees be indebted to defendant. *Chapman vs. Nimmo and The Phœnix*, Q. B., 11 L. C. R., p. 90.

12. Where a party has pleaded to the merits of an action begun on *capias*, and has moved to quash the *capias*, he will be considered to have submitted to the jurisdiction of the Court, and he will not be allowed to object thereto. *Brisson vs. McQueen*, S. C., 7 L. C. J., p. 70.*

13. The Court of Vice-Admiralty has no jurisdiction in a case of pilotage where there has been a previous judgment of the Trinity House upon the same demand. *The Phœbe*, p. 59, S. V. A. R.

14. The jurisdiction of the Vice-Admiralty Court, in relation to claims for extra pilotage, is not ousted by the Provincial Stat. 45 Geo. 3, c. 12, s. 12. *The Adventure*, p. 101, S. V. A. R.

In case of wreck in the river St. Lawrence (Rimouski) the Court has jurisdiction of salvage. *The Royal William*, p. 107. *Ib.*

15. A great part of the powers given by the terms of the commission or patent of the Judge of the Admiralty are totally inoperative. *The Friends*, p. 112. *Ib.*

The Court of Admiralty, except in prizes, exercises an original jurisdiction only on the grounds of authorized usage and established authority. *Ib.*

It has no jurisdiction *infra corpus comitatus*. *Ib.*

The Admiralty jurisdiction as to torts depends upon locality, and is limited to torts committed on the high seas. *Ib.*

Torts committed in the harbour of Quebec are not within the Admiralty jurisdiction. *Ib.*

The Admiralty has jurisdiction of personal torts and wrongs committed on a passenger on the high seas by the master of the ship. *Ib.* Also *The Toronto*, p. 181, S. V. A. R.

17. Justices of the Peace cannot give themselves jurisdiction in a particular case, by finding that as a fact which is not a fact. *The Scotia*, p. 164, S. V. A. R.

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* Of course this only means where the want of jurisdiction is personal to defendant, but where the Court has a right to take cognizance of the subject matter. *V. infra. The Mary Jane*, No. 20.

JURISDICTION :—

18. Collision between a steamboat and a *bateau*, both exclusively employed in the harbour of Quebec, not cognizable by this Court. *The Lady Aylmer*, p. 213, S. V. A. R.

19. The Court has no jurisdiction in a claim of property to an anchor, &c., found in the river St. Lawrence, in the district of Quebec. *The Romulus*, p. 208, S. V. A. R.

20. The Court has no jurisdiction for the cost of materials supplied to a vessel built and registered within the port of Quebec. *The Mary Jane*, p 267, S. V. A. R. Where the Court has clearly no jurisdiction, it will prohibit itself. *Ib.*

21. The Court of Vice-Admiralty exercises jurisdiction in the case of a vessel injured by collision in the river St. Lawrence, near the city of Quebec. *The Camillus*, p. 383, S. V. A. R.

In a case of forfeitures and penalties incurred by a breach of any Act of the Imperial Parliament relating to the trade and revenues of the British possessions abroad.

In a case of forfeitures and penalties incurred by a breach of any Act of the Provincial Parliament, relating to the customs, or to trade or navigation.

" :—*Vide Beaudry vs. Thibodeau*, S. C., 7 L. C. J., p. 137.
" :— " ABSENTEE.
" :— " ADMIRALTY.
" :— " CIRCUIT COURT.
" :— " COLLISION.
" :— " INSURANCE.
" :— " JUDGE.
" :— " TRESPASS.
" :— " VICE-ADMIRALTY COURT.

JURORS :—Jurors acting within the limits of their functions cannot be questioned as to whether the finding of their verdict proceeded from malice, and if they cannot agree on a verdict any one of them is equally protected as the whole in expressing his own individual opinion of the case. *Simard vs. Jenkins*, S. C., L. R., p. 38. Also, *Simard vs. Tuttle*, S. C., 4 L. C. R., p. 193. But in a similar case, arising out of the same facts, of *Simard vs. Townsend*, Q. B., 6 L. C. R., p. 315, in which a like judgment was rendered, and from which judgment plaintiff appealed, it was held in the Q's. B., that in an action of damages against one of nine jurors, forming part of a coroner's juror of nineteen, impanelled to inquire into the death of several persons, where no verdict was rendered, the jurors being divided ten against nine, it is sufficient for the plaintiff, one of the witnesses examined at the inquest, to allege in his declaration, that the defendant, with eight others, in breach of their oath as jurors, and in violation of their duty, from hatred, malice and ill-will to the plaintiff, and with the intent to injure him, did conspire to charge him falsely, with wilful and corrupt perjury, and that the defendant aforesaid, in pursuance of such design, did draw up a libellous statement, and did wickedly and maliciously procure the same to be published. And it is not competent for any one or more jurors, individually to prefer a charge of wilful and corrupt perversion of truth

JURORS :—

against any of the witnesses examined; and the juror who does so, will be liable to damages for any injury suffered.

JURY TRIAL:—1. In an action upon an agreement for the sale of a cargo of coal, by a merchant, to an ironmonger and blacksmith, the trial and verdict of a jury may be obtained under the Provincial Ordinance 25 Geo. III. c. 2, sect. 38. [Con. Sts. L. C., c. 87, sect. 6.] *Hunt vs. Bruce et al.*, P. R., p. 3. And an action by a printer in matters relating to his business is susceptible of a trial by jury. *Lovell vs. Campbell et al.*, S. C., 6 L. C. J., p. 115. But the Court of Q. B., on granting an appeal in this case intimated that it would probably hold a different opinion, 6 L. C. J., 116. And insurance against fire by an insurance Company, being a commercial transaction, an action on a policy of insurance may be tried by a jury. *Smith vs. Irvine*, 1 Rev. de Lég., p. 47. Also, *McGillivray vs. The Montreal Insurance Company*, S. C., 5 L. C. R., p. 406.

2. A trial by jury may be had on an action for a breach of promise of marriage, as in an action for personal wrongs. *Fergusson vs. Patton*, S. C., 4 L. C. R., p. 383. But an action *en déclaration de paternité*, although coupled with a demand for damages, is not susceptible of trial by jury. *Clarke vs. McGrath*, S. C., 1 L. C. J., p. 5. Nor will a trial by jury be granted in a case where there are two causes of action, the one commercial and the other not. *Mann et al., and Lambe*, Q. B., 6 L. C. J., p. 75.

3. Mutilating a person's horse is not considered a *personal wrong* entitling the parties to a trial by jury. *Durocher vs. Meunier*, S. C., 1 L. C. J., p. 290.

4. A trial by jury cannot be had in an action of damages, by two professional men, against three merchants, for breach of contract to buy a railroad; and so much of the conclusions of the defendants pleas in such action as pray for such trial by jury will be rejected on motion. *Abbott et al. and Meikleham et al.*, S. C., 2 L. C. J., p. 283. And an action of revendication of stolen goods, althought between merchant and merchant, is not susceptible of trial by jury. *Fawcett et al., vs. Thompson et al.*, S. C., 3 L. C. J., p. 229. And an action of damages for malicious prosecution, arising out of mercantile transactions is not a civil suit of a mercantile nature susceptible of trial by jury, under the cap. 84, C. Sts. L. C., sect. 39. *Fogarty vs. Morrow et al.*, S. C., 5 L. C. J., p. 222.

5. An action *en reddition de compte* between the representatives of two successions, is not susceptible of trial by jury. *Mann et al., vs. Lambe*, S. C., 5 L. C. J., p. 330. Confirmed in Appeal, 6 L. C. J., p. 75.

6. An action for money lent by a non-trader to a commercial firm, is not liable to trial by jury. *Whishaw vs. Gilmour et al.*, S. C., 6 L. C. J., p. 320, and 13 L. C. R., p. 94.

7. But an action by a non-trading corporation against a commercial firm, to recover back an over-charge of freight, is susceptible of trial by jury. *Her Majesty's Principal*

JURY TRIAL :—

Secretary of State for the War Department vs. Edmonstone et al., S. C., 6 L. C. J., p. 322. And in the Q. B., leave to appeal was refused, the case being clearly susceptible of trial by jury. *Ib.*, p. 323, (in note.) Also, 13 L. C. R., p. 79.

8. If a party moves for a trial by jury, he cannot afterwards reject the verdict, on the ground that the jury ought not to have been allowed, because he, the mover, was not a merchant or a trader. *Rivers vs. Duncan*, S. R., p. 139.

9. When in any suit where trial by jury may be had, either party who desires to proceed by jury must make his option by his declaration or plea, or within four days after issue joined. *Wilson vs. The State Fire Insurance Company*, S. C., 12 L. C. R., p. 96.

10. Notice of motion for jury trial, given within four days in vacation from the joining of issue, was held not to be a sufficient compliance with the 64th rule of practice, which declares that either party desiring to avail himself of the privilege of proceeding by jury trial must make his option so to do by declaration, plea or motion within four days of issue joined. *Arcand and Montreal & N. York R. Road Company*, S. C., 6 L. C. J., p. 38. *Johnston vs. Whitney*, S. C., 6 L. C. J., p. 39; and *Lovell vs. Campbell et al.*, S. C., 6 L. C. J., pp. 115, 116. But this case having gone to the Q. B., 12 L. C. R., p. 97, the judgment was reversed; and it is now the settled jurisprudence that such notice is a sufficient compliance with the rule of practice. Also *Secretan vs. Foote et al.*, S. C., 11 L. C. R., p. 497.

11. A defendant declared his option for a trial by jury by his first plea, which was dismissed on demurrer, but made no such option by the second, and it was held that the declaration of such option still subsisted unimpaired and that he was entitled to a trial by jury. *Whyte and Nye*, Q. B., 9 L. C. R., p. 228.

12. The question ordered to be submitted to the jury must cover the pleadings. *The Montreal Assurance Company and Aitken*, Q. B., 7 L. C. R., p. 88.

13. When the verdict and findings of a jury are contrary to evidence the Court will order a new trial. *Beaudry and Papin*, Q. B., 1 L. C. J., p. 114.

" :—*Vide* NEW TRIAL.

" :— " VERDICT.

JUSTICE OF THE PEACE:—1. Although Justices of the Peace, exercising summary jurisdiction, be the sole judges of the weight of evidence given before them, and no other of the Queen's Courts will examine whether they have formed the right conclusion from it or not, yet other Courts may, and ought to examine whether the premises stated by the Justice are such as will warrant their conclusion in point of law. *The Scotia*, p. 160, S. V. A. R.

Justices of the Peace cannot give themselves jurisdiction in a particular case by finding that as a fact which is not a fact. *Ib.*

Where a Justice of the Peace, acting under the authority of the Merchant Seamen's Act (5 & 6 Wm. IV., c. 19, s. 17),

JUSTICE OF THE PEACE:—
had awarded wages to a seaman, on the ground that a charge of owners had the effect of discharging the seaman from his contract; this Court, considering that proceedings had before the Justice of the Peace did not preclude it from again entering into the enquiry, *held*—that the contract of the seaman was a subsisting contract with the ship, notwithstanding the sale of her. *Ib.*

In no form can this Court be made ancillary to the Justices Court, still less be required to adopt, without examination, as legal premises on one demand, the premises which the Justices' Court may have adopted as legal premises on another demand. *Ib.*

2. In a suit for the recovery of wages under the sum of fifty pounds, Justices acting under the authority of "The Merchant Shipping Act, 1854," (17 & 18 Vic., c. 104, ss. 188, 189), may refer the case to be adjudged by this Court. *The Varuna*, p. 357, S. V. A. R.

3. Where a limited authority is given to Justices of the Peace they cannot extend their jurisdiction to objects not within it, by finding as a fact that which is not a fact; and their warrant in such a case will be no protection to the officer who acts under it. *The Haidee*, V. A. C., 10 L. C. R., p. 101.

JUSTIFICATION:—In action by a seaman against the master, a justification, on the ground of mutinous, disobedient and disorderly behaviour, sustained. *The Coldstream*, p. 386, S.V. A. R.

" :—*Vide* ASSAULT.

" :— " PLEADING & PRACTICE.

KERR, (JUDGE):—Appointed Judge of the Vice-Admiralty Court at Quebec, by letters patent, under the Great Seal of the High Court of Admiralty of England, on the 19th of August, 1797. p. 152, S. V. A. R.

His duty discharged by a Deputy, from the 30th of August, 1833, until his removal in October, 1834.

Two of his decisions in the Vice-Admiralty Court. p. 383, S. V. A. R.

LANDLORD AND TENANT:—*Vide* LESSOR AND LESSEE.

" " :— " SAISIE GAGERIE.

LANDS:—A certificate from the local Crown Land Agent, of a payment of an instalment of the price of a Clergy lot, is not sufficient title to support an opposition founded on such certificate. Under the 4 & 5 Vic., c. 100, sec. 18, and the 12 Vic., c. 31, sec. 2 [repealed 16 Vic., c. 159, sec. 1], the holder is entitled only to maintain action against wrong doers or trespassers. *Ross and Berthelot & al.*, Q. B., 6 L. C. R., p. 420.

" :—*Vide* EXECUTION.

" :— " FREE AND COMMON SOCCAGE.

" :— " HYPOTHÈQUE.

LANDSMAN:—*Quære.* Whether a mere landsman, shipping himself as an able-bodied seaman, is entitled to any allowance whatever. *The Venus*, p. 92, S. V. A. R.

LARBOARD:—Probable derivation of this nautical term. p. 235, S. V. A. R., in note.

LAW :—In Lower Canada, a law may be abrogated by disuse. *Desforges and Dufaux & al.*, Q. B., 13 L. C. R., p. 179.

LAW OFFICERS :—Opinion of the law officers of the Crown in England as to the authority of the judge to establish a table of fees. p. 69, S. V. A. R.

Opinion of the law officers of the Crown in Canada, as to the practice of requiring proxies to be produced under certain circumstances. p. 247, S. V. A. R.

LEASE :—1. A demand for a sum of money due for rent, under a notarial lease, is sufficient, although the declaration does not allege that the lessee entered upon or enjoyed, and had the use of the premises demised, or that the plaintiff has performed the obligations he was bound to fulfil under the lease. *Pirrie vs. McHugh & al.*, S. C., 1 L. C. R., p. 271.

2. The lessee cannot quietly enjoy the lease until rent is demanded of him, and then complain of such damage caused by the landlord as a reason for non-payment of the rent. *Loranger vs. Perrault*, S. C., L. R., p. 50. But it was held in the Q. B., that in an action for rent by a lessor against a lessee, due under a lease executed before notaries, it is lawful for the lessee to plead that he did not obtain possession of the premises leased at the time mentioned in the said lease; and that by reason thereof he had suffered damages; which damages the lessee will be entitled to deduct from the rent payable by him to the lessor. *Belleau and The Queen*, 12 L. C. R., p. 40.

3. There must be legal process, by a lessee against a lessor, or an order obtained by such lessee against such lessor to enable the lessee to obtain the rescision of the lease between the parties, by reason of the insufficiency of the premises leased, and by reason of such premises being out of repair and not in tenantable order. *Boulanger vs. Doutre*, S. C., 1 L. C. J., p. 393. And in an action for resiliation of a bail against two joint-lessees, one of whom has made default, the defendant will not be permitted to take new conclusions without notice to both of the defendants. *Dubois and Lamothe & al.*, Q. B., 12 L. C. R., p. 480.

4. A lease may be rescinded in default of the premises leased having been provided with a privy, when from the want of it, such premises have become unwholesome. *Lambert vs. Lefrançois*, S. C., 11 L. C. R., p. 16.

5. The clause that the *locataire* cannot sublet is not a *clause comminatoire*, and its violation resiliates the lease. *Hunt vs. Joseph & al.*, 2 Rev. de Leg., p. 52.

6. A lease *d'affermage particire* by which the lessee has undertaken to perform personally certain obligations, cannot be, by such lease, assigned to a third party. The assignment of such lease gives right to the lessor to seek the rescision of the contract of lease, and the resiliation of the assignment after such action *en rescision* brought, does not deprive the lessor of his right to set aside the lease. *Hudon vs. Hudon & al.*, S. C., 2 L. C. R., p. 30.

7. A lease can be broken by a subsequent sale, without any previous notice to the tenant by the vendor. *Mountain vs. Léonard & al.*, S. C., 1 L. C. J., p. 272. But in a case of

LEASE:—

Boucher vs. Forneret, S. C., 1 L. C. J., p. 269, it was held that a lease could not be broken by a subsequent sale, as far as regards the current year, nor without previous notice to that end. But when a house has been sold during the pendency of a lease, and the lessee on the written order of the lessor goes out, he cannot maintain an action of damages against him. *McGinnis and Hodge*, S. C., 2 L. C. R., p. 447.

8. The lessee of real estate seized by the sheriff cannot oppose the sale unless it be sold subject to his unexpired lease. *Choquette vs. Brodeur and Gloutency*, 1 Rev. de Lég., p. 335. Nor under any lease. *Bogle et al. vs. Chinic and Proulx et al.* *Vide Vo.* Opposition.

9. Creditors cannot seize or sell the unexpired term of a lease held by their debtors, this right only exists in favor of the landlord under the 16 Vic. c. 200, sec. 11. [Repealed 18 Vic. c. 108.] *Hobbs et al. vs. Jackson & al., and Jackson*, opposant, S. C., 10 L. C. R., p. 197.

10. A clause in a lease to the effect "That the lessees shall pay all extra premiums of insurance, that the company, at which the premises now leased may be insured, shall exact in consequence of the business or works done or carried on therein by the said lessees," applies to all extra premiums of insurance charged on account of the actual nature of the business carried on by the lessees, and does not merely contemplate hazardous contigencies which may afterwards arise, such as the erecting of steam engines, &c. *Platt vs. Kerry & al.*, S. C., 7 L. C. J., p. 80.

11. The lease of a mill cannot be assimilated to the lease of a farm, in such a way as that the law will allow a reduction in the rent stipulated in case of any unforeseen accident. *Corriveau vs. Pouliot*, 1 Rev. de Lég., p. 184.

12. The lessee of a lot and water power near the Lachine Canal, and within the limits of the city of Montreal, from the Commissioner of Public Works under a lease for twenty-one years, renewable for ever on the terms mentioned in the lease, has a *jus in re*, and is liable for city taxes and assessments, as proprietor of the leased property. Such case is an alienation of the *domaine utile*, the Crown having only the *domaine direct*, and if made previous to 14 & 15 Vic. c. 128, is not affected by the powers conferred upon the Corporation of the city of Montreal by the 92nd section of their Act. Ex parte *Harvey*, S. C., 5 L. C. R., p. 378. Also *Gould & The Corporation of Montreal*, Q. B., 3 L. C. J., p. 197.

13. Where a tenant admits a verbal lease, the lessor may prove the value and duration of the occupation. *Viger and Belliveau*, Q. B., 7 L. C. J., p. 199.

" :—*Vide* ASSESSMENT.

" :— " HYPOTHÈQUE.

" :— " OPPOSITION.

LEGACY:—1. A clause in the will of a testator, that a usufruct bequeathed by him to his wife should cease, on her marriage, is not *contrâ bonos mores*. When a tutor *ad hoc* is appointed

LEGACY :—

to minors for the purpose of protecting their interest in a usufruct bequeathed to them, and he is sued relative to this usufruct, it is not necessary that a tutor *ad hoc* should be appointed expressly for the purposes of the suit. *Forsyth & al., vs. Williams & al.*, S. C., 1 L. C. R., p. 102.

2. A devise by the husband of the share of the *communauté* belonging to his wife, under a condition to pay a life rent, is valid, if she accepted of the condition annexed to such devise. *Roy and Gagnon*, Q. B., 3 L. C. R., p. 45.

3. A legacy from a father to a daughter, conditional on her not doing certain things, is forfeited by her doing them, and it is a fatal variance in a declaration to claim such legacy as an absolute one. *Freligh vs. Seymour*, S. C., 2 L. C. J., p. 91.

4. Where A. by his will bequeaths the interest of a capital sum to each of his daughters during their lifetime, and from and after the death of any one of them to her children, lawfully begotten, until the age of majority, and on attaining that age, "the principal to be paid to him, her or them, for his, her or their absolute use," subject to the proviso, that if any such daughters should die unmarried or without leaving lawful issue, the interest should be paid to the surviving daughters, and one of the daughters dies intestate, leaving a child who only survives her a few days, the legacy, in capital and interest, so bequeathed to such deceased daughter, becomes the property of the surviving husband. *Reid and Prevost*, Q. B., 1 L. C. J., p. 320.

5. The terms "children still living," may comprehend the grand-children, descendants *en ligne directe*, of the testatrix, if such appears to have been the intention. *Glackemeyer vs. The Mayor, &c. of the City of Quebec and Lagueux*, S. C., 11 L. C. R., p. 18. But in a case of *Martin and Lee*, it was decided in the Q. B.,—that a bequest "to all her children living at the time of her decease" did not include the grand-children of testatrix. 11 L. C. R., p. 84.

6. A legacy to a confessor is valid. *Harper vs. Bilodeau*, S. C., 11 L. C. R., p. 119.

" :—*Vide* CORPORATION.
" :— " DELIVRANCE DE LEGS.
" :— " SUBSTITUTION.
" :— " WILL.

LEGATEE :—1. A party sued as universal legatee, for the recovery of a debt due by the testator, by the terms of the will it appearing that he is only a special legatee, will not be held liable, without due proof by plaintiff that the property bequeathed formed, in fact, the universality of the testator's estate; and the production by plaintiff of an inventory of such estate, in which defendant is styled universal legatee, and in which no property and effects are mentioned other than those bequeathed to defendant, will not be held to be such proof. And parol evidence will not be admitted to prove a promise by the legatee to pay. *McMartin vs. Gareau*, S. C., 1 L. C. J., p. 286.

LEGATEE:—

2. Legatees cannot bring an action against a third party, charged by the universal legatee to pay them, for want of privity of contract. *Rainsford & al. vs. Clarke & al.*, 3 Rev. de Lég., p. 250.

LEGISLATIVE ASSEMBLY:—A person committed by the Legislative Assembly to the common jail, during pleasure, is discharged by a prorogation. Ex parte *Monk*, S. R., p. 120.

LEGISLATIVE COUNCIL:—The Legislative Council has a right to commit for breach of privilege in cases of libel; and the Court will not notice any defect in the warrant of commitment for such an offence, after conviction. *Daniel Tracy*, S. R., p. 478.

LEGITIME:—1. *Legitime* cannot be claimed where the deceased has left a will. *Quintin vs. Girard & ux.*, S. C., 1 L. C. J., p. 163. Confirmed in Q. B., 2 L. C. J., p. 141; and 8 L. C. R., p. 317.

2. In an action for *legitime*, account must be taken of the charges to which the property given has been made subject. *Lefebvre & ux. vs. Boyer*, Q. B., 1 L. C. J., p. 267.

LESION:—In an action by a minor to set aside a deed passed by him during his minority, he must prove the *lesion* as well as allege it. *Metrissé & al. and Brault*, Q. B., 4 L. C. J., p. 60. But the *lesion* may be inferred without being positively proved. *Larivière vs. Arsenault & Larivière*, S. C., 5 L. C. J., p. 220.

The indemnity due to the minor for *lesion* suffers no reduction for the amount received, unless it be proved that he has profited by such amount. *Ib.*

And the fact that he managed a considerable part of his affairs is no answer to the action; nor will it discharge the defendant from paying the fruits received by him and which are due to the minor from the date of the transaction. *Ib.*

The minor is only obliged to reimburse the necessary expenses. *Ib.*

LESSOR AND LESSEE:—1. A lessee in an action for rent cannot put in issue his landlord's title. *Hullet vs. Wright*, 2 Rev. de Lég., p. 59.*

2. As to question of title, raised on an action for rent. *Brossard vs. Murphy*, S. C., L. R., p. 29.

3. A lessee of land cannot set up, as against his lessor, plaintiff in a petitory action, improvements made by the lessee on the land sought to be recovered. *Peltier vs. Larichelière*, S. C., 5 L. C. R., p. 96.

4. A writ under the Lessor and Lessee Act, 18 Vic., c. 108, [Con. Sts. L. C., cap. 40], summoning a defendant to appear before "one or more of the Judges of our Superior Court for Lower Canada, in the district of Montreal, in the hall of the Court House wherein are usually held the sittings of our said Court," is null. Such writ should be returned before the Superior Court. And proceedings had at the *greffe* or in chambers in such case are *coram non judice*, and must be annulled and the parties put out of Court. *Grant and Brown*, Q. B., 6 L. C. R., p. 187.

* Nor can a third party intervene in an action for rent between landlord and tenant, to wage his petitory action. *Joseph vs. Moffat, and Castongué & al.* intervening parties. S. C. M., decided in 1857 or '58.

LESSOR AND LESSEE:—

5. The privilege of the landlord for rent extends to the expiration of the current year. *Earl & al. vs. Casey*, S. C., 4 L. C. R., p. 30; also *Tyre and Boisseau*, Q. B., 4 L. C. R., p. 466.

6. The lessor of a concert room has no lien on a piano temporarily placed there for an evening concert, as against the proprietor of the piano, who is not the lessee. *Pearce vs. the Mayor, &c. of the City of Montreal*, S. C., 3 L. C. J., p. 122.

7. A tenant who only owes one term of his rent may be expulsed, in virtue of the 18 Vic., c. 108, sec. 2, s.s. 4, [Con. Sts. L. C., cap. 40, sec. 1.] *Quintal vs. Novion, and Brown vs. Janes*, S. C., 4 L. C. J., p. 35. And so also in another case where the term unpaid was only of one month. *Quintal vs. Novion*, C. C., 5 L. C. J., p. 28; also *McDonnell & al. vs. Collins*, S. C., 3 L. C. J., p. 44.

8. But in the case of *Healey vs. Labelle*, S. C., 3 L. C. J., p. 45, it would seem to have been held, that under the section 2, a tenant cannot be expelled on the ground that he does not pay his rent in conformity with the conditions of the lease.

9. In an action of ejectment under the Lessor and Lessee's Act it is not necessary formally to invoke it in the Superior Court. *Brown vs. Janes*, S. C., 4 L. C. J., p. 35.

10. The purchaser of a house sold by *decret* has a right of action against the occupant for rent, in consequence of his use and enjoyment thereof at the time of sale and since. And such occupant who has carried off the moveables which furnished the house, and who has left the house unfurnished should be condemned for the rent for the whole year. *Lacroix vs. Prieur*, C. C., 3 L. C. J., p. 42.

11. Rights of purchaser with respect to tenant of vendor remaining in possession after expiration of lease. *Desallier and Giguères*, 1 Rev. de Lég., p. 388.

12. In conformity with the dispositions of the 16th clause of the Lessor and Lessee's Act 18 Vict. c. 108. [C. S. L. C., cap. 40, sec. 16,] a person who has occupied without lease, a house or part of a house from the 1st of May is bound for the payment of the rent for the year up to the 1st of May of the following year. *Deslongchamp & al. vs. Payette dit St. Amour* C. C., 3 L. C. J., p. 44.

13. The proprietor is not obliged to give a tenant notice to quit, when the lease, is for a fixed period. *Jobin vs. Morriset*, 1 Rev. de Lég., p. 383.

14. The allegation that the lessor could not give up to lessee, the places let, owing to the violent and unjust detention by a tenant whose lease has expired, is no defence to the action of damages by a second tenant whose enjoyment ought to commence. *Swanson vs. Defoy*, 2 Rev. de Lég., p. 167.

15. A lessee cannot sue in one action his lessor and an other lessee of the same building for damages for leakage from the part of the building above occupied by the other lessee. The nature of the actions against the lessor and the other lessee is different. *Mercier vs. The Mayor &c. of Montreal and Rivet and Doray*, C. C., L. R., p. 54.

LESSOR AND LESSEE:—

16. Under the 18 Vic. c. 108, [C. S. L. C., cap. 40,] the Superior Court has no jurisdiction in an action of damages for breach of contract of lease, in not delivering possession of the premises leased to the lessee. *Close vs. Close* S. C., 3 L. C. J., p. 140. But otherwise on the violation of the clause of lease, even though the lease have expired,—and the amount of rent rules the jurisdiction of the Court. *Bédard vs. Dorion*, S. C., 3 L. C. J., p. 253. But where the term of a lease is for less than a year, and the rent payable for that term does not exceed £50, the Circuit Court has jurisdiction, notwithtansding that the annual value or rent of the property leased would exceed £50, if the term extended to a period of one year. *Clairmont & al. vs. Dickson*, S. C., 4 L. C. J., p. 4.

17. Under the Lessor and Lessee's Act the amount of rent sued for indicates the Court having jurisdiction over the demand. *Kelly vs. Shrapnell*, S. C., 12 L. C. R., p. 214. And it is not the amount of damages claimed which determines the jurisdiction of the Court, but the annual lease of the property. *Barbier vs. Verner*, C. C., 6 L. C. J., p. 44.

18. But in an action for lease at common law, independently of the Lessor and Lessee's Act, the Superior Court has jurisdiction where the rent does not exceed $200, if the sum sued for be of the amount required to bring an action in the Superior Court. *Fisher & al. vs. Vachon*, S. C., 6 L. C. J., p. 189.

19. In an action under the 18 Vic. c. 108, [C. S. L. C., cap. 40,] the defendent is not bound to proceed between the tenth day of July and the 30th of August inclusive. *Clairmont et al. vs. Dickson*, S. C., 3 L. C. J., p. 255.

20. A lessor is *garant* of his tenant, in an action by a *sous locataire* for repairs to the house leased, even where there is a clause in the lease forbidding the tenant to sub-let without the consent of the lessor, if it appears that the lessor has taken the extra-premium of insurance caused by such sub-letting to a tavern-keeper. *Théberge vs. Hunt*, S. C., 11 L. C. R., p. 179.

21. Under the Lessor and Lessees' Act, Con. St. of L. C. cap. 40, the Court has no authority to rescind a lease made to the plaintiffs by the defendants, on account of a change in the destination of the neighbouring property previous to the time when the plaintiff's lease came into effect; and that the action which was founded on alleged injury arising from the leasing of the adjoining premises for military barracks was premature being brought in February, whereas the plaintiff's lease only commenced on the 1st of May, 1862. *Crathern & al. vs. Les Sœurs de St. Joseph de l'Hôtel-Dieu*, S. C., 12 L. C. R., p. 497.

22. In an action of ejectment under the Lessor and Lessee's Act, for non-payment of rent, the Court cannot take cognizance of a demand for hire for the use of furniture leased by the same deed as the premises. *Kelly vs. Shrapnell*, S. C., 13 L. C. R., p. 214. But in *Viger and Belliveau* it was held in the Q. B., that the Court would take cogniz-

LESSOR AND LESSEE :—

ance of the rent of furniture leased with a house as an accessory. 7 L. C. J., p. 199.

23. An action wont lie against defendants resident in Lower Canada under the Lessor and Lessee's Act to set aside a lease of property in Upper Canada. *Scheuer & al. vs. Porter & al.*, S. C., 7 L. C. J., p. 42.

24. The privilege of the first lessor subsists although he has not been diligent in prosecuting the sale of the moveables he has seized, and this against a second lessor. *Tavernier vs. Bonneville and Dechantal*, S. C., L. R., p. 30.

Vide Defoy vs. Hart, 1 Rev. de Lég., pp. 381-387.

25. Rent cannot be recovered by suit for premises leased as a house of ill-fame. *Garish vs. David*, C. C., 7 L. C. J., p. 127.

" :—*Vide* PRIVILEGE.

" :— " PLEADING & PRACTICE.

LETTER OF ATTORNEY —*Vide* POWER OF ATTORNEY.

LETTERS PATENT:—1. The certificate required by 6 Wm. IV, c. 34, must be given by the attorney general, or in his absence by the sollicitor-general. The certificate of a Queen's counsel is insufficient. *Belanger vs. Levesque*, 1 Rev. de Lég. p. 185.

2. Letters Patent for inventions granted under Her Majesty's privy seal in England are of no force and effect in Canada. The patentees have no other remedy than that given by our Provincial Statute. *Adams vs. Peel & al.*, S. C., 1 L. C. R., p. 130.

3. Letters Patent may be annulled otherwise than by *scire facias*. See *Scire facias*.

4. A party who has effected an improvement in fire engines, by a new combination of old parts, whereby results are obtained, is entitled to take out and maintain Letters Patent for his exclusive right. *Muir vs. Perry*, S. C., 2 L. C. R., p. 305.

5. In an action for infringement of letters patent for an invention, it is sufficient to set out in the declaration the granting of the letters patent in favor of plaintiff, setting out also the date and tenor thereof, without alleging compliance with the formalities pointed out by the Statute to entitle the plaintiff to obtain the letters patent. *Bernier vs. Belliveau*, S. C., 8 L. C. R., p. 297. Also *Bernier vs. Beauchemin*, S. C., 2 L. C. J., p. 193. And in an action for infringement of patent if it be proved that the article patented was in public use or on sale in the province, with the consent of the patentee, at the time of the application for the patent, the plaintiff cannot recover; and a verdict of a jury in his favor, will, under such circumstances be set aside and a new trial granted. *Bernier vs. Beauchemin*, S. C., 2 L. C. J., p. 289. Confirmed in appeal, 5 L. C. J., p. 29. And a patent will be declared null and of no avail, if it be not established that the patentee is the sole and only inventor of the thing patented, or if it be not established that such patentee is the true and first inventor. *Ritchie and Joly*, Q. B., 12 L. C. R., p. 49.

LIABILITY :—*Vide* ATTORNEY.

" :— " BUILDER.

" :— " DAMAGES.

LIBEL :—*Vide* CRIMINAL INFORMATION.
" :—LEGISLATIVE COUNCIL.
" :—TRESPASS.

LIBEL (Pleading) :—All that is required in a libel for seaman's wages is to state the hiring, rate of wages, performance of the service, determination of the contract, and the refusal of payment. *The Newham*, p. 70, S. V. A. R.

LICENSE :—A license for a timber limit under the signature of an officer styling himself "Surveyor of Crown timber licenses," dated 10th July 1851, is inoperative, inasmuch as up to the 8th August, 1851, "The Collector of Crown timber duties," was the only officer authorized to issue such licenses. In such licenses by the words "lots occupied by squatters for three years excepted," are intended township lands as stated in the returns of the surveys of townships, and not merely those portions of lots improved by such squatters. *Hall and Thompson*, Q. B., 3 L. C. R., p. 466.

LICITATION :—1. An action *en licitation* always contains an action *en partage*. And in such actions the parties are in the same relative positions to one another, each being at the same time plaintiff and defendant. And in such cases the cause of action is the joint ownership and not the indivisibility of the property. So a plea setting up that an action *en partage* between the same parties for the same properties is still pending, will be a good plea of litispendence. *Boswell vs. Lloyd et al.*, S. C., 12 L. C. R., p. 447.

2. *Douaire coutumier* does not affect a mere undivided interest or share in real property, where such property is sold by *licitation forcée*, the effect of the licitation being to convert the right of dower on the land to a claim on the moneys resulting from the sale of the property, and this even in the case of *tiers acquéreur*. *Denis vs. Crawford*, S. C., 7 L. C. J., p. 251.

" :—*Vide* ADJUDICATAIRE.

LIEN :—1. Effects upon which a defendant has a lien, will not be delivered up out of his possession, in an action of revendication, unless the amount of his claim be deposited in Court, in lieu of his effects. *Bell vs. Wilson*, S. C., 5 L. C. R., p. 491, and this though the pledgor, who had the goods in his possession, be not the proprietor. And under the statute 10 and 11 Vic. c. 10, sect. 4, [Con. Stats. C., cap. 59, sects. 4, 5 and 6,] even although pledgee knew that the pledgor was not the proprietor, and that goods were pledged as security for a transaction between pledgor and pledgee, who is not *mala fide*, so long as he has no notice from the owner that the pledgor has no authority to pledge.

2. The lien is not extinguished by the pledgee transferring to a third party negotiable notes which he had taken from pledgor, if the notes come back into pledgee's hands being unpaid at maturity. *Clark vs. Lomer and Clark et al.*, S. C., 4 L. C. J., p. 30. Confirmed in Appeal. *Johnson et al., (plaintiffs par reprise d'instance,) and Lomer*, 6 L. C. J., p. 77.

3. A carriage-builder who had the safe-keeping of a carriage, has a lien upon it until he is paid for his keeping of it. *Ryland vs. Gingras*, 3 Rev. de Lég., p. 300.

LIEN :—

4. A merchant's clerk has no lien upon the goods of his employer for any sums of money which may accrue and become due to him after the institution of his action. *Poutré vs. Poutré*, S. C., 6 L. C. R., p. 463.

5. In the case of *Frechette vs. Gosselin et al., and divers opposants*, S. C., 1 L. C. R., p. 145, it was held, that the master of a ship has a privilege for the amount of his wages against such vessel, preferable to a party claiming under an assignment by way of mortgage. And material men preserve their privilege upon a ship or vessel for their wages and for materials furnished only so long as they retain possession of such ship.

6. A maritime lien is not inviolable, but may be lost by delay to enforce it, when the rights of other persons have intervened. *The Haidee*, V. A. C., 10 L. C. R., p. 101.

7. A mercantile house at Newry, directs a house at Quebec to contract for the building of a ship, for which they, the Newry house, would send out the rigging. The Quebec house enters into a contract with some ship-builders accordingly. The Newry house then directs their correspondent at Liverpool to send out the rigging. He does so, and it having been delivered to the Quebec house, it was held, that the property in it was vested in the Newry house, and that the Quebec House had a right to retain it against the Liverpool correspondent, on account of their lien on it for advances made to the builders and payment of custom house expenses, although previously to the delivery they had obtained the assignment of the ship to themselves from the builders, and had registered it in the name of one of the partners in their house. *Rodgerson et al. and Reid*, S. R., p. 412; also, 1 Knapp's Rep., p. 362.

8. Salvors have a right to retain the goods saved until the amount of the salvage be adjusted and tendered to them. *The Royal William*, p. 107, S. A. V. R.

9. In the civil and maritime law of England, no hypothecary lien exists, without actual possession, for work done or supplies furnished in England to ships owned there. *The Mary Jane*, p. 267, S.V. A. R.; 3 Rev. de Lég., p. 436.

10. Lien for pilotage attaches even after sale of vessel. *The Premier*, V. A. C., 6 L. C. R., p. 493.

11. A maritime lien does not include or require possession. *The Hercyna*, p. 275, S.V. A. R., in notes.

Lien is defined by Lord *Tenterden* to mean a claim or privilege upon a thing, to be carried into effect by legal process. *Ib.*, p. 276.

Where reasonable diligence is used and the proceedings are in good faith, the lien may be enforced against any one into whose possession the thing may come. *Ib.*

There seems to be no fixed limit to the duration of a maritime lien. *Ib.*

It is not, however, indellible, but may be lost by negligence or delay, where the rights of third parties may be compromised. *Ib.*

" :—*Vide* FREIGHT.

" :— " DELIVERY.

LIEN :—*Vide* HOTELLIER.
" :— " SALVAGE.
" :— " SHERIFF.
" :— " SHIP.

LIFE-RENT:—A real estate cannot be sold by the Sheriff, charged with a life-rent. *Campagna vs. Hébert and Hébert*, S. C., 1 L. C. R., p. 24.

LIGHTS :—Lights (vues droites) which consist only of an opening between an upper story extending over a passage and the top of the fence which separates the passage from the neighbour's lot, are illegal under the article 202 of the Custom. *Robert vs. Danis*, S. C., 11 L. C. R., p. 74.

LIGHTS (on Ships):—1. The hoisting of a light in a river or harbour at night is a precaution imperiously demanded by prudence, and the omission cannot be considered otherwise than as a negligence *per se*. *The Mary Campbell*, p. 225, in note. S. V. A. R.

2. The omission to have a light on board in a river or harbour at night amounts to negligence *per se*. *The Dahlia*, p. 242, S.V. A. R.

3. A vessel at anchor in the stream of a navigable river must have, at night, a light hoisted to mark her position. *The Miramichi*, p. 240, S.V. A. R.

4. Damages given for a collision, the night at the time being reasonably clear, and sufficiently so for lights to be seen at a moderate distance. *The Niagara*, p. 308, S.V. A. R.

LIMITATIONS :—1. The English statute of limitations is not law in Canada. *Butler vs. Macdonall*, 2 Rev. de Lég., p. 70 ; and never was so. *Russell and Fisher*, Q. B., 4 L. C. R., p. 237, and *Langlois et al. vs. Johnston*, S. C., 4 L. C. R., p. 357.

2. The statute 10 & 11 Vic., c. 11 [Con. Sts. L. C., cap. 67], has not a retroactive effect. *Brown vs. Gugy*, 3 Rev. de Lég., p. 469. . *Russell and Fisher*, Q. B., 4 L. C. R., p. 237. *Langlois et al. vs. Johnston*, S. C., 4 L. C. R., p. 357.

3. The statute of limitations is a good plea to a debt contracted in London, without any reference, direct or indirect, to the law of another country. *Hogan and Wilson*, S. R., p. 145.

4. An action of trespass against a road surveyor who acted under a judgment of the Court of Quarter Sessions, for entering the plaintiff's close and destroying certain buildings, must be brought within three months after the right of action accrued, as provided by the statute 36 Geo. III., c. 9, s. 76.* And such action may be maintained against persons acting under the orders of the road surveyor, who do not plead a justification. *Cannon vs. Larue et al.*, S. R., p. 338.

" :—*Vide* ACTION.
" :— " PRESCRIPTION.

LITISPENDENCE :—Litispendence in a foreign state is no bar to an action instituted in this Province. *Russel et al. vs. Field*. S. R., p. 558.

" :—*Vide* LICITATION.
" :— " PLEADING & PRACTICE.

LOAN OF DEBENTURES :—*Vide* PRIVILEGE.

* Repealed by Municipal and Road Acts, C. Sts. L. C., cap. 24.

LODS ET VENTES :—1. The *datio in solutum* gives rise to *lods et ventes*. *Gugy and Chouinard*, 1 L. C. R., p. 50.

2. A *donation onéreuse* gives rise to *lods et ventes*. *Lamothe et al. vs. Talon dit Lespérance*, Q. B., 1 L. C. J., p. 101.

3. The gift made, by way of reward, to a donee resigning a public trust, with a view of procuring such public trust to be conferred upon the donor, is productive of *lods et ventes*. If any difficulty arise as to the value of the office, *lods et ventes* will be awarded on the value of the property given. *Desbarats vs. La Fabrique de Québec and Graveley*, S. C., 1 L. C. R., p. 79.

4. The donation subject to a life-rent gives rise to *lods et ventes*. The amount thereof is not to be ascertained by multiplying the life-rent by ten and taking the product as the capital; but such *lods et ventes* are chargeable upon the value of the donor's life; and the value of such life shall be ascertained by estimating either the value of the land or the rent. *Cuthbert vs. McKinstry*, 1 Rev. de Lég., p. 184. *Desbarats and La Fabrique de Québec and Graveley*, Q. B., 1 L. C. R., p. 84.

5. *Lods et ventes* are due upon the sale of immoveable property held under a *bail emphyteotique*, when over and above the payment of the annual rent there are *deniers d'entrée*. And a clause in such *bail* that the lessee shall have the right, at the expiration of the lease, to take away his buildings, does not deprive the seignior of his right of *lods et ventes* upon the price of such buildings, in the event of their being sold with the ground, but for a separate price. *Dionne vs. Méthot*, S. C., 1 L. C. R., p. 295.

6. A donation by a father to his son, in which a sum of money is made payable to the donor, will produce *lods et ventes* for so much, but not so for the other charges usually inserted in deeds of donation. *Drapeau et al. vs. Gosselin*, S. C., 6 L. C. R., p. 87.

7. A donation by a father to his son, with the obligation of paying a life-rent, and also certain debts of the father, does not give rise to the right of *lods et ventes*. *Drapeau et al. vs. Campeau*, S. C., 6 L. C. R., p. 86.

8. No *lods* are due on the resiliation of a deed of donation which had not its perfect execution. *Lamothe et al. and Fontaine dite Bienvenu et al.*, Q. B., 7 L. C. R., p. 49. But a deed of sale merely annullable, *atteint d'une nullité relative*, produces *lods et ventes*. *Le Séminaire de Québec, vs. Labelle and Labelle*, S. C., 4 L. C. J., p. 290.

9. *Lods* are not due on the sale of real estate required for public use. *Grant and the Principal Officers of Artillery*, Q. B., 1 L. C. R., p. 91.

10. It is lawful for a purchaser of lands, if there be two different means of effecting his purchase, to adopt that which is free from or less productive of seigniorial dues, provided the contract be serious and be made in good faith. But the seignior may adduce evidence to show that in reality there was a *soulte* paid, and on that *soulte lods et ventes* are due. *Rolland and Loreau*, Q. B., 5 L. C. R., p. 75.

11. And simulations of deeds may be presumed from the deeds themselves, when there is an evident object to injure

LODS ET VENTES :—
third parties, even though no one of the deeds taken separately discloses the fact that it be simulated. *Ramsay vs. Guilmettre*, S. C., L. R., p. 24. Thus fraud will be presumed, and *lods* accorded where a party, owning a property *en censive*, and another in free and common soccage, sells the latter to B., who, on the same day, and before the same notary, exchanges it for the property *en censive*. *The Sisters of Charity of the General Hospital and Primeau*, Q. B., 1 L. C. J., p. 200. The Superior Court had decided adversely to the claim of the plaintiff. 1 L. C. J., p. 13.

12. The act of union or amalgamation of the Grand Trunk Railway, in so far as regards the payment of £75,000 to the St. Lawrence and Atlantic Railway Company, is a sale, and gives rise to *lods et ventes* upon that portion which on appraisement passes through a seigniory. And in appraising such lands, the buildings, fences, rails and other improvements must be taken into account. *Kierzkowski vs. The Grand Trunk Railway Company*, Q. B., 10 L. C. R., p. 47.

" :—*Vide Lanaudière et al., vs. Jobin*, 2 Rev. de Lég. p. 304.
" :— " MAINMORTE.
" :— " SEIGNIORIAL RIGHTS.

LOOK-OUT:—1. As to the necessity, in all cases, of a proper and sufficient look-out. *The Niagara—The Elizabeth*, p. 308, S. V. A. R.

2. The ship is clearly responsible for the fault of her look-out. *The Mary Banatyne*, p. 354, S. V. A. R.

LOST:—A horse lost and purchased *bonâ fide* in the usual course of trade, in a hotel yard in Montreal, where horse dealers are in the habit of selling daily a number of horse does not become the property of the purchaser as against the owner who lost it. *Hughes vs. Reed*, S. C., 6 L. C. J., p. 294.

" :—*Vide* SALE.

LOTTERY:—A deed of sale in execution of a *tirage au sort* or lottery is null. *Ferguson et al., vs. Scott*, 2 Rev. de Lég. p. 305.

" :—*Vide* CRIMINAL LAW.

LOYERS:—When the rent is payable monthly, the owner can take an action of ejectment against his tenant if one monthly term remains unpaid. *Quintal vs. Novion*, 5 L. C. J., p. 28.

" :—*Vide* LESSOR AND LESSEE.
" :— " PRESCRIPTION.
" :— " SAISIE-GAGERIE.

MACHINE:—An apparatus for manufacturing potash, consisting of ovens, kettles, tubs, &c., is not a machine or engine within the meaning of the 4th and 5th Vic. c. 26, sec. 5, [C. S. C., cap. 93, sect. 18,] the cutting, breaking or damaging of which is felonious. *R. v. Doherty*, 2 L. C. R., p. 255.

MAGISTRATE:—*Vide* DAMAGES.

MAINMORTE:—1. The declaration of the King of France which requires a license in mortmain in certain cases, is repealed by the Provincial Statute 41 Geo. III, c. 17, so far as regards the Royal Institution for the advancement of learning. *Desrivières vs. Richardson*, S. R., p. 218. Also, the *Royal Institution vs. Desrivières*, S. R., p. 224 *in note*.

MAINMORTE :—

2. Mortmain restrictions upon the acquisition of real estate by mortmain corporations, were caused by the acquired property thereby becoming inalienable, not by the existence of the corporations being perpetual or continuous. These restrictions applied to corporations aggregate, the clergy in general, religious bodies, fraternities, municipal guilds, and others of like nature, which form the class designated as mortmain corporations, *gens de mainmorte*. Modern civil corporations, established for commercial and trading purposes, as joint-stock or incorporated companies, &c., cannot be included in such class, nor do mortmain restrictions apply to them. Two or more civil corporations may unite to form one incorporated company, without such union being in itself a sale, or equivalent thereto, and without subjecting the company thus formed from the two, to the payment of seigniorial or feudal dues. And the deed of agreement for union of the St. Lawrence and Atlantic Railroad Company and the Grand Trunk Railway Company of Canada, was, in law, only in the nature of preparatory articles of union, not in itself a sale or equivalent thereto, and not *translatif de propriété*, and in law could not and did not, by itself, establish the new company as a corporation.

3. The defendant is not, in law, a mortmain corporation, nor subject to mortmain restrictions, and does not, in law, hold the lands in question, in mortmain, as alleged in the plaintiff's declaration. And the defendant, the existing Grand Trunk Railway Company of Canada, was incorporated by the 18th Vic. c. 33, when the Seigniorial Act of 1854 was in existence, by which all Seigniorial dues were abolished, and which relieved the defendant's acquisitions from all seigniorial dues. The sums of money claimed in this cause are not for arrears of seigniorial dues accrued to the plaintiffs previous to the existence of the Seigniorial Act of 1854, the recovery whereof is provided for by that act.

4. If the defendants were such *gens de mainmorte*, and had acquired, as alleged, the realty in question, previous to the legal operation of the Seigniorial Act of 1854, the declaratory provision of that act applies, retrospectively, to such acquisitions, and relieves the defendants, as such *gens de mainmorte*, from liability to the seigniorial *indemnité*, claimed by the plaintiff for such acquisition, made directly from other *gens de mainmorte*.

5. The undertaking of the Grand Trunk Railway Company of Canada is a work of public utility, including therein the realty acquired and in question in this case, and the defendant is not liable to the *lods et ventes* claimed by the plaintiff. *Kierzkowski vs. the Grand Trunk Company of Canada*, S. C., 8 L. C. R., p. 3; 4 L. C. J., p. 86. Confirmed in Q. B., in so far as the judgment establishes that the defendant is not a Company in *mainmorte*, and reversed as regards *lods et ventes*. Q. B., 10 L. C. R., p. 47. The company in question is not created for the public utility—its charter is granted to private individuals. *Ib.* Also opinion of *Duval*, J. *Ib.*, 481.

" :—*Vide* SEIGNIORIAL RIGHTS.

MALICIOUS ARREST:—In an action for malicious arrest it is not necessary to allege that the action in which the arrest was made is terminated. *Whitefield et al. vs. Hamilton et al.*, S. R., p. 40.

MANDAMUS:—1. The answer to a writ of mandamus desiring an election of *marguilliers* to be made, that the person had been duly elected according to usage and law, is a sufficient and legal answer. Ex parte *Turcot*, 2 Rev. de Lég., p. 83. But in the case Ex parte *Rioux*, 3 Rev. de Lég., p. 480, it would seem that the reverse was held.

2. A writ of mandamus may be properly directed to the Mayor of a City Council alone, to rectify the minutes of the Council, if the grievance to be remedied was caused by the Mayor. *Robinson vs. Robitaille*, S. C., 7 L. C. R., p. 3.

3. And a writ of mandamus may issue addressed to a *Fabrique*, to cause a public officer to be installed in a *banc d'honneur*. Ex parte *Dominâ Reginâ and La Fabrique de la Pointe aux Trembles*, 2 Rev. de Lég., p. 53.

4. A writ of mandamus will not lie to compel a *Fabrique* to repair the fence of a grave-yard. *Vinvellette vs. La Fabrique de St. Athanase*, S. C., 6 L. C. R., p. 484. Nor will a writ of mandamus be granted to compel the Sheriff to cause the sale of lands and tenements, as directed by the Ordinance 25 Geo. III., c. 33, to be advertised in a newspaper called the "Quebec Gazette," when it is not shown that there is no other legal remedy. And the Court will not grant an injunction to the King's Printer, enjoining him not to advertise the sale of lands and tenements under the same Ordinance. Ex parte *Neilson*, S. R., p. 168. And a mandamus will be refused to force a corporation to take steps to indemnify a party obliged to demolish his house to stop the progress of a fire. Ex parte *McKenzie*, 1 Rev. de Lég., p. 394. And in the case of a controverted municipal election a *mandamus* will be refused. Ex parte *St. Louis*, S. C., 2 L. C. R., p. 500. A writ of mandamus will lie even against the officers of the Crown, to compel them to the performance of a duty charged by Statute. *Young vs. Lemieux et al., Commissioners of Public Works*, S. C., 9 L. C. R., p. 43.

5. A copy of a writ of mandamus, issued under 12 Vic., c. 41 [Con Sts. L. C., caps. 77, 88, 89], must be served upon the defendant, also copy of the declaration or *requête libellée*. Under the 9 Vic., c. 82, intituled: "An Act to incorporate the Montreal and Lachine Railroad Company," it is the duty of the Clerk or Secretary of the Company to make an entry of the names and places of residence of owners of stock in the Company; and the Superior Court has jurisdiction to enforce such duty, under the provisions of the 12 Vic., c. 41. *M. Donald and the Montreal and New York Railroad Company*, S. C., 6 L. C. R., p. 232.

" :—*Vide* APPEAL.

" :— " ENGLISH LANGUAGE.

" :— " MARGUILLIER.

MANDATAIRE:—A *mandataire* who does not execute his *mandat* should notify his principal of its inexecution. *Torrance vs. Chapman et al.*, S. C., 6 L. C. J., p. 32.

" :—*Vide* ABSENTEE.

" :— " BILL OF EXCHANGE.

MANURE:—Manure lying on land at the time of sale passes to the purchaser by the sale; and new manure made since will be taken to be the property of the purchaser, the vendor setting up no special title thereto but meeting the action by the general issue. *Wyman and Edson*, Q. B., 10 L. C. R., p. 17.

MARGUILLIER:—1. The *marguillier en charge* has alone a right to receive moneys due to the *Fabrique*. The appointment by the *anciens marguilliers* of a *procureur fabricien* is illegal; and the party so appointed will be ordered to abstain from exercising any such duties. *Taillefer vs. Bélanger*, S. C., 1 L. C. R., p. 322.

2. The *notables* have a right to participate in the election of *marguilliers*. The *notables* are all the parishioners who pay tithe. And the *curé* and *marguilliers* may be compelled by mandamus to convoke meetings of the *notables* for the election of *marguilliers*. The return made by the *curé* and *marguilliers*, that they offered to admit certain persons to the meetings who were *notables* by their position and condition, excluding the generality of the parishioners, is insufficient and illegal. A single writ of mandamus may issue to deprive two *marguilliers* of their office and elect two others. It is not necessary that the first writ of mandamus be served on the *marguillier* whose election is contested; its service on the corporation is sufficient.

The corporation after having made return that it could not obey the first writ, cannot, extra-judicially and without the permission of the Court, proceed to redress the grievance complained of.

When the corporation has made a return, the writ of mandamus can only issue after the return has been declared illegal and insufficient when rejected. No costs will be allowed to the petitioner for a writ of mandamus. Ex parte *Renouf*, 1 Rev. de Lég., p. 310.

3. The *curé* is not necessarily obliged to invite from the pulpit the old and present *marguilliers* and *notables*. An advertisement in general terms that a meeting will be held is a sufficient invitation to those who claim to be electors. Ex parte *Binet*, 1 Rev. de Lég., p. 321, and so also Ex parte *Renouf*, 1 Rev. de Lég., p. 310.

4. According to the 23 Vic. c. 67, sect. 4,* a regular proposal is required to nominate as candidate a person to fill the office of churchwarden. *Belanger et al., vs. Cyr*, S. C., 12 L. C. R., p. 470.

" :—*Vide* FABRIQUE.

" :— " MANDAMUS.

" :— " PEW.

MARINE INSURANCE:—1. On a demand for indemnity under a policy of insurance against the perils of the sea, it is necessary to prove that the damage claimed for was caused by one of the perils insured against. The mere fact that the goods were damaged to a trifling extent by sea-water, does not constitute such proof.

2. A survey of goods alleged to be damaged, without notice to the underwriter, followed by a sale at 9 A. M., of

* C. S. L. C., cap. 18, sect. 45, ss. 4. But this section does not sustain the judgment.

MARINE INSURANCE :—

the second day, the goods being bought in by the insurer, is no proof of the amount of loss suffered. *The Sun Mutual Insurance Company vs. Masson et al.*, S. C., 4 L. C. J., 23.

3. In marine insurance an endorsement upon an open policy of a cargo for insurance, is incomplete if the name of the vessel by which such cargo is shipped is in blank; but it is perfected by a notice, to the insurers of the name of the vessel, whether they fill up the blank or not. "Class B. 1," without any reference to a special classification will be construed, on a policy of insurance, as meaning the class of vessels recognized by mariners as class B. 1, if there be any such class.

The person who insures as agent for another, cannot sue for indemnity in his own name as principal, and a consignee under a policy in his own name can only recover for his insurance agent.

The possession of a bill of lading is only *prima facie* evidence of proprietorship. *Cusack vs. The Mutual Insurance Company of Buffalo*, S. C., 6 L. C. J., p. 97.

MARINERS :—1. If a mariner be disabled in the performance of his duty, he is to be cured at the expense of the ship; but if the injury which he sustained be produced by drunkenness on his part, he must himself bear the consequences of his own misconduct. *The Atlantic*, p. 125, S. V. A. R.

Abandoning seamen, disabled in the service of the ship, without providing for their support and cure, equivalent to wrongful discharge. *Ib.*

2. The seaman owes obedience to the master, which may be enforced by just and moderate correction; but the master on his part owes to the seaman, besides protection, a reasonable and direct care of his health. *The Recovery*, p. 130, S. V. A. R.

3. Where a seaman can safely proceed on his voyage, he is not entitled to his discharge by reason of a temporary illness. *The Tweed*, p. 132, S. V. A. R.

Mere sickness does not determine the contract of hiring between him and the master. *Ib.*

4. Seaman going into hospital for a small hurt not received in the performance of his duty, is not entitled to wages after leaving the ship. *Captain Ross*, p. 216, S. V. A. R.

5. Mariners, in the view of the Admiralty law, are *inopes consilii*, and are under the special protection of the Court. *The Jane*, p. 258, S. V. A. R.

The jealousy and vigilance and parental care of the Admiralty, in respect to hard dealings, under forbidden aspects, with the wages of mariners. *Ib.*

The Court of Admiralty has power to moderate or supersede agreements made under the pressure of necessity, arising out of the situation of the parties. *Ib.*

6. Seamen are regarded as essentially under tutelage, and every dealing with them personally by the adverse party, in respect to their suits, is scrutinized by the Court with great distrust. *The Thetis*, p. 365, S. V. A. R.

Negotiations with them, even before suit is brought, more to the satisfaction of the Court when entrusted to their proctors. *Ib.*

MARINERS :—

A seaman is entitled to his costs as well as his wages, and a settlement after suit brought, obliging him to pay his own costs, is in fact deducting so much from his wages. *Ib.*

7. Sailors while acting in the line of their strict duty, cannot entitle themselves to salvage. *The Robert and Anne*, p. 253, S. V. A. R.

For services beyond the line of their appropriate duty, or under circumstances to which those duties do not attach, they may claim as salvors. *Ib.*

MARINERS' CONTRACT :—1. Articles not signed by the master as required by the General Merchant Seamen's Act (7 and 8 Vic. c. 112, s. 2,) cannot be enforced. *The Lady Seaton*, p. 260, S. V. A. R.

2. A promise made by the master, at an intermediate port on the voyage, to give an additional sum, over and above the stipulated wages in the articles, is void for want of consideration. *The Lockwoods*, p. 123, S. V. A. R.

3. Change of owners, by the sale of the ship at a British port, does not determine a subsisting contract of the seamen, and entitle them to wages before the termination of the voyage. *The Scotia*, p. 160, S. V. A. R.

4. Where a voyage is broken up by consent, and the seamen continue, under new articles, on another voyage, they cannot claim wages under the first articles subsequent to the breaking up of the voyage. *The Sophia*, p. 219, S. V. A. R.

5. Whether when a merchant ship is abandoned at sea *sine spe revertendi*, in consequence of damage received and the state of the elements, such abandonment taking place *bonâ fide* and by order of the master, for the purpose of saving life, the contract entered into by the mariners is by such circumstances entirely put an end to ; or whether it is merely interrupted, and capable, by the occurrence of any and what circumstances, of being again called into force. *Florence*, p. 254, S. V. A. R.

6. Where seamen shipped for "a voyage from the port of Liverpool to Constantinople, thence (if required) to any port or places in the Mediterranean or Black Seas, or wherever freight may offer, with liberty to call at a port for orders, and until her return to a final port of discharge in the United Kingdom, or for a term not to exceed twelve months," and the ship went to Constantinople in prosecution of the contemplated voyage, and then returned to Malta, whence, instead of going to a final port of destination in the United Kingdom, she came direct to Quebec in search of freight, which she had failed to obtain at the ports at which she had previously been, it was held that coming to Quebec could not be considered a prosecution of the voyage under the 94th section of the Mercantile Marine Act, 1854. *The Varuna*, p. 357, S. V. A. R.

The words "nature of the voyage" must have such a rational construction as to answer the leading purposes for which they were framed, viz: to give the mariner a fair intimation of the nature of the service in which he engages. *Ib.* In note p. 361.

MARINERS' CONTRACT :—

The words "or wherever freight may offer" are to be construed with reference to the previous description of the voyage. *Ib.* 360.

The words "or elsewhere" must be construed either as void for uncertainty, or as subordinate to the principal voyage stated in the preceding words. *Ib.* 361.

MARITIME LIEN :— *Vide* LIEN.

MARRIAGE :—1. In case of the marriage of a minor, without the consent of parents, the parents may recover damages, without being first obliged to take proceedings to set aside the marriage. *Laroque & al. and Michon*, S. C., 1 L. C. J., p. 187, Q. B., 2 L. C. J., p. 267, and 8 L. C. R., p. 222.

2. A marriage contracted and solemnized in accordance with the laws of the country where the marriage is contracted, is, by the law of nations, binding and valid every where. Thus a marriage in the State of New York (where minors may be legally married without the aid of parents or tutors,) between a minor unassisted by her tutor, and a major, both parties being residents of Lower Canada, is valid in Lower Canada. And a second marriage in Lower Canada, preceded by a contract, stipulating *séparation de biens* can in no way affect the civil rights of the parties, under the first marriage. And the fact of the tutor to one of the married parties having been a party to such contract, and present at such second marriage is no bar to his pleading the nonvalidity of such contract and second marriage, and the fact of his being a creditor of the husband entitles him in law so to plead. And it is incompetent for either of the married parties themselves to plead the nullity of their first marriage. *Languedoc & ux. vs. Laviolette*, S. C., 1 L. C. J., p. 240. Confirmed in appeal, March, 1858.

3. A person attacked with *delirium tremens* may have a lucid interval and may contract a valid marriage during such lucid interval

It will not be reputed *in extremis* although death ensues within two days after its celebration, if the person was not sensible at the time that he was attacked with his last illness, and in imminent danger of dying.

The testimony of the attending physician called in the day after the marriage and the day preceding the decease, may be rebutted by the testimony of the notary, the priest and a witness present at the celebration of the marriage and the execution of the marriage contract.

Where the *status* of the wife is recognized, collateral relations have not the *qualité* to dispute the marriage.

Acknowledgment of the *status* of the children precludes an interested party from afterwards disputing the marriage.

The *status* of a family being indivisible, it cannot be recognized by certain members and disputed by other members of the same family.

The Ordinance of 1639, depriving of civil effects *marriages in extremis* should be strictly interpreted. *Scott and Paquet & al.*, Q. B., 4 L. C. J., p. 149.

" :—*Vide* ASSIGNMENT.

" :— " LEGACY.

MARRIED WOMEN:—1. The widow being seized of all the property of the community, may and is bound to make an inventory, and an action to that effect is unnecessary. And in an action by the widow for a *partage* of the *communauté*, the minors issue of the marriage, must be represented by a tutor *ad hoc* specially appointed to answer such demand *en partage*. *McTavish and Pyke & al.*, Q. B., 3 L. C. R., p. 101.

2. A married woman can only oblige herself with her husband as *commune en biens*, and a suretyship entered into by a married woman jointly with her husband is null and void under the provisions of the 4th Vic. c. 30, sec. 36, [Con. St. L. C., cap. 37, sec. 55.] *Jodoin vs. Dufresne & al.*, Q. B., 3 L. C. R., p. 189.

3. A wife *séparée de biens* cannot oblige herself without her husband and an obligation so contracted is null and void. A married woman can only oblige herself with her husband as *commune en biens* under the 4th Vic. c. 30, sec. 36. *Bertrand vs. Saindoux & Lavoie*, 1 Rev de Lég., p. 333. And so where a wife *séparée de biens* makes a note jointly with her husband in order to be his security, the note is null as regards her. *Shearer vs. Compain & ux.*, S. C., 5 L. C. J., p. 47. And an obligation entered into by a married woman *séparée de biens*, for a debt due by her husband, will be declared null, at the instance of a third party in the cause; but a *commencement de preuve par écrit* is required. *Fuchs vs. Talbot and Lavivière*, S. C., 13 L. C. R., p. 494.

4. Where groceries were bought by a husband, separated as to property from his wife, a joint and several judgment will be rendered against husband and wife, on proof that the goods were consumed in the common domicile, such goods being necessaries. *St. Amand & al. vs. Bourrett & al.*, S. C., 13 L. C. R., p. 238, and 7 L. C. J., p. 32. Also *Paquette vs. Lémoges & vir*, S. C., 7 L. C. J., p. 30. And a note given by her and her husband for necessaries will be valid, *Cholet vs. Duplessis & al.*, S. C., 6 L. C. R., p. 81. And this without any proof of express authority to her to sign the same. 12 L. C. R., p. 303.

5. And where a wife *séparée de biens* is sued on two notarial obligations in which she acknowledges herself personally indebted to the plaintiff, she can plead and prove by verbal testimony, that the statement of personal indebtedness contained in the obligations is false, and that on the contrary it was the husband who was really indebted and that she was merely his security, on the ground that such contracts are in fraud of the law. *Mercile vs. Fournier & al.*, S. C., 2 L. C. J., p. 205. Confirmed in appeal, 9 L. C. R., pp. 300 and 347, and 4 L. C. J., p. 51. And a married woman cannot validly renounce her hypothec on the lands of her husband in favor of his creditors, for the payment of a *rente viagère* created by her marriage contract, to stand in place of dower. *Russell vs. Fournier and Rivet*, S. C., 3 L. C. J., p. 324.

6. But in *Boudria & vir. vs. McLean*, it was held,—that although a married woman could only oblige herself with her husband, as *commune en biens*, in virtue of the 4 Vic., c. 30, sec. 36 [Con. Sts. L. C., c. 37, sec. 55], yet she can re-

MARRIED WOMEN :—

nounce to the exercise of her hypothecary rights for *reprises matrimoniales* on the estate of her husband which had been alienated. Q. B., 6 L. C. J., p. 65 ; also 12 L. C. R., p. 135. But a wife *séparée de biens* from her husband cannot bind her real estate for a debt due by her husband, for the payment of which she could not bind herself personally. *Little and Diganard*, Q. B., 12 L. C. R., p. 178.

7. An action to recover the price of goods sold to a married woman, *séparée de biens*, will not be maintained, without proof that the husband expressly authorized the purchase by his wife. *Benjamin & al. vs. Clarke & al.*, S. C., 3 L. C. J., p. 121.

8. A woman *séparée de biens* by her contract of marriage may sue for the preservation of her personal estate without the assistance or authority of her husband. *Cary vs. Ryland*, S. C., 3 L. C. R., p. 132. But a married woman *commune en biens* cannot sue without the authority of her husband, although *marchande publique*. *Lynch vs. Poole*, S.C., L. R., p. 60.

9. A married woman, although separated as to property and having the administration of her *biens*, cannot validly affect or hypothecate her property without the special authority of her husband. *Dme. Hertel de Rouville & al. vs. The Bank of the Midland District*, 1 Rev. de Lég., p. 406.

10. And a motion for a *folle enchère* against a woman *séparée de biens, adjudicataire*, will be rejected, unless the husband have notice of the motion. *Clouthier vs. Clouthier*, S. C., 10 L. C. R., p. 457 ; and so also *Jordain and Ladrière*, Q. B., 12 L. C. R., p. 33.

11. A rule for *contrainte par corps* against a married woman *séparée de biens*, is null, unless served upon her husband. *McDonald vs. McLean*, S. C., 11 L. C. R., p. 6.

12. The express authority of the husband to his wife, *séparée de biens*, to become bound as his surety, is sufficiently proved by a notarial deed signed by them, in the beginning of which the wife appears with other creditors of her husband, and is declared to be *autorisée en justice* and otherwise specially authorized by her husband, testified by his signature thereto, "as party of the first part," and also appears with another as surety for her husband and as a party of the *fourth part*. And this although no words of authorization are contained in that part of the deed where they appear, or where she binds herself as such surety. Ex parte *Joseph*, S. C., 5 L. C. R., p. 320. And also where the husband being present and signing the deed, the notary expresses the authorization as though it were he who authorizes, the authorization will be considered sufficient. *Metrissé & al. and Brault*, Q. B., 4 L. C. J., p. 60 ; and 10 L. C. R., p. 157.

13. A married woman, living abroad, whose husband and she are both natives of Canada, needs the authorization of her husband to convey land in Lower Canada, although the deed be sufficient according to the laws of her then domicile. Such a deed, without the authorization of the husband, is of no effect here. *Laviolette and Martin*, Q. B., 5 L. C. J., p. 211 ; also 11 L. C. R., p. 254.*

* The Court was of opinion that the fact of the husband and wife being Canadians did not alter the rule ; but I only give what necessarily results from the case submitted.

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14. A married woman, a minor, does not require a tutor *ad hoc* to follow her moveable rights in the succession of her mother. *Prevost & al. vs. Breux*, 1 Rev. de Lég., p. 288 ; also *Metrissé and Brault*, Q. B., 4 L. C. J., p. 60, where it was also held, that the hypothec which guarantees the payment of a *douaire préfix* is a moveable right that the minor, emancipated by marriage, may alienate, with the authorization of her husband.

15. A married woman, separated as to property from her husband by judgment, may continue the same trade as her husband formerly carried on, he acting as her agent, if there be no fraud. *Giltner & vir. vs. Gorrie*, S. C., 12 L. C. R., p. 454.

" :—*Vide* ASSIGNMENT.

" :— " HYPOTHÈQUE.

" :— " PROMISSORY NOTE.

MASONS :—*Vide* BUILDER.

MASTER AND SERVANT :—1. A servant refusing to obey a lawful order of his master and discharged in consequence, can only recover wages to date of discharge, notwithstanding proof of previous good conduct. *Hastie vs. Morland*, S. C., 2 L. C. J., p. 277 ; also *Charbonneau vs. Benjamin*, C. C., 2 L. C. J., p. 103. And in an action for salary on the grounds of wrongful dismissal, where defendant pleads that plaintiff has been guilty of disobedience of orders and prevarication and defalcation in his accounts, though neither charges be proved, yet, if the Court thinks that there has been a manifest neglect of duty and errors and irregularities in plaintiff's accounts, his discharge will be held to be justifiable and he will not be entitled to wages beyond the date of dismissal. *Webster vs. The Grand Trunk Railway Company of Canada*, S. C., 1 L. C. J., p. 223. But a servant who has left the employ of his master before the expiration of his term of hire, does not thereby forfeit the wages which he had previously earned. *Bilodeau vs. Sylvain*, 4 L. C. R., p. 26.

2. In the case of *Stuart and Sleeth*, Q. B., 10 L. C. R., p. 278, it was held, that in an action for the recovery of wages by a servant against his master, the latter cannot be examined as a witness for the purpose of proving alleged acts of insolence and negligence on the part of the former—that the statement of the master, under oath, must be limited to a proof of the terms of engagement and wages paid, or advances of money or value made to the domestic.

3. Under the Act 12 Vic., c. 55, sec. 3 [Con. Stats. L. C., cap. 27, sec. 2], to punish servants, &c., for desertion, a Justice of the Peace has no jurisdiction except in cases where there is a contract. Ex parte *Rose*, S. C., 3 L. C. R., p. 495.

" :—*Vide* SCHOOL COMMISSIONERS.

" :— " PRIVILEGED COMMUNICATION.

MASTER OF SHIP :—1. The master of a ship is not liable for damages done by his ship to plaintiff's property whilst sailing out of the port of Quebec under the management of a branch pilot, taken on board under the provisions of the 12 Vic., c. 114, sec. 53. *Lampson vs. Smith*, S. C., 8 L. C. R., p. 193. Confirmed in Q. B., 9 L. C. R., p. 160, where it was also held

MASTER OF SHIP:—
that the presence of the pilot on board in charge, and consequent release, may be invoked under the general issue.

2. The Provincial Statute, 12 Vic. c. 114, renders it compulsory to take pilots for vessels navigating the St. Lawrence between Quebec and Montreal; consequently the master is not liable for damages done to a wharf by a vessel in charge of a pilot. The fact of a collision in such a case is *prima facie* evidence that it was occasioned by the fault of the pilot. *The Harbour Commissioners of Montreal vs. Grange*, 9 L. C. R., p. 3. But this case was reversed in appeal, where it was held that the master, in general, under the maritime law, as the agent (*institor et proposé*) of the owners is liable; and that he is, by the 20th sec. of the 18 Vic., c. 143, together with all other ship masters, expressly declared to be liable to the appellants for injury done to the wharves under their charge. Q. B., 10 L. C. R., p. 259.

3. Master admitted as a witness in a case of pilotage. *The Sophia*, p. 96, S. V. A. R.

4. A promise made by the master, at an intermediate port on the voyage, to give an additional sum over and above the stipulated wages in the articles, is void for want of consideration. *The Lockwoods*, p. 123, S. V. A. R.

5. Upon the death of the master during the voyage the mate succeeds him as *hæres necessarius*. *The Brunswick*, p. 139, S. V. A. R.

6. Possession of a ship awarded to the master appointed by the owner, to the exclusion of the master named by the shippers of the cargo. *The Mary and Dorothy*, p. 187, S. V. A. R.

By the 17 & 18 Vic., c. 104, s. 240, power is given to any Court having Admiralty jurisdiction in any of Her Majesty's dominions to remove the master of any ship, being within the jurisdiction of such Court, and to appoint a new master in his stead, in certain case. *Ib.*, p. 189.

7. The master of a merchant vessel may apply personal chastisement to the crew whilst at sea; the master thereby assuming to himself the responsibility which belongs to the punishment being necessary for the due maintenance of subordination and discipline, and that it was applied with becoming moderation. *The Coldstream*, p. 386, S. V. A. R.

" :—*Vide* ADMIRALTY; EVIDENCE; JURISDICTION; PATRONE; PASSENGER; PERSONAL DAMAGE; SEAMEN; TORTS; ADMIRALTY; WITNESS.

MATE:—1. The mate of a vessel is chargeable for the value of articles lost by his inattention and carelessness, and the amount may be deducted from his wages. *The Papineau*, p. 94, S. V. A. R.

A chief mate suing for wages in the Court of Admiralty is bound to show that he has discharged the duties of that situation with fidelity to his employers. *Ib.*, in note.

Amongst the most important of the duties of a mate are a due vigilance, care and attention to preserve the cargo. *Ib.*, in note, p. 95.

2. Where a second mate is raised to the rank of a chief mate by the master during the voyage, he may be reduced

MATE :—

to his old rank by the master for incompetency, and thereupon the original contract will revive. *The Lydia*, p. 136, S.V. A. R.

3. Death of the master and the substitution of the mate in his place does not operate as a discharge of the seamen. *The Brunswick*, p. 139, S. V. A. R.

By the maritime law, upon the death of the master during the voyage the mate succeeds as *hæres necessarius*. *Ib.*

MATERIAL MEN:—Persons furnishing supplies to ships in this country, technically called material men, have not a lien upon the ship for the amount of their supplies, and the Court has no jurisdiction to enforce demands of this nature. *The Mary Jane*, p. 267, S. V. A. R.

Have no lien upon British ships without actual possession. *Ib.*, p. 270.

A vessel built and registered in a British possession is not a "foreign sea-going vessel" within the provisions of the 3rd and 4th Vic, c. 65. *Ib.*, p. 272.

" :—*Vide* PRIVILEGE.

MATRIMONIAL RIGHTS :—*Vide* ADULTERY.

MEASUREMENT :—A cargo of wheat, the measurement of which is commenced in the presence of both carrier and consignee, or their representatives, may be continued in the absence of either party. *Syme et al. vs. Jones et al.*, S. C., 2 L. C. J., p. 169.

MEASURE OF DAMAGES :—*Vide* DAMAGES.

MEMBERS OF THE LEGISLATURE :—1. The privilege from arrest of members of the Legislature, upon civil process, does not attach to members of the Canadian Legislature by virtue of any law or usage. It does not attach as a legal incident to the constitution of the Legislature, or by analogy between it and the Parliament of Great Britain; it only attaches on the ground of necessity, and not beyond it. *Cuvillier et al. vs. Munro*, S. C., 4 L. C. R., p. 146.

2. On a motion for a writ of *habeas corpus* to produce the body of a person in custody under a warrant from three members of the Executive Council, for treasonable practices, founded upon his privilege as a member of the Provincial Parliament, two papers, purporting to be two indentures of election, produced in support of the motion, are not sufficient evidence of his being such member to entitle him to the benefit of the writ. And a member of a Parliament held at Quebec, the place of the member's residence, arrested eighteen days after its dissolution, for treasonable practices, and being elected a member of a new Parliament while still in confinement, is not entitled to privilege from such arrest by reason of his election to either Parliament. Ex parte *Bédard*, S. R., p. 1.

MEDICAL ATTENDANCE :—*Vide* PRESCRIPTION.

MERCHANT'S CLERK :—*Vide* LIEN.

MERCHANT SHIPPING ACT, 1854 :—1. Rule as to ships meeting each other, in 296th section, cited. *The Inga*, p. 340, S.V.A.R.

2. Construction of the Act, as to agreements to be made with seamen. *The Varuna*, p. 357, S. V. A. R.

MERCHANT SHIPPING ACT, 1865 :—

3. In an action against the owners of a sea-going ship for loss of jewellery, forming part of the luggage of a passenger, a plea (based on the 503rd clause of the Merchant Shipping Act), alleging that the articles lost were gold, silver, diamonds, &c., &c., that the loss happened without the privity or fault of the owner, and by reason of robbery, embezzlement, &c., and that the passenger not having inserted in the bill of lading or otherwise disclosed in writing, the true nature and value of such articles, &c., the owners were not liable, will be dismissed on demurrer. *McDougall vs. Allan et al.*, S. C., 6 L. C. J., p. 233.

MERGER :—Where there has been a recovery in the Trinity House, the original consideration is merged in the judgment of the Trinity House. *The Phabe*, p. 59, S. V. A. R.

MILITARY EQUIPMENT :—*Vide* EXECUTION.

MILITIAMEN :—*Vide* ASSIGNMENT OF PENSION.

MILL :—*Vide* BANALITÉ.

MILL-DAM :—Under the 19 and 20 Vic., c. 104, [C. Sts. L. C., c. 51.] a proprietor has no right to erect across a water-course a dam abutting on the land of the opposite proprietor; and if so erected, it will be demolished at the instance of the latter. *Joly vs. Gagnon*, S. C., 9 L. C. R., p. 166.

MINOR :—1. A minor of the full age of twenty years can bequeath personal property to a tutor. *Durocher et al., vs. Beaubien et al.*, S. R., p. 307. But a minor of twenty years cannot dispose of his immoveable property by will. *Loranger and Boudreau et al.*, Q. B., 9 L. C. R., p. 385.

2. A minor cannot be sued in his own name for necessaries for which he is liable, the action must be brought against his tutor. *Cooper vs. McDougall*, S. C., 4. L. C. R., p. 224. But in *Thibaudeau vs. Mangan*, S. C., 4. L. C. J., p. 146, a different rule was adopted; and where a writ of summons is dated previous to, but is served after the majority of the defendant, the action must be dismissed on *exception à la forme*. *Chalifoux vs. Thoin dit Roch*, S. C., 9 L. C. R., p. 71. Also 2 L. C. J., p. 187.

3. A father cannot sue for his minor child as his natural tutor, nor maintain his own action, if coupled to that of his son, as such natural tutor. *Petit vs. Bichette*, S. C., 2 L. C. R., p. 367. And in a case of *Fletcher vs. Gatignan and Gatignan*, S. C., 1 L. C. J., p. 100, it was held that minors can only be represented in legal proceedings by a tutor appointed *en justice*, and an opposition filed by a parent styling himself merely the natural or legitimate tutor of his children, will be dismissed.

4. A minor may plead by an *exception peremptoire en droit*, that he is not assisted by a tutor. *Crump vs. Middlemiss*, S. C., 5. L. C. J., p. 48.

5. A minor *marchand* can be sued and condemned for debts contracted in the transaction of his business, without its being necessary that a tutor should be appointed to him, such minor being with respect to such transactions reputed of full age. *Danais and Côté*, Q. B., 5 L. C. R., p. 193.

6. And a minor may be sued for his board in his own name, where contracted for as a trader and in the course of

MINOR :—

his business. *Browning vs. Gale*, S. C., 6 L. C. J., p. 251; also, 12 L. C. R., p. 292. And for such debt he may be arrested under a *capias*. *Ib.*

7. And a married minor may bring an action for wages for an amount exceeding $25. *Ryan vs. Minoque*, S. C., 7 L. C. J., p. 127.

8. An emancipated minor may validly alienate his moveables. *Metrissé et al., and Brault*, Q. B., 4 L. C. J., p. 60.

" :—*Vide* DONATION.

" :— " MARRIAGE.

" :— " RES JUDICATA.

MINORITY :—No action is maintainable against a person for a promise made to pay a commercial debt, contracted while a minor, unless such promise be in writing. *Mann vs. Wilson*, S. C., 3 L. C. J., p. 337.

" :—*Vide* PRESCRIPTION.

MINUTE :—The Statute, cap. 92, sec. 26, Con. Sts. C., does not make it an offence to steal an authentic copy of an act or deed passed before a notary. *The Queen and McGinnis*, Q. B., Crown side, 7 L. C. J., p. 311.

" :—*Vide* NOTARY.

MISCONDUCT :—1. In a suit by a seaman for wages, service and good conduct are presumed till disproved. *The Agnes*, p. 56, S. V. A. R.

Defence, grounded on misconduct of seaman, must be specially pleaded, with proper specification of the acts thereof. *Ib.*

2. In an action against the master for inflicting bodily correction upon an offending mariner, a justification, on the ground of mutinous, disobedient and disorderly behaviour, sustained. *The Coldstream*, p. 386, S. V. A. R.

MISFEASANCE :—*Vide* TRESPASS.

MISNOMER :—1. A plaintiff is obliged to tell his name correctly to defendant. *Paradis vs. Lamère*, S. C., L. R., p. 81.

2. "Louis" in place of "Lewis" is no misnomer; nor "Justras" for "Jontras," *vide* CAPIAS; nor "Brackmore" for "Blackmore," *vide* CONFIRMATION OF TITLE.

" :—*Vide* EXCEPTION.

MITOYEN :—*Vide* MUR MITOYEN.

MONEY HAD AND RECEIVED :—*Vide* FEES.

MONEYS :—1. Moneys levied under execution must be distributed by the ordinary report of distribution, although only one opposant file a claim, unless all the parties concerned consent to a distribution by motion. *Mead vs. Reipert et al. and Bouthillier*, S. C., 1 L. C. J., p. 177.

2. An intervening party must give notice to all the parties in the cause of his motion for moneys under a judgment in his favor. *Gillespie et al. vs. Spragg et al.; and McGill and Hutchinson*, S. C., 6 L. C. J., p. 25.

MONTREAL :—*Vide* DAMAGES.

MOORING :—A vessel which moors alongside of another at a wharf or elsewhere, becomes responsible to the other for all injuries, resulting from her proximity, which human skill or prevention could have guarded against. *The New York Packet*, p. 329, in note, S. V. A. R.

MOTION:—Two cases will not be united on motion merely because the matters in contest in both cases are identical. *Simard vs. Perrault and Perrault vs. Simard*, S. C., 1 L. C. J., p. 249.

" :—*Vide* ATTACHMENT.

MOTIVE:—*Vide* WARRANTY.

MOVEABLES:—The mere placing a paper machine in a mill does not make it an immoveable, so long as it can be removed without injury to itself or to the mill. *The Union Building Society vs. Russell and Godard*, S. C., 7 L. C. R., p. 374.

2. To complete sale of machinery, as against third parties, there must be a *deplacement*. *Ash et al. vs. Willett and Seymour et al.*, S. C., 4 L. C. J., p. 301.

3. In actions respecting moveables, each party has a right to go into the question of property. *Herbert and Fennell*, Q. B., 7 L. C. J., p. 302; and 13 L. C. R., p. 385.

4. Where A., B. & Co. agreed to tan a quantity of hides, the property of C., D. & Co., and to deliver the leather, when tanned, to the latter, who were to have the conclusive right of sale thereof, on the understanding that the former was to be entitled to a certain share of the profits arising from the sale of the leather by the latter, and instead of so delivering the leather, when tanned, to C., D. & Co., one of the members of the firm of A., B. & Co., without the knowledge even of his partner, conveyed the leather into a foreign state and sold the same for his own benefit, assuming at the same time a fictitious name,—that such an act was not a *vol*, as understood by the law of Lower Canada. That, apart from any question of *vol*, A., B. & Co. had no right to revendicate such leather in the hands of a third party in good faith, who had purchased the same for a valuable consideration.

The absence of the usual stamps of weight and inspection on such goods, coming from a foreign market, and that the leather was, in the main, unrolled instead of rolled; and that the price paid was low, at a time when leather was particularly scarce, is not sufficient evidence of bad faith to justify revendication of the goods by the party claiming them. *Fawcett et al. vs. Thompson et al*, Q. B., 4 L. C. J., p. 234.

" :—*Vide* POSSESSION.

MOVEABLE ESTATE:—*Vide* WILLS.

MUNICIPAL ACT:—1. Under the municipal act of 1860, 23 Vic., c. 41, there is an appeal from the conviction of a Magistrate to the Circuit Court. *The Trustees of the Montreal Turnpike Roads and Bernard*, C. C., 4 L. C. J., p. 326.

2. A Municipal Councillor cannot be compelled to pay a penalty under 45th and 62nd clauses of the Municipal Act of 1860, in consequence of a vote given at a meeting of Council. *Souligny vs. Vezina*, C. C., 6 L. C. J., p. 41.

3. Under sec. 42, par. 3 of the municipal act, a winter road cannot be laid out through a field fenced with rough boards, against the will of the proprietor. *Lavoie vs. Gravel*, S. C., 6 L. C. J., p. 113.

4. The inspector of a local municipality has no right to sue in his own name, to recover the penalty incurred by a *habitant* a proprietor of the municipality who neglects to keep his front road in order, under the C. Sts. of L. C. cap.

MUNICIPAL ACT:—

24, sect. 48, par. 6. Such action should be brought by the Inspector in the name of the municipality. *Dion vs. Morris*, S. C., 6 L. C. J., p. 200.

5. The making and maintaining of a street is not a "county work," within the meaning of the 2nd sub-sect. of sect. 39 of the act of 1855, but a local-work. *G. T. Railroad Company and Corporation of Levis*, Q. B., 11 L. C. R., p. 57.

6. Local councils cannot impose a special tax for the purchase of a fire engine, under C. S. L. C., cap. 24. *Langlois vs. The Corporation of the Parish of St. Roch et al.*, S. C., 13 L. C. R., p. 317.

7. All taxes must be imposed rateably on all the inhabitants of a municipality, and not on a portion of them only. *Ib.*

8 The action brought by a Municipal Council must be brought, not in its own name, but in the name of the corporation it represents. *Le Mesurier and the Municipal Council of the Township of Chester West*, Q. B., 12 L. C. R., p. 314.

9. In the case of a sale of immoveables under the Municipal Act of 1855, for taxes due to a School Municipality by a person other than the proprietor in possession of such immoveables, such proprietor disturbed in his possession by the purchaser may bring an action *en complainte* against such purchaser, without the necessity of, in the first place, procuring the resiliation of the deed of sale. *La Corporation du Comté d'Yamaska & Rhéaume*, Q. B., 12 L. C. R., p. 488.

10. A municipality is only bound by the acts of a council in so far as they are legal. *Leclerc vs. The Corporation of Pointe Claire*, S. C., 7 L. C. J., p. 81.

A special Superintendant is a Municipal officer. *Ib.*

Tavern-keepers are ineligible as such Superintendant, and also to fill any Municipal Office. *Ib.*

MUNICIPAL COUNCILLORS:—1. When a vacancy occurs in a municipal council, and the municipality fails to fill it up at the first meeting of Council, after the expiration of three months from the occurrence of the vacancy, and the Governor General in consequence nominates a Councillor to the vacancy, such appointment will be set aside if the municipality has elected a Councillor in the interim. *Brosseau and Bissonette*, S. C., 2 L. C. J., p. 94.

2. Where two vacancies occur in the City Council of Quebec, one by resignation of a member whose period of service has not expired, and the other in the ordinary course, the candidates elected will be called to serve each for a particular vacancy, so, that the one having fewest votes may be elected for a longer period than he who has the greater number. *Lee vs. Burns*, S. C., 12 L. C. R., p. 425.

MUNICIPAL COUNCILS:—Municipal councils cannot, under the act of 1855, close a street, and form therewith a public pound by by-law, but must do so by *procès-verbal*. *Corporation of the Parish of Verchères vs. Boutillet*, S. C., 2 L. C. J., p. 115.

MUNICIPAL DEBENTURES:—Under the 16 Vic. c. 138, [C. S., L. C., cap. 25,] a by-law of a County Municipality which authorizes a subscription for shares of Stock on a Railway passing through the County, and for the issuing of debentures to

MUNICIPAL DEBENTURES :—

pay for such shares, is void if no provision be made in the by-law for imposing an annual rate or assessment for the payment of interest, and the establishment of a sinking fund. In passing such a by-law without making this provision the Corporation exceeds its powers under the 12 Vic. c. 41, [C. S. L. C., cap. 88,] the Superior Court, on petition in the name of the Attorney General, has jurisdiction over corporations, and to set aside such a by-law. *Regina vs. The Municipality of Two Mountains*, S. C., 5 L. C. R., p. 155. Also, *Regina vs. The Corporation of Shefford*, S. C., 5 L. C. R., p. 200.

MUNICIPAL ELECTIONS :—1. In cases of contested municipal elections a mandamus will be refused. Ex parte *St. Louis*, S. C., 2 L. C. R., p. 500.

2. A petition alleging that a municipal councillor, after taking his seat has been expelled, upon a contestation illegally decided, and another person named in his stead and praying that he may be reinstated in his office in place and stead of such other person is sufficient. *Giroux vs. Binet*, S. C., 3 L. C. R., p. 206. And in the case of *Binet and Giroux*, Q. B., 4 L. C. R., p. 177, it was held, reversing the judgment of the S. C., (3 L. C. R., p. 206,) that under the 10 and 11 Vic. c. 7, sect. 33, a Municipal Council has a right of delegating to a committee the power of investigating the facts complained of in the contestation, and that the resolution adopted by such council, upon the report of such committee, cancelling and annulling the election of a councillor, and declaring his opposant duly elected, was legal and within the authority of municipal councils. On an enquiry into the legality of votes given at a municipal election for the City of Quebec, the Judges are bound by the list of electors prepared by the Council, and they have no right to scrutinize it. *McDonald and Quinn*, S. C., 4 L. C. R., p. 457.

3. R., warden of the County of Quebec, had appointed himself to preside at the municipal election of Charlesbourg and on the day fixed, G., the senior Justice of the Peace, assuming that the nomination of R. was illegal, had forcibly installed himself as president, and had proceeded with the election, assisted by a party who had expelled R. from the polling place ; R., on his part, had proceeded with an election in an adjoining room, without the presence of the Majority of electors, and after polling four votes had declared his election closed by reason of violence. It was held that G. had no right to install himself as president, even admitting the illegality of R's appointment, and that therefore the election presided over by him was void. That the senior Justice of the Peace alone can preside in the absence of the person appointed by the Warden,—and that the election presided over by R. was void, inasmuch as it had taken place in the absence of the majority of the electors assembled, and had been prematurely terminated after the polling had commenced. *Paquet et al., and Robitaille et al.*, S. C. 8 L. C. R., p. 125.

4. And where the person named by the Warden of the County to preside at a meeting of electors, assembled for the

MUNICIPAL ELECTIONS :—

purpose of electing councillors for a municipality, absents himself after the commencement of the meeting, the electors present have no right to name another president in his stead, and the election made under the presidency of the person so named by the electors is null and void. *Perrault vs. Brochu*, S. C., 10 L. C. R., p. 111.

5. A municipal election is void, where the votes have been taken on loose sheets, and where in fact there was no poll book stating the purposes of the election, giving the names of the candidates, those of the electors, their additions and places of residence,—and where the votes had been given without naming the candidates, for whom such votes were so given, but merely by indicating the party in whose favor the votes were given.

And petitioners who pray to be declared duly elected in the place and stead of others, are bound to allege and prove that they are duly qualified and eligible as municipal councillors. *Guay et al., and Blanchet et al.*, S. C., 8 L. C. R., p. 181.

6. The Statute Law of Lower Canada being silent on the subject of bribery in municipal elections, has not the effect of annulling the votes of the persons bribed, nor of disqualifying the candidate by whom they were bribed. But see 23 Vic. c. 72, sect. 40.

That defendant cannot by means of a special answer be compelled to answer charges not specified in the *requête libellee*, filed under the 12 Vic. c. 41, sec. 3, [C. S. L. C., cap. 88, sect. 3.] And the petitioner having prayed for a judgment declaring a particular person to be elected, the defendant has a right to contest his qualification to hold such office. *Wood and Hearn*, C. C., 8 L. C. R., p. 332.

MUR MITOYEN :—1. *Mitoyenneté* of wall between neighbouring properties is a presumption of law which can only be rebutted by titles or *marques*. *McKenzie vs. Tetu et al.*, S. C., 12 L. C. R., p. 257.

2. An action for money paid and advanced may be maintained by a proprietor of a *mur mitoyen* against his co-proprietor for his proportion of the sum expended in the repairs of the wall, if the latter has impliedly acquiesced in the making of such repairs. *Latouche vs. Rollman*, S. R., p., 151.

3. And the neighbour who uses the elevation of the *mur mitoyen* made by his neighbour, is bound to pay half the price and value thereof. *Tavernier vs. Lamontagne*, S. C., 4 L. C. J., p. 81.

4. No damages can be recovered on account of inconvenience and loss suffered by the taking down and rebuilding of a *mitoyen* wall when such inconvenience and loss are the necessary consequence of the taking down and rebuilding the wall, and when all proper precautions have been observed, and no unnecessary delay or neglect has taken place. *Peck and Harris*, Q. B., 6 L. C. J., p. 206, and 12 L. C. R., p. 355. And where the *mitoyen* wall is sufficient to support the existing buildings but is not sufficient for others, and one of the parties wishes to erect, the party so wishing to build has a

MUR MITOYEN:—
right to demolish the wall and rebuild the same, observing the formalities in that behalf required by law. *Ib.*

But though the other party has no right to claim damages, the tenant of the building, the wall of which is demolished, is entitled to a diminution of the rent in proportion to the duration and extent of the encroachment on his possession. *Ib.*

And so also it was held in *Lyman et al. and Peck*, Q. B., 6 L. C. J., p. 214, and 12 L. C. R., p. 368.

NATURAL CHILD:—*Vide* PATERNITÉ.

NAVIGABLE RIVER:—A superior mill has no right to obstruct a river which is navigable and *flottable* and used for floating timber, by constructing a boom across such river; and parties owning mills lower down the river, whose logs are detained by such boom, have a right, after reasonable notice of demand to be allowed to pass with their logs, to pass down, and they are not responsible for the damages caused thereby to the person obstructing the river, by reason of their logs being carried down the stream. *Chapman vs. Clarke & al.*, 8 L. C. R., p. 147.

NAVIGATION:— *Vide* COLLISION.

NEGLIGENCE:—The presumption of negligence, arising from the fact of railway carriages getting off the track and thereby causing personal injury to a passenger train, is stronger than the testimony to the contrary of the railway company's servants whose duty it was to guard against such accidents. *Germain vs. The Montreal and New York Railroad Company*, S. C., 1 L. C. J., p. 7.

NEW CONCLUSIONS:—1. In a default case, new conclusions reserved by declaration, in respect of rent accruing, may be taken without service thereof on the defendant. *Dubois vs. Gauthier*, S. C., 2 L. C. J., p. 94.

2. The plaintiff, in an action of revendication of a moveable, who has omitted to conclude in terms sufficiently ample to meet all the emergencies of the case, cannot be allowed to take new conclusions. His only remedy is by motion to amend. *Poulin vs. Langlois*, S. C., 10 L. C. R., p. 322.

NEW TRIAL:—1. When the verdict and findings of a jury are contrary to evidence the Court will grant a new trial. *Beaudry and Papin*, Q. B., 1 L. C. J., p. 114. But a new trial will not be accorded unless it be shewn that the verdict is without proof or clearly against the evidence. *Dill vs. La Compagnie d'Assurance de Québec*, 1 Rev. de Lég., p. 113. And the Superior Court has the power of appreciating for itself the evidence adduced before the jury and if the verdict be not sustained by the evidence, will set it aside upon motion to that effect and render such judgment as shall be justified by the record. *Higginson vs. Lyman & al.*, S. C., 4 L. C. J., p. 329, also *Tilstone & al. and Gibb & al.*, Q. B., 4 L. C. J., p. 361.

2. A motion for a new trial, on the ground of misdirection, will be maintained, if it appear that the judge has not charged the jury respecting the imputation of payments. *Tilstone & al. and Gibb & al.*, Q. B., 10 L. C. R., p. 284.

NEW TRIAL :—

3. And a motion to set aside the verdict and dismiss the action, or to grant a new trial, is regular and in accordance with the practice of the Court. *Higginson vs. Lyman & al.*, S. C., 4 L. C. J., p. 329.

4. A motion for a new trial cannot be received after the first four days of the term next following the verdict of a jury. *Merritt vs. Lynch*, S. C., 9 L. C. R., p. 353, and 3 L. C. J., p. 276.

5. There is no new trial on the Crown side of the Queen's Bench. *R. vs. Bruce*, 10 L. C. R., p. 117.

Vide Brush vs. Jones, L. R., p. 16.

" *Gibb & al. vs. Tilstone & al.*, 9 L. C. R., p. 244.

" :—*Vide* JURY TRIAL.

" :— " VERDICT.

NEWSPAPER :—1. A newspaper subscription can be recovered, on mere proof of delivery of the paper, without any order for the same, and notwithstanding a verbal refusal to take the paper, and notification to the carrier to discontinue to deliver it. *Bristow vs. Johnston*, C. C., 2 L. C. J., p. 275. But in *Parsons & al. vs. Kelly, ib.*, it was held that delivery without proof that the paper had been ordered was not sufficient to maintain an action for the subscription.*

2. The proprietors of a newspaper announced that a single lady had been delivered of twins, and could not produce the party who had given them directions to insert, and the proprietors were held liable in an action of damages. *Starnes vs. Kinnear & al.*, L. R., p. 45, and 6 L. C. R., p. 440.

NON-USER :—*Vide* DESUETUDE.

NOTABLES :—*Vide* MARGUILLIERS.

NOTARIAL DEED :—*Vide* NULLITY.

NOTARY :—1. If a paper-writing purporting to be an holograph will, contained in a sealed envelope, be opened by a notary public and retained by him after the decease of the testator, such notary cannot keep it on record in his office : but must produce the same before a judge that probate may be made, and the will is then to remain deposited among the records of the Court of King's Bench. *Grant vs. Plante*, S. R., p. 60. A notary public has no authority to unseal an holograph will unless in the presence of a judge. *Ib.*

2. The Court has no power to compel a notary to send up his minute. *Attorney General & al. vs. Ryan & al.*, L. R., p. 6.

3. The deeds of notaries of Lower Canada in which such notaries style themselves notaries of Canada are null. *Beaudry vs. Smart & al.*, 1 Rev. de Lég., p. 45.

4. The provisions of the Ordinance of 1498, and of Blois of 1579, in so far as they require the presence of a second notary to the execution of a notarial act, have been abrogated by disuse ; and consequently a notarial deed is neither *faux*

* If these cases be correctly reported, it is difficult to say which is the more extravagant. It is as ridiculous to pretend on the one hand that a man should be compelled to pay for a paper plainly delivered against his will, as it is to maintain that no acquiescence on the part of the defendant will supply the want of a regular order. It is however to be supposed, that the judgments in question carried out the well known principles which govern sale and delivery, and did not establish any special rules for the contract between newspaper proprietors and newspaper readers.

NOTARY :—

nor *nul* from the minute having been countersigned several years after it was executed, the minute having been signed by the parties, the whole without fraud, and the minute having been presented to the second notary, by the *notaire instrumentaire*. *Desforges and Dufaux et al.*, Q. B., 13 L. C. R., p. 179. A protest by a third party assignee of a creditor of a party to the *acte*, would not necessarily prevent the second notary from validly countersigning the minute presented to him by the *notaire instrumentaire*. *Ib.*

5. Action of damages against notary for giving an incorrect copy of a minute. *Bourdeau vs. Dupuis*, S. C., 7 L. C. J., p. 34.

6. In an action by a notary for the cost of deeds passed by him, the copies themselves will be sufficient evidence that the deeds were passed. *Trudeau vs. DeLamaudière*, S. C., 7 L. C. J., p. 118.

7. The costs of an inventory must be borne by the surviving *conjoint* for one half and by the representatives of the deceased *conjoint* for the remainder. *Ib.*

" :—*Vide* EVIDENCE.

" :— " INSCRIPTION EN FAUX.

NOTICE :—A notice subsequently given of security in appeal is a waiver and a revocation of such security already given for a previous day. *Sullivan and Smith*, Q. B., 2 L. C. J., p. 160.

NOTICE OF ACTION :—1. A collector of customs is entitled to a month's notice of action to compel him to pay back money exacted by him as fees of office; but he cannot object that such action should have been commenced within three months from the time when such fees were paid. *Price vs. Perceval*, S. R., p. 179.

2. The notice of action given to a public officer before bringing a suit is no commencement of the action. *Lavoie vs. Grégoire*, S. C., 9 L. C. R., p. 255.

3. In an action against a Justice of the Peace, entitled by law to notice of action, such notice need not be cited at full length in the declaration. *Davis vs. Maguire*, 4 L. C. R., p. 347. And so also in a case of *Simard vs. Tuttle*, V. *Vbo.* Jurors.

4. In a possessory action for trespass by making and opening a road on the plaintiff's farm, the defendant cannot claim the benefit of one month's notice, under the provisions of the 14 & 15 Vic. c. 54, [C. S. L. C., cap. 101, sec. 1,] under the pretence that he fulfilled a public duty in so doing, and acted under orders received from a surveyor of roads. *Esinhart vs. McGuillan*, S. C., 6 L. C. R., p. 156.*

5. But an inspector of roads is an officer within the meaning of the Provincial Statute 14 & 15 Vic. c. 54, entitled to a month's notice of action for damages in consequence of an act performed by him in that capacity, although such act may have been committed without legal authority. *Jetté*

* This could hardly give rise to a question, for the Statute only gives the notice as a protection against an action of damages and not against a possessory action.

NOTICE OF ACTION:—
and Choquet, Q. B., 1 L. C. J., p. 148, and 7 L. C. R., p. 63. See also, *McNamee vs. Himes* S. C., 3 L. C. J., p. 109.*

6. Where a public officer is entitled to notice of action, he does not lose this privilege although the action be brought after he has ceased to be such public officer. *Corporation of Pointe Claire and Valois & al.*, S. C., 7 L. C. J., p. 83.

" :—*Vide* SHERIFF, No. 5.

NOTICE OF ENQUETE:—*Vide* ENQUETE.

NOTICE OF MOTION:—A motion of which no notice has been given will be rejected, if it be not a motion of course. *Dillon vs. Chabot*, 1 Rev. de Lég., p. 48.

" :—*Vide* GARDIEN, No. 1.

NOTICE OF PROTEST:—*Vide* PROMISSORY NOTE.

NOVATION:—1. To render a delegation perfect, it is only necessary that the will of the creditor to accept the new debtor in place of the old should appear in some way, by act or otherwise. And payments made by the party delegated in his own name and for his own account, and so accepted by the creditor, constitute a sufficient acceptance of the delegation, and the party delegated can afterwards only be liberated by the creditor. *Poirier vs. Lacroix*, S. C., 6 L. C. J., p. 302.

2. When there is no special mention of novation in a deed, the right of the creditor to sue upon the original claim remains. *Macfarlane vs. Patton*, 1 L. C. R., p. 250. And a promissory note given in payment of rent operates no novation. *Jones vs. Lemesurier & al.*, 2 Rev. de Lég., p. 317. And so generally notes given as payment of any chattel will not create a novation of the debt unless it otherwise appear that such was the intention of parties; and the words "*dont quittance*" in a deed of sale are not an indication of such an intention. *Noad and Lampson*, Q. B., 11 L. C. R., p. 29. And the giving of one promissory note will not operate the novation of another previously given. *Noad & al. vs. Bouchard & al.*, S. C., 10 L. C. R., p. 476. To constitute a novation, there must be some difference between the old and new contract. *Brown vs. Maillioux & al.*, S. C., 9 L. C. R., p. 252. And so where the holder of a promissory note to order under protest, has received an account from the maker and another note at three months retaining the first as security for the second, he does not lose his recourse against the endorsers of the first note, who have given their assent to the transaction, although the maker of the first note be insolvent. And a receipt given under such circumstances may be explained by parol evidence. *Woodbury and Garth*, Q. B., 9 L. C. R., p. 438.

3. The extension of delay allowed to a principal debtor by the creditor operates novation, as regards the security (*caution*), and liberates him. *St. Aubin vs. Fortin*, 3 Rev. de Lég., p. 293.†

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* This case appears to be in conformity with the ruling in *Jetté and Choquet*: but as the report no where states in what capacity defendant pretended to act, little information can be gathered from the decision.

† Can there be such thing as a relative novation? If not, it is not because of a novation of the debt that the endorser is discharged, but owing to a presumed release, or such negligence on the part of the creditor with regard to the interests of the *caution*, that he is held to be relieved from all liability thereby.

NOVATION :—

4. The taking of a note made by B. for goods sold and delivered to A. does not operate a novation so as to discharge A. for the price of the goods without an express agreement to make a novation. *McGarvey vs. Auger*, S. C., 7 L. C. J., p. 338.

5. The sale by *decret* of a constituted rent does not operate any novation of such rent and has not the effect of changing its nature. *Turcotte vs. Papans & al.*, S. C., 7 L. C. J., p. 272.

NUISANCE :—It is no solid defence to an indictment for a nuisance to say that the advantage derived by the public is greater than the inconvenience arising from the nuisance. *R. vs. Bruce*, Q. B., 10 L. C. R., p. 117.

NULLITÉ DE VENTE :—An *adjudicataire* who has purchased a farm together with buildings at sheriff's sale, cannot claim a reduction of price because such buildings are not upon the premises, he ought to demand the nullity of the sale. *Lloyd and Clapham*, 2 Rev. de Lég., p. 179.

" :—*Vide* DECRET.

NULLITY OF SETTLEMENT OF ACCOUNT :—*Vide* TUTORSHIP.

NUMBER :—Error in the number, on the back of an opposition *afin d'annuller*, is a good ground for causing such opposition to be rejected,—and the Court will not grant a counter motion in amendment of the endorsation of such opposition if it appears that the opposition is in itself frivolous and only made to obtain delay. *Joseph vs. Cay and Cay*, opposant, S. C., 1 L. C. J., p. 2. And also where there is no number the opposition will be rejected. *Leverson & al. vs. Cunningham*, S. C., 6 L. C. R., p. 483.

OBLIGATION :—1. For the validity of an obligation and *hypothèque*, it is not necessary that the creditor should be present, nor that the deed be accepted by him, or any one in his name. *Ryan and Halpin*, Q. B., 6 L. C. R., p. 61.

2. Under the 16 Vic., c. 80, an obligation is null for all excess of interest over the rate of six *per centum*. *Belleau vs. Degourdelle*, S. C., 11 L. C. R., p. 166.

" :—*Vide* INTEREST.

" :— " USURY.

OFFICE :—1. A transaction relative to a public office will be declared null. *Delisle vs. Delisle*, 3 Rev. de Lég., p. 244.

2. An agreement by a person, not a member of parliament, not to use his influence in opposition to the passage in parliament of a public law, is not against public policy, and is a valid consideration for a contract to pay money. And an agreement to cease acting as inspector of ashes, and to close an inspection of ashes store in Montreal, is a valuable consideration sufficient to support a contract to pay money, though under the Provincial Statute 18 Vic. c. 11, the party agreeing to do so had no legal right to act as inspector, or have an inspection store. *Henshaw vs. Dyde*, S. C., 1 L. C. J., p. 124, and 7 L. C. R., p. 124.

OFFENCES :—Commission for the prosecution and trial of offences committed within the jurisdiction of the Admiralty. p. 380, S. V. A. R.

OFFRES RÉELLES:—1. If the defendant in an action makes a tender in satisfaction of plaintiff's demand, the Court will give judgment for the amount tendered, without inquiring whether or not the amount was really due. *Gugy and Chouinard*, 3 Rev. de Lég., p. 308.

2. A tender to the attorney *ad litem* of the plaintiff, who resides beyond the limits of the Province, of the value of certain goods, which the sheriff as *gardien* had failed to produce, and the costs of the rule, which had been dismissed, and an appeal sued out in consequence, made before service of appeal, is sufficient, and the respondent will be entitled to his costs in appeal. *Leverson & al. and Boston*, 3 L. C. J., p. 223.

3. The tender of principal and interest after issue of a writ of summons, but before return, is bad, unaccompanied by the costs of an action before return. *Boucher vs. Lemoine & al.*, S. C., 4 L. C. J., p. 300.

4. *Offres reelles* should specify the different kinds of money offered, and where this is not done the *offres* will be held to be null. *Perras vs. Beaudin*, S. C., 6 L. C. J., p. 241.

ONUS PROBANDI:—1. Where a person hires a horse to go to a certain place, and he takes it to a more distant place, and the horse dies in his hands, it is for him to prove that the horse was not in a healthy state. *Desautels vs. Perrault*, S. C., L. R., p. 60.

2. Where a ship at anchor is run down by another vessel under sail, the *onus probandi* lies with the vessel under sail to show that the collision was not occasioned by any error or default upon her part. *The Miramichi*, p. 240, S. V. A. R. *The John Munn*, in note, p. 266, *ib.*

" :—*Vide* EVIDENCE.

OPPOSITION:—1. An opposition will be dismissed on motion, on the ground of the insufficiency of the affidavit which states the opposition as made in good faith, and with the object of obtaining justice, if the word sale in the form of affidavit, set forth in the rules of practice, be omitted. *Scholefield & al., vs. Rodden & al.*, S. C., 6 L. C. R., p. 479. And an affidavit in support of an opposition *afin d'annuller*, in which the word "unnecessarily" appears instead of the word "unjustly," and in the jurat of which the word "sworn" is used instead of "sworn," is bad, and not in accordance with the affidavit required by the rules of practice, and the opposition *afin d'annuller* founded thereon, will be dismissed, and a rule obtained, to seek to be permitted to file a new affidavit correcting such errors will be discharged, if such corrected affidavit be not tendered in support of such rule. *Morin & al., vs. Daly & al.*, S. C., 6 L. C. R., p. 431. But an affidavit made by a party, *to the best of his knowledge*, is sufficient to sustain an opposition *afin d'annuller*. *Fournier and Russell*, Q. B., 7 L. C. R., p. 130, and 1 L. C. J., p. 118. But an opposition *afin d'annuller* dated after the making of the affidavit appended thereto, will be set aside. *Walker vs. Burroughs and Burroughs*, S. C., 3 L. C. J., p. 53.

2. An opposition *afin d'annuller*, containing frivolous or insufficient grounds will be rejected on motion. *McDonnell vs. Grenier alias Grinier and Grenier*, S. C., 3 L. C. J., p. 72.

OPPOSITION :—

3. An opposition will be dismissed on motion, if there be no grounds assigned. *McDonald vs. Grenier and Grenier*, S. C., 9 L. C. R., p. 73.

4. An opposition to annul the seizure of real estate cannot be received within the fifteen days preceding the day fixed for sale, even with the order of a judge. *Lespérance and Allard & al.*, Q. B., 1 L. C. R., p. 154. But in certain cases an opposition *afin d'annuller* or *de distraire* may be filed to a writ of *venditioni exponas*. *Fournier and Russell*, Q. B., 7 L. C. R., p. 130, and 1 L. C. J., p. 118. But for this, permission of the Court must first be obtained, else the opposition so filed will be dismissed on motion. *Boudreau & al. vs. Poutré*, S. C., 6 L. C. R., p. 72; also, *Quebec Building Society vs. Atkins & al., and Atkins & al.*, S. C., 9 L. C. R., p. 447. But this case of *Atkins & al., and the Quebec Building Society*, went to appeal, 10 L. C. R., p. 333, where it was held that an opposition *afin d'annuller* may be made to a writ of *venditioni exponas*, where such opposition is founded upon alleged nullity of the writ itself, or the irregularity of the proceedings thereon, and the fiat of a judge or the permission of the Court is not required.*

5. An opposition *afin d'annuller* to a sale of real estate under a writ of *venditioni exponas*, will be rejected on motion, if the defects alleged existed in the proceedings under the *fieri facias*, or if the conclusions demand the setting aside of the proceedings under the *fieri facias*. *Abbott vs. The Montreal and Bytown Railroad Company*, S. C., 6 L. C. R., p. 428, and 1 L. C. J., p. 1.

6. An opposition *afin de distraire* may be filed to a writ of *venditioni exponas de bonis*. *Delisle vs. Couvrette and Clement dit Lavivière*, S. C., 4 L. C. J., p. 84.

7. An opposition *afin de distraire* produced too late, namely: within and not "previous to the fifteen days next before the day of the sale," will be rejected upon motion, notwithstanding that such opposition has been produced with the order of a judge to receive the same, and upon affidavit of one of the opposants. *Joseph vs. Donnelly and Monaghan*, S. C., 12 L. C. R., p. 106. But in the case of *The Trust and Loan Company vs. Julien and May*, it was held, that an opposition *afin d'annuller* to the sale of an immoveable produced within the 15 days preceding the sale, cannot be dismissed on motion. S. C., 7 L. C. J., p. 129. Confirmed in Q. B., 9th Sept., 1864.

8. An opposition *afin d'annuller* cannot be maintained against a seizure of lands, on the ground that the defendant was possessed of sufficient moveable property to satisfy plaintiff's judgment, when such seizure has been preceded by a regular return of *nulla bona*. *Soupras vs. Boudreau*

* It is proper to remark in this case, that the judgment was rendered by Duval, J., and C. Mondelet and Badgley, Ass. Judges of the Q. B., the Chief Justice and Aylwin J. dissenting. There are therefore three Judges on either side, two of the regular Judges of the Q. B., and one Judge of the S. C. being overruled by one of the regular Judges of the Q. B., and two Assistant Judges drawn from the S. C. This case therefore can hardly be cited as a precedent.

It should be remarked that the Chief Justice approved of the allowing of such oppositions *afin d'annuller*, but on special cause shewn and permission of the Court first had.

OPPOSITION :—

and Boudreau, opposants, S. C., 2 L. C. J., p. 290. And when the seizing officer returned that he had seized the lands because the defendant had no moveables, it was held that an opposition *afin d'annuller* would not be maintained unless it contradicted the return of the seizing officer. *Arnold vs. Campbell*, S. C., 9 L. C. R., p. 33. And no opposition to a *vendition exponas* grounded on the nullity of such proceedings, there being no *procès-verbal de récollement*, will be maintained. *Lespérance vs. Langevin and Langevin*, 1 L. C. R., p. 279. But otherwise if land *en roture* be advertised for sale in a parish other than that in which it is situate. *Esty & al. vs. Judd & al. and Judd & al.*, S. C., 3 L. C. J., p. 73.

9. It is no ground of opposition that the advertisement declared the property was to be sold at the Sheriff's Office instead of at the church door of the parish where it ought to be sold; but the absence of any date to the *procès-verbal* is fatal to the seizure. *Rossette vs. Dalrymple and Dalrymple*, S. C., L. R., p. 54.

10. An opposition *afin d'annuller* need not be registered in the office of the Circuit Court before it is placed in the hands of the bailiff. *Lamothe and Garceau*, Q. B., 13 L. C. R., p. 88, and 7 L. C. J., p. 115.

If no hour be fixed for the return of an opposition, such opposition must be received if it be filed at the office during the hours of business. *Ib.*

That it is not by exception *à la forme* but by motion that the intrinsic proceedings required to put an opposition before the Court should be attacked. 7 L. C. J., p. 115.

11. An opposition *afin d'annuller*, filed by the defendants, a railway company against the seizure of a locomotive, on the grounds that it was part of the rolling stock and necessary for the working of the road, and was subject to the liens of privileged creditors who were entitled to the proceeds, will be dismissed on the grounds that it is for privileged creditors alone to urge this objection. *The Eastern Townships Bank vs. The G. T. Railway Company of Canada*, S. C., 13 L. C. R., p. 455.

12. The Court will construe "The Grand Trunk Arrangement Act of 1862," 25 Vic., c. 56, and particularly the 1, 22, 23, 24, 25 and 39 sections all together, that under the Act, the debt of a creditor entitled to a share of the postal moneys could not be extinguished, or his right to execution taken away, without payment and tender by the company of the postal moneys and preference stock referred to in the Act. *Ib.*

13. A rule by an opposant *afin de distraire* calling on plaintiff to contest his opposition and to order that in default thereof *main-levée* be granted is irregular. *McGrath vs. Lloyd and Keith & al.*, S. C., 2 L. C. J., p. 279. And so also it was held in *Limoges vs. Marsant and Labelle*, S. C., 13 L. C. R., p. 244.

If the parties do not make a contestation the parties should proceed *ex parte*. *Ib.*

OPPOSITION :—

14. When plaintiffs declare that they do not contest an opposition *afin de distraire, main-levée* of the seizure will be granted without costs against the plaintiffs, but with costs against the defendant. *Corse vs. Taylor and Taylor*, S. C., 3 L. C. J., p. 167.

15. The affidavit of defendant, opposant's husband, is good, without any allegation that he is opposant's agent. *Wilson vs. Pariseau and Simard*, S. C., 1 L. C. J., p. 1.

16. An opposition *afin de distraire* will be dismissed on motion, if it appears on the face of it to be frivolous and vexatious, as where moveables are seized under a writ of *Venditioni Exponas*, and an opposition to *distraire* these goods was made setting up a sale to opposant of the goods while under seizure and alleging no *déplacement*. *Lovell vs. Fontaine and St. Amand*, S. C., 5 L. C. J., p. 71.

17. It is not sufficient for defendant to allege in his opposition *afin de distraire* that the goods seized form part of his tools or the implements of his trade. And it is not necessary for the bailiff to allege in his *procès-verbal*, that he has left to defendants the effects exempt by law. *Von vs. O'Connor and O'Connor*, S. C., 7 L. C. J., p. 126.

Under the C. Sts. of L. C., c. 83, sec. 40, an opposant is bound to allege and prove that he has property in the district where the Judgment was rendered in order to suspend the execution of the writ in another district. *Rose vs. Coutlée*, S. C., 12 L. C. R., p. 403. And *Massue vs. Crebassa and Crebassa*, S. C., 7 L. C. J., p. 225.

18. The lessee of a property seized and advertised for sale by the Sheriff, cannot by opposition *afin de charge* claim that the property should be sold subject to the unexpired lease. *Bogle et al., vs. Chinic and Proulx et al.*, P. R., p. 20. Also *Choquette vs. Brodeur and Grouteney*. *Vbo. Bail verbal.*

19. An opposition *afin de conserver* may be filed on a transfer not signified. *Lamothe and Talon dit Lespérance*, Q. B., 1 L. C. J., p. 101.

20. A proprietor, whose property has been sold upon an execution against a party who held it merely under an emphyteotic lease, can claim an indemnity on price of sale by opposition *afin de conserver*. *Murphy vs. O'Donovan*, S. C., 2 L. C. R., p. 333.

21. An opposition *en sous ordre* must allege the insolvency of the party whose rights, under the distribution, it is sought to claim. *Lemoine vs. Donegani*, L. R., p. 67. Or a *titre exécutoire*. *Venner vs. Barnard et al., and Patton*, 1 L. C. R., p. 498.

22. An opposition *en sous ordre* being in the nature of a *saisie arrêt* must be either founded on a judgment or be supported by the ordinary affidavit required in the case of an attachment before judgment. *Stirling et al., vs. Darling and Fowler* opposant *en sous ordre* to plaintiff. S. C., 1 L. C. J., p. 161.

23. An opposition *en sous ordre* claiming as against a party not indebted in any way to the opposant *en sous ordre*, will be dismissed on demurrer. *Thompson and Martel*, Q. B., 12 L. C. R., p. 11.

OPPOSITION :—

24. The Court will not permit the filing of an opposition *afin de conserver, en sous ordre*, on the day fixed for the homologation of the report of distribution by which the parties would be deprived of the use of the moneys of which they stood in need, unless it be shewn that the opposant is in danger of losing his debt. *Doyle et al., and McLean*, Q. B., 10 L. C. R., p. 309.

25. The contestation of the opposition of a creditor, collocated in a report of distribution, may be accompanied in the same plea or *acte* of contestation, by a demand or conclusions tending to have such report confirmed. *Mallet and Desrarats*, Q. B., 4 L. C. J., p. 305. A party living out of the Province who contests the collocation of another opposant is bound if required to give security for costs. *Benning vs. The Montreal Rubber Company and Young et al.* S. C., 2 L. C. J., p. 287.

26. An opposition by a defendant will be dismissed on motion, the opposition being headed "No. 363, C. B. C. Leverson, plaintiff, vs. James Cunningham, defendant," there being no number on the endorsation, and the words "et al," being omitted both in the heading of the opposition and in the endorsation. *Leverson et al. vs. Cunningham*, S. C., 6 L. C. R., p. 483. Also *Joseph vs. Coy*, S. C., 1 L. C. J., p. 2.

27. A debtor may oppose the sale of his real estate, the creditor not having given him credit for sums received in part payment of his judgment. *Fournier and Russell*, Q. B., 7 L. C. R., p. 130. Also *La Banque du Peuple vs. Donegani*, S. C., 3 L. C. R., p. 478.

28. An opposant *afin d'annuller* who has omitted to file his titles with his opposition, will not be allowed to file them afterwards at the *enquête*. *Major et al. vs. Baby*, S. C., 4 L. C. R., p. 126.

29. Where an officer charged with a writ of execution made return that he had been told by the defendant that he had no moveables and that thereupon he had seized the defendants immoveables; and where an opposition was made to such seizure by defendant on the ground that he had sufficient moveables, on demurrer such opposition will be declared insufficient, unless it contain a declaration of the falsity of the return of such officer. *Arnold vs. Campbell*, Q. B., 9 L. C. R., p. 33.

30. An opposition filed contrary to law will be dismissed on motion as irregularly filed. The judgment against a *tiers-saisie* carries with it a right of execution and confers rights on the seizing creditor which cannot be interfered with by the other creditors of defendant. *Mason et al vs., Choall and the Merchant Assurance Company* and *Biron*, S. C., 6 L. C. R., p. 169. Also, *Chapman vs. Clarke and the Unity Life Insurance Company*, T. S., S. C., 3 L. C. J., p. 159.

31. The Court cannot take notice of reasons of opposition which have already been invoked by a former opposition upon which the Court had already decided. *Fournier and Russel*, Q. B., 10 L. C. R., p. 367.

OPPOSITION :—

32. A person whose interests are affected by a judgment in a cause, to which such person was not a party, may come in either by *tierce-opposition* or by direct action, with a view to be maintained in all his rights. *Thouin and Leblanc et al.*, Q. B., 10 L. C. R., p. 370.

33. An opposition to a judgment rendered by Prothonotary, filed after a first execution but before any day for sale is fixed, will not be dismissed on motion. *Martineau vs. Cadoret*, S. C., 12 L. C. R., p. 423.

34. In cases of opposition *afin de distraire*, &c., if any parties to a cause have declared that they intended to contest any such opposition, and yet fail so to contest after having been regularly put *en demeure* to do so, parties making such oppositions will not, nevertheless, be entitled to obtain judgment upon their opposit ons, *de plano*, but must proceed as in cases *ex parte*, for want of a plea, and give notice of inscription to the party who has declared his intention to contest, in order that such party may cross-examine any witness produced by such opposant ; and that, in such cases, opposants do not come within the operation of the 84th rule of practice. *McBlain and Oliver*, Q. B., 13 L. C. R., p. 417.

" :—*Vide* AMENDMENT.
" :— " CONTEMPT.
" :— " DOMICILE.
" :— " EXECUTION.
" :— " HYPOTHÈQUE.
" :— " JUDGMENT.
" :— " NUMBER.
" :— " RATIFICATION OF TITLE.

OPTION :—Where a party had his option to proceed either before the Trinity House or before the Admiralty, and made his option of the former, by that he must abide as well in respect of the execution of the judgment as in the obtaining of it. *The Phabe*, p. 59, S. V. A. R.

ORDER :—Maintenance of order in Churches.
" :—*Vide* CONVICTION.

ORDERS IN COUNCIL :—At the Court of St. James,' 27th June, 1832.
" " at Brighton, 20th Nov., 1835.

Cases upon :—*The John and Mary*, p. 64, S. V. A. R.—*The London*, p. 140, S. V. A. R.

" :—*Vide* FEES.
" :— " RULES AND REGULATIONS.
" :— " TABLE OF FEES.

OVER-BIDDING :—*Vide* RATIFICATION.

OWNERS :—1. Owners of vessels are not exempt from their legal responsibility, though their vessel was under the care and management of a pilot. *The Cumberland*, p. 75, S. V. A. R.

2. Having a pilot on board, and acting in conformity with his directions, does not discharge responsibility of owner. *The Lord John Russell*, p. 190, S. V. A. R.

3. Change of the owner, by the sale of a ship in a British port, does not determine a subsisting contract of seamen, and entitle them to wages before the termination of the voyage. *The Scotia*, p. 160, S. V. A. R.

OWNERS :—

4. The Court of Admiralty has authority to arrest a ship upon the application of the owner, in a case of possession. *Mary and Dorothy*, p. 187, S. V. A. R.

PACTE COMMISSOIRE.—1. That where a compromise has been made with a *pacte commissoire* in a deed of sale, the consideration of which is a *rente viagère*, and a new deed is made referring to the first, and in which last deed it is specially stipulated that the vendors should retain their privilege as *bailleurs de fonds* under the first deed, but where no reservation is made of the *pacte commissoire*, it will be held to have been abandoned. *Evans vs. Smith*, S. C., 11 L. C. R., p. 337.

2. In case of a deed of sale in consideration of a *rente viagère*, the retrocession by the purchaser to the vendor by reason of a *pacte commissoire*, will not be viewed in the light of a resale by the original vendor, so as to admit of intermediate mortgages obtaining a preference to the original vendor; provided that the retrocession be made without fraud, and that the property retroceded be in the same state and of the same value as when originally sold; and in such case it is not necessary that the *pacte commissoire* should be enforced by means of a judgment. *The People's Building Society vs. Evans and Sprowls*, Q. B., 13 L. C. R., p. 288.

PAIN BENI :—*Vide* HONNEURS DANS L'EGLISE.

PAPER MACHINE :—*Vide* MOVEABLES.

PARISH :—*Vide* CERTIORARI.

" :— " EXCEPTION A LA FORME.

PARLIAMENT :—A member of Parliament is not liable for the penalty imposed by the C. Sts. of C., chap. 3, sec. 7, for sitting and voting without having the property qualification required by law. The penalty is only exigible from a person whose incapacity to become a member is decreed by the sect. 5, and whose election is radically null. *Morasse vs. Guèvremont*, S. C., 5 L. C. J., p. 113.

PARTAGE :—A *partage provisionnel* may be ordered at any time between usufructuary legatees. *Cuthbert and Cuthbert*, S. C., 6 L. C. J., p. 128.

" :—*Vide* ACTION EN PARTAGE.

" :— " LICITATION.

PARTICULARS OF DEMAND :—*Vide* BILL OF PARTICULARS.

PARTNERSHIP :—1. The dissolution of a partnership without particular notice to persons with whom it has been in the habit of dealing, and general notice in the Gazette to all with whom it has not, does not exonerate the several members from the payment of the debts due to third persons not notified, and who contracted with any of them in the name of the firm, either before or after the dissolution. *Symes vs. Sutherland*, S. R., p. 49. And co-partners who have filed a certificate of partnership continue liable after a dissolution, if they have omitted to file under the Partnership Act, a certificate of dissolution. *Murphy vs. Paige et al.*, S. C., 5 L. C. J., p. 335; also, *Jackson vs. Paige et al.*, S. C., 6 L. C. J., p. 105.

2. The declaration of the names of all the partners of a commercial firm at the Prothonotary's office and the Registry office of the place where is the principal seat of their com-

PARTNERSHIP :—

merce, is sufficient under the 12 Vic., c. 45, [C. Sts. L. C., c. 65,] and it is not necessary that it should be enregistered wherever such partnership does an act of commerce. *Senécal vs. Chenevert*, S. C., 4 L. C. J., p. 239. A partnership is only obliged to enregister a certificate of partnership in the office of the Prothonotary in the district where it has the principal seat of its affairs. *Senécal and Chenevert*, Q. B., 12 L. C. R., p. 145.

3. In an action under the 12 Vic., c. 45, [C. Sts. of L. C., c. 65, Sect. 4,] for the penalty for the non-registration of a partnership, there is no prescription under the statute for limiting the time during which penal actions may be brought, 52 Geo. III., ch. 7, [C. Sts. L. C., c. 108.] as the offence continued from day to day. *Handsley vs. Morgan*, S. C., 5 L. C. J., p. 54.

4. The admission of a partner on *faits et articles* binds the firm. *Maguire and Scott*, Q. B., 7 L. C. R., p. 451. And even after the dissolution of the partnership. *Fisher vs. Russell et al.*, S. C., 2 L. C. J., p. 191. Confirmed in Q. B., 1st December, 1858. But the existence of a partnership cannot be established by the admission on *faits et articles* of one of the alleged co-partners. *Bowker and Chandler*, S. C., L. R., p. 12. And later in the case of *Chapman v. Masson*, S. C., 2 L. C. J., p. 216. Confirmed in Q. B., 3 L. C. J., p. 285.

5. And the confession of judgment against a copartnership, which has ceased to exist, by one of the late copartners is invalid. *The Canada lead mine Company vs. Walker*, S. C., 11 L. C. R., p. 433.

6. A vendor who sells to one partner, in his own individual name, and upon his own credit and responsibility, has a right to recover against the firm of which he is a member, provided the firm has benefited by the transaction, and this although the vendor, at the time he sold the goods, was not aware of the partnership. *Maguire and Scott*, Q. B., 7 L. C. R., p. 451. But a debt contracted by the members of a partnership individually, is not due by the firm. *Howard vs. Stuart*, S. C., 6 L. C. J., p. 256.

7. A member of a composite firm, cannot retire and substitute another in his place without the consent of each individual partner, and a judgment rendered against the composite firm, under such circumstances, is null, *quoad* the non-assenting co-partners. *Mullins vs. Miller et al., and McDonald et al., opposants*, S. C., 1 L. C. J., p. 121. Confirmed in Appeal, 1st October, 1857.

8. A promise signed by one partner in the name of the firm, but without authority from his partners, undertaking to receive a stranger into that firm as a partner, is not binding upon the other members of it. And an agreement to take a party into a partnership after the lapse of a specified term, upon "terms that shall be mutually satisfactory," but specifying no conditions as to duration, shares and the like, is not such an agreement as will afford any basis for the assessment of damages, in the event of a breach of it. *Higginson vs. Lyman et al.*, S. C., 4 L. C. J., p. 329.

PARTNERSHIP :—

9. In a contract between several persons for the keeping of a ferry, with power to any one of them to sell or convey his right therein, the assignees of any one of the said parties cannot act so as to injure the business ; and the co-partners have a direct action against such assignees, as well for the damages arising from the breach of the original contract, as for the rescision of the contract for the future. *Lalouette dit Lebeau et al. and Delisle et al.*, Q. B., 8 L. C. R., p. 174.

10. Partnership property is not liable for the debts of the partners individually. *Montgomery vs. Gerrard*, S. R., p. 437.

11. A debt due to a defendant by a partnership of which the plaintiff was a member, cannot be offered in compensation of the personal debt of the plaintiff. *Butler vs. Desbarats*, S. C., L. R., p. 4 ; also, *Howard vs. Stuart*, S. C., 6 L. C. J., p. 256.

12. A dormant partner can only, under any circumstance, be held responsible for the debts of the copartnership, in so far as he had profited by such co-partnership. *Chapman and Masson*, Q. B., 9 L. C. R., p. 422.

13. A creditor of a co-partnership may sue any one of the co-partners without having previously brought his action against the co-partnership. *Tutor et al., vs. McDonald*, L. R., p. 68.

14. The effects of co-partners sold under execution, are not liable to the creditors of one of the co-partners individually, until after the payment of the partnership creditors. *Moody vs. Vincent et al.*, 5 L. C. R., p. 388.

15. On a judgment rendered jointly and severally against two co-partners, for the personal debt of one of them, the payment made by the personal debtor liberates the other partner, and he who has paid cannot be subrogated in the rights of the plaintiff, but for any claim against the other partner must proceed by a direct action *pro socio*. *Leduc vs. Turcot, and Legendre et al. and Turcot et al.* S. C., 5 L. C. J., p. 96.

16. In an action by co-partners where one dies during the pendency of the suit, and when the cause is *en état d'être jugée*, it is not necessary that the *instance* be taken up on behalf of the deceased. *Burry et al. vs. Shepstone et al.* C. C., 2 L. C. J., p. 122.

" :—*Vide* ACTION EN REDDITION DE COMPTE.
" :— " EVIDENCE.
" :— " FAITS ET ARTICLES.
" :— " PARTNERS.

PARTNERS :—1. The only action partners can bring against each other, in respect of the affairs of the co-partnership after its dissolution, is the action *pro socio*. *Bouthillier vs. Turcotte*, S. C., 1 L. C. J., p. 170. *Vide Vbo. Assumpsit.*

2. Where a number of persons unite in a joint adventure each of them cannot bring an action, depending on such adventure alone. They are to all intents co-partners in so far as regards such joint adventure. *Bosquet vs. McGreevey*, S. C., 9 L. C. R., p. 266.

" :—*Vide* ACTION EN REDDITION DE COMPTE.
" :— " ADMISSION.
" :— " EVIDENCE.

PARTY WALL :—*Vide* MUR MITOYEN.

PASSENGER :—The relation of master and passenger produces certain duties of protection by the master analogous to the powers which the law vests in him as to all the persons on board his ship; any wilful violation of which duties, to the personal injury of the passenger, entitles the latter to a remedy in the Admiralty, if arising on the high seas. *The Friends*, p. 118, S. V. A. R.

Unless in cases of necessity, the master cannot compel a passenger to keep watch. *Ib.*, p. 120.

Master may restrain a passenger by force, but the cause must be urgent, and the manner reasonable and moderate. *Ib.*, p. 122.

2. The authority of the master will always be fully supported by the courts so long as it is exercised within its just limits. *The Toronto*, p. 179, S. V. A. R.

Damages awarded against a master of a vessel for having, in a moment of ill-humour, attempted to deprive a cabin passenger of his right to the use of the quarter-deck and cabin, and to separate him from the society of his fellow-passengers. *Ib.*, p. 180.

" :—*Vide* ADMIRALTY.

" :— " ASSAULT.

" :— " CARRIERS.

PASSENGER :—*Vide* DAMAGE.

" :— " JURISDICTION.

PASTURAGE :—*Vide* SERVITUDE.

PATERNITÉ :—A natural child should be left with its mother during the first years of its infancy, but afterwards the father has the option of taking it. *Dubois vs. Hébert*, S. C., 7 L. C. J., p. 290.

" :—*Vide* ACTION EN DÉCLARATION.

PATRONE :—Import of the term in the Mediterranean States. *The Scotia*, p. 166, S. V. A. R.

PELERIN :—*Vide* HOTELLIER.

PENALTY :—If any act be prohibited under a penalty, a contract to do it is void. *The Lady Seaton*, p. 263, S. V. A. R.

" :—*Vide* AGRICULTURAL ACT.

" :— " CRIMINAL LAW.

PEREMPTION D'INSTANCE :—1. A petition claiming the *péremption d'instance* ought to be accompanied by a certificate of the clerk, establishing the date of the last proceeding. *Les Dames Religieuses Ursulines and Botterell*, Q. B., 1 L. C. R., p. 89.

2. The *péremption d'instance* will be interrupted, even after the filing of a motion for a rule to declare the *instance périmée*, by the service of a notice of motion by the plaintiff. *Dinning vs. Bates*, S. C., 1 L. C. R., p. 109. And the *péremption d'instance* may be covered by a valid proceeding before any judgment has declared the *instance périmée*. *Beaudry vs. Plinguet*, 3 L. C. J., p. 237. And a notice of motion for *péremption d'instance* does not amount to a demand of such *péremption*, and it is competent to the opposite party to prevent the effect of the *péremption* by taking proceedings in the case between the giving of the notice and the actual making of the motion. *McDonald & al. vs. Roy*,

PEREMPTION D'INSTANCE :—

S. C., 3 L. C. J., p. 302. But *contra* to this and to the preceding case, *vide Farman vs. Joyal*, S. C., 4 L. C. J., p. 128; and 10 L. C. J., p. 20; also *Charlebois vs. Bastien*, S. C., 6 L. C. J., p. 293; and *DeBeaujeu vs. Masse*, S. C., 7 L. C. J., p. 105.*

3. A motion for *péremption d'instance*, praying that the action may be dismissed for want of proceedings, and not asking that case may be declared *périmée* is irregular and will be rejected. *Peck & al. vs. Murphy & al., and The Mayor, &c. of the City of Montreal*, T. S., S. C., 2 L. C. J., p. 211.

4. *Péremption d'instance* will not be allowed in the absence of the original record. *Turner vs. Boyd*, S. C., 2 L. C. J., p. 96. But it will be allowed notwithstanding the absence of a portion of it. *Chapman & al. vs. Aylen*, S. C., 1 L. C. J., p. 264.

5. *Péremption d'instance* made in the names of three attorneys, one of whom is dead, will be rejected. *DeBeaujeu vs. Rodrigue*, S. C., 7 L. C. J., p. 43. The motion should be made in the names of the survivors.

6. An interlocutory judgment which suspends proceedings while in force, interrupts the time necessary for acquiring the *péremption d'instance*. *Archambault and Busby*, Q. B., 9 L. C. R., p. 219. Also, 3 L. C. J., p. 222.

7. And when one of the defendants dies during the pendency of a suit, the time for peremption ceases to run during the 3 months and 40 days allowed the heirs to deliberate. *Mackay & al. vs. Gerrard & al.*, S. C., 5 L. C. J., p. 331.

8. The death of one of several defendants extinguishes the *mandat* of his attorney *ad litem*. *Ib.*

9. But civil death does not stop peremption it not having been signified to defendant before the motion for peremption. *DeBeaujeu vs. Masse*, S. C., 7 L. C. J., p. 105.

10. The time for acquiring *péremption d'instance* is not interrupted by the defendant ceasing to be represented by his attorney. *The New City Gas Company vs. Macdonnell*, 3 L. C. J., p. 283. But it is interrupted by the death of plaintiff. *Tate & al. vs. McNeven*, S. C., 4 L. C. J., p. 148.

11. The time necessary for acquiring peremption is not intercepted during the vacation extending from the 10th July to the 21st August inclusive. *Benoit vs. Peloquin*, S. C., L. R., p. 31.

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* These four reports give rise to great uncertainty as to the time when, or the stage of the proceedings at which, plaintiff may interrupt the *péremption d'instance*.

By the first, decided in December, 1850, present Day, Smith, and C. Mondelet, J. J., it was held that a motion for the rule does not prevent plaintiff from interrupting the *péremption*. But on the 29th May, 1859, in the case of *Brandon vs. Plinguet*, C. Mondelet, J., decided that plaintiff might interrupt the *péremption* by any act of procedure, prior to judgment declaring the *instance périmée*. It was impossible to go further than this in the same direction, and in *McDonald & al. vs. Roy*, decided 20th September, 1859, Badgley, J., decided that between the giving notice of motion and the actual making of motion, plaintiff might interrupt the *péremption*. It is evident that this case does not go even so far as *Dinning vs. Bates*. The question however was not suffered to rest there, for on the 31st December, 1859, in the case of *Farman vs. Joyal*, *Badgley*, J., referring to the case of *Brandon vs. Plinguet*, held that plaintiff could not interrupt the *péremption* after service of the rule or even after service of notice of motion. It is however proper to add that *Farman vs. Joyal* is confirmed by the cases reported since.

PEREMPTION D'INSTANCE :—

12. *Péremption d'instance* has always been allowed with costs in the Superior Court in Montreal. *Mongeon & ux. vs. Turenne*, S. C., 1 L. C. J., p. 264; *Chapman & al. vs. Aylen, Ib.; Gore & al. vs. Gugy, Ib.* But a different ruling has prevailed in Quebec. There the Court held, in the case of *Fournier vs. The Quebec Fire Insurance Company*, 6 L. C. R., p. 97, that in *péremptions d'instance* each party should pay his own costs. But the case of *Gore & al. and Gugy* having been taken to appeal, it was held in the Q. B. that in a suit *périmée* the plaintiff may be condemned to pay costs, which are in the discretion of the Court, 8 L. C. R., p. 454. Also *DeBleury vs. Gautier*, S. C., 11 L. C. R., p. 494, it was held that costs will not be given where cause on affidavit is shewn for not awarding costs, and 5 L. C. J., p. 330. But in a case decided in the S. C. at Quebec, it was held that in cases where *péremption d'instance* is granted no costs will be awarded. *Turner vs. Lomas*, S. C., 10 L. C. R., p. 38.

13. An opposition is subject to *péremption d'instance*. *Blackburn vs. Walker and Walker*, opposant, S. C., 3 L. C. J., p. 195. But in exp. *Robertson and Pollock & al.*, it was held that peremption will not be granted at the instance raised by an opposition to a ratification of title. S. C., 5 L. C. J., p. 150, and 11 L. C. R., p. 285. A defendant cannot have his default taken off in order to demand peremption of instance. *Courville vs. Levar and Levar*, S. C., 6 L. C. J., p. 256.

14. But where a defendant has appeared but filed no contestation he may obtain *péremption d'instance*. *McBean vs. Cullin*, S. C., 7 L. C. J., p. 117.

Vide Hart vs. Vallières de St. Réal, 2 Rev. de Lég., p. 319.

PERISHABLE EFFECTS :—The Sheriff may be authorized to sell perishable effects under seizure in his hands. *Wurtele vs. Verrault*, 3 Rev. de Lég., p. 394. But in a more recent case of *Larochelle vs. Piché and Piché*, it was held, that the Court could not order perishable goods under seizure to be sold *pendente lite*. S. C., 1 L. C. J., p. 158.

PERJURY :—A charge of perjury does not give a right to suspend the action, in which the perjury is alleged to have been committed, until the criminal charge is settled. *Fortier vs. Mercier*, 3 Rev. de Lég., p. 363.

" :—*Vide* JURORS.

PERSONAL AND HYPOTHECARY ACTION :—*Vide* PRESCRIPTION.

PERSONAL DAMAGE :—*Vide* DAMAGE.

PERSONAL WRONGS :—*Vide* DAMAGE.

PETITION OF RIGHTS :—*Vide* PRESCRIPTION.

PETITORY ACTION :—*Vide* ACTION PÉTITOIRE.

PEW :—1. The eldest son of the *concessionnaire* of a pew is entitled to have it, upon the marriage of his father's widow, at the price at which it may be adjudged to the highest bidder. *Borne vs. Wilson & al.*, S. R., p. 133.

2. *Droits honorifiques*, such as the use of a pew in a church, were only granted to seigniors in their quality of *hauts justiciers*, as one of the attributes of the power they held and of the jurisdiction they exercised; and by the effect of the conquest the jurisdiction which they exercised having ceased,

PEW :—

and their judicial power having become extinct, they have ceased to be entitled to those rights, and more particularly to pews in churches. *Larue & al. vs. La Fabrique de St. Pascal*, 1 L. C. R., p. 175. But although the seignior is not now entitled to the free use of a pew in church as *haut justicier*, he may claim it as patron, if he has granted the land to build the church, and if he has a title to that effect, and the possession. *The Curé and Marguilliers de la paroisse du Cap St. Ignace vs. Beaubien & al.*, 4 L. C. R., p. 321.

3. The covenant in the lease of a pew in a church, by which covenant it is agreed, that in default of payment of the rent to accrue at the period fixed by the law, such lease will immediately become null and void and of no effect, and that it will be lawful to the lessors, forthwith to take possession of the pew leased, and to proceed to re-let the same, without being bound to give any notice thereof to the lessee, is not a covenant which will be regarded as a *clause comminatoire*, but as a covenant the execution of which will be enforced. *Richard and La Fabrique de Québec*, Q. B., 5 L. C. R., p. 3.

4. The purposes for which a pew has been used, cannot be changed, without the consent, after deliberation, of the members of the *Fabrique*; and the meeting to authorize the *Fabrique* to take steps to recover a pew illegally sold or granted, can be presided over by the *Curé*. *Reid and La Fabrique de Chateauguay*, Q. B., 6 L. C. R., p. 290.

" :—*Vide* COMPLAINTE.

PILOTAGE :—*Vide* PRIVILEGE.

PILOT :—1. His lien on ship. *The Premier*, V. A. C., 6 L. C. R., p. 493.

2. A pilot in charge of a vessel is entitled to remuneration from the owner, in addition to the usual pilotage, for loss of time, and for services rendered in saving some of the spars and rigging of such vessel, carried away owing to the defective quality of the materials used. And where owner of such vessel obtains indirectly the amount of such pilot's claim from the underwriters, the pilot will recover from the owner in an action for "work and labor and loss of time," although there be no count in the declaration for money had and received. *Russell vs. Parke*, 8 L. C. R., p. 229.

3. A pilot is a mariner, and as such may sue for his pilotage in the Vice-Admiralty Court; (see 2 Will. 4, c. 51.) p. 4, S. V. A. R.

4. A pilot who has the steering of a ship is liable to an action for an injury done by his personal misconduct, although a superior officer be on board. *The Sophia*, p. 96. S. V. A. R.

Damages occasioned to the ship by the misconduct of the pilot may be set off against his claim for pilotage. *Ib.*

5. In cases of pilotage, where there has been a previous judgment of the Trinity House upon the same cause of demand, the Court has no jurisdiction. *The Phœbe*, p. 59, S. V. A. R.

PILOT :—

6. Persons acting as pilots are not to be remunerated as salvors. *The Adventure*, p. 101, S. V. A. R.

Pilots may become entitled to extra pilotage, in the nature of salvage, for extraordinary services rendered by them. *Ib.*

The jurisdiction of the Court is not ousted in relation to claims of this nature by the Provisional Stat. 45 Geo. 3, c. 12, s. 12. *Ib.*

7. Owners of vessels are not exempt from their legal responsibility, though their vessel was under the care and management of a pilot. *The Cumberland*, p. 75, S. V. A. R.

8. Exclusive duty of pilot in charge is to direct the time and manner of bringing a vessel to anchor. *The Lord John Russell*, p. 190, S. V. A. R.

Pilot having control of ship, not a competent witness for such ship without a release. *Ib.*

Ship held liable for collision notwithstanding there being a pilot on board. *Ib.*

9. Having a pilot on board, and acting in conformity with his directions, does not discharge responsibility of owner. *The Creole*, note, p. 199, S. V. A. R.

10. A pension granted to decayed pilots, and to the widows and children of pilots, upon the funds established by the 45th Geo. III, c. 12, sec. 11, cannot be seized. *Lelièvre & al. vs. Baillargeon*, 3 L. C. R., p. 420.

PILOT ACTS :—The English cases by which the owners are exempted from responsibility where the fault is solely and exclusively that of the pilot, not shared in by the master or crew, are based upon the special provision of the English Pilotage Acts. *The Cumberland*, in note, p. 81, S. V. A. R.

Construction of the Lower Canada Pilot Act, (45 Geo. 3, c. 12.) *Ib.*

Construction of the Liverpool Pilot Act. *Ib.*

Construction of the Pennsylvania Pilot Act, p. 179. *Ib.*

The provisions of the General Pilot Act of England, (6 Geo. 5, c. 125,) p. 82. *Ib.*

The whole of this Act is repealed by "The Merchant Shipping Repeal Act, 1854," (17 and 18 Vic. c. 100.)

Limitation of the liability of owners where pilotage is compulsory, re-enacted by the "Merchant Shipping Act, 1854," (17 and 18 Vic. c 104, s. 388.) Applies to the United Kingdom only, p. 338. *Ib.*

PLEADING AND PRACTICE:—1. The signification given under the 3 Wm. IV, c. 1, commonly called the Lessor and Lessees Act, should be given by the Sheriff of the district and not by a Bailiff. The writ may be in English. The Judicature Act 7 Vic. c. 16, has in no way modified this exceptional procedure. *Defoy vs. Hart*, 1 Rev. de Lég. p. 381. *Guay vs. Lefebvre, ib.* p. 384. *Murphy vs. McGill, ib.* 385. *Marceux vs. Bitner, ib. Glackmeyer vs. Day, ib.* p. 386. *Plamondon vs. Farquhar, ib.* p. 387.*

2. The Court of Q. B. has jurisdiction in hypothecary actions under £10 sterling, notwithstanding the 4 Vic. c. 20.

* The Lessor and Lessees Act now in force is Cap. 48, C. S. L. C.

PLEADING AND PRACTICE:—

Delery and Lemieux, 3 Rev. de Lég., p. 402. But District Courts established by 4 and 5 Vic. c. 20, (repealed,) had not jurisdiction in hypothecary actions. *Talon vs. Cloutier*, 3 Rev. de Lég., p. 405.

3. Under the 88 and 87 sections of the Statute of the 12 Vic. c. 38, sec. 87, [C. S. L. C., cap. 83, sec. 78,] it is sufficient in any pleading to allege the facts upon which the party means to rely in plain and concise language, to the intrepretation of which the rules of construction applicable to such language in the ordinary transactions of life may apply, and no special form of words is necessary to express the same. *Halero and Delesderniers*, Q. B., 2 L. C. R., p. 325.

" :—Action.—1. A negatory action is a proper remedy for a party to take to have his lands declared free from municipal rates illegally imposed and to oblige councils to desist from the sale of his lands seized for such illegal rates. *McDougall and the Corporation of the Parish of St. Ephrem d'Upton*, Q. B., 5 L. C. J., p. 229.

2. In a petitory action claiming land under deed of the 21st January, 1856, defendant pleaded that he was in possession for more than ten years previous thereto. By special answer the plaintiff set up anterior titles. It was held in the Queen's Bench, that the parties must be put out of Court each paying his own costs.—1st. Because plaintiff had not proved the title set up in his declaration.—2nd. Because defendant's plea set up no adverse title.—3rd. Because the issue between the parties was irregular, and they ought not to have been permitted to go to evidence upon it. *Osgoud and Kellam*, Q. B., 10 L. C. R., p. 22. And where a title has not been pleaded it cannot be produced at *enquête*, as a part of a chain of titles. *Gibson and Wear*, Q. B., 6 L. C. J., p. 78. And 12 L. C. R., p. 98.

3. The heir may proceed by the petitory action for the recovery of immovable property appertaining to the estate of his father and mother, even though such immovable property should be in the possession of a third party claiming an undivided portion of the same, *à titre de douaire*, and it is not necessary that the heir should proceed by the action *en partage*. *Cannon vs. O'Neil et al.*, S. C., 1 L. C. R., p. 160.

4. A plaintiff who has brought his action to oblige defendant to make an inventory, and to whom defendant makes answer that he has made one, cannot in the same action proceed to *debattre* such inventory. *Bates vs. Foley*, L. R., p. 108.

5. By one and the same action a plaintiff may claim damages for slander and for personal wrongs. *Paquet and Globenski*, Q. B., 6 L. C. R., p. 185.

6. In an action of damages, acts committed by a person in his private capacity cannot be joined to others committed in his capacity of Justice of the Peace. *O'Neil and Atwater*, Q. B., 9 L. C. R., p. 442.

7. Where a statute limits the time of bringing an action against a custom-house officer to three months, the Court will allow a plaintiff, who has omitted an essential allegation in

his declaration, to amend after three months have expired on payment of costs. *Bressler vs. Bell*, S. C., 4 L. C. R., p. 101.

8. In an information at the suit of the Crown, for goods seized at the Custom House, the allegation that the goods sought to be forfeited, had been seized as having been imported into the Province without the duties being paid, &c., is insufficient,—there must be a substantive allegation that they were imported, and brought in, in violation of the Custom House regulations. And the omission of the words "against the form of the statute." is fatal. *The Solicitor General vs. Two casks of Planes and Darling*, S. C., 2 L. C. R., p. 20.

9. In an action of damages for assault and battery, words in the declaration charging the defendant with a design to do grevious bodily harm to the plaintiff, do not necessarily constitute an accusation of felony. And even in case of the assault charged amounting to a felony, the plaintiff may proceed in an action for damages without being first compelled to prosecute criminally for the assault of which he complains. *Lamothe and Chevalier et al.*, Q. B., 4 L. C. R., p 160.

10. An action of damages against several, charged with breach of contract to convey a raft, cannot be dismissed on a *défense au fonds en droit*, although by the conclusions it is prayed that the defendants may be condemned jointly and severally. *Ranger vs. Chevalier et al.*, S. C., 5 L. C. R., p. 180.

11. In an action by a Railway Company against a stockholder for calls, it is sufficient for such company to state in the caption of the declaration that it is a body politic and corporate, without a specific allegation to that effect. *The Saint Lawrence and Ottawa Railroad Company vs. Frothingham et al.*, S. C., 5 L. C. R., p. 140.

12. In an action by a shareholder in the Grand Trunk Railway Company, against the Company for refusing to register a transfer of his shares, the allegations that the transferees had offered to surrender such transfer to the company and had demanded that the company should transfer the shares on their books, are insufficient to meet the requirements of the company's charter. *Webster vs. The Grand Trunk Railway Company of Canada*, S. C., 2 L. C. J., p. 291. Reversed in appeal 3 L. C. J., p. 148.

13. In an action on a Policy of Insurance, in which there is a misdescription made by the agent of the insurers, it is not necessary in the declaration to set up the right description or the error alluded to. *Somers vs. The Athenæum Insurance Society*, S. C., 3 L. C. J., p. 67.

14. An action against a husband and wife merely setting up a debt due by the wife previous to her marriage, and the fact of the subsequent marriage, will be dismissed upon the wife pleading that she was sued as *commune en biens*, whilst in reality she was *séparée de biens* by marriage contract produced. *Gagnier vs. Grevier et al.*, S. C., 6 L. C. R., p. 485. Also, *Wheeler et al., vs. Burkitt et al.*, S. C., 4 L. C. J., p. 309.

PLEADING AND PRACTICE :—

15. In an action to compel the defendant to send back the plaintiff's wife alleged to have been enticed away and harboured by the defendant, her brother, it is no defence to set up the bad treatment, personal violence and threats to his wife after action brought, or a general allegation that the wife was obliged by the *sévices* of the plaintiff, to take refuge with her brother. *Caissé vs. Hervieux*, S. C., 6 L. C. R., p. 73.

16. In an action for infringement of Patent for Lower Canada, the allegation of an infringement "in the county of Montreal," is sufficient indication of the place where the infringement took place. *Prowse vs. Panuelo*, S. C., 2 L. C. R., p. 311.

17. A note payable to order, for value received, may be considered as a note in writing, and it is well described in declaration as a writing obligatory or *bon*. *Hall vs. Bradbury et al*, 1 Rev. de Lég., p. 180.

18. An action against an endorser of a promissory note, payable in three months, setting up, by error, that the note was made on the 11th of July, instead of the 16th, and that it was protested on the 19th October, will be dismissed on demurrer, and the allegation that the endorser promised to pay after protest, will not cover the objection. *Hellivell vs. Mullin*, S. C., 5 L. C. J., p. 76.

19. A declaration which sets forth that "the defendants under the name of A. & Co., made their certain promissory note," it will be held good on demurrer, though it appears that the note was made by the wife doing business as A. & Co., and that the husband was there only to authorize his wife. *Adams vs. Flemings et al.*, S. C., 13 L. C. R., p. 78.

20. The conditions of an hypothecary action must demand that the land be sold in the ordinary course and not simply. *Platt et al., vs. Platt et al.*, S. C., 1 L. C. J., p. 183.

" :—Declaration.—1. It is not necessary that the declaration annexed to the writ should contain the domicile and addition of the parties. *Gugy and Donahue*, Q. B., 11 L. C. R., p. 421.

2. An agent cannot sue in his own name, even where there is an express agreement with the defendant that the action shall be so brought. *Nesbitt et al. vs. Turgeon et al.*, 2 Rev. de Lég., p. 43. But the cashier of a bank may sue in his own name to recover a sum due to the bank. *Ferrie and Thompson*, 2 Rev. de Lég. p. 303.

3. The prayer of a declaration which claims a sum in figures, will be held bad on *exception à la forme*. *Rivet vs. Poisson*, S. C., 11 L. C. R., p. 493.

4. A declaration may be amended at any time on payment of 50s. costs, without prejudice to the evidence, and with power to defendant to replead within eight days, when it results from the proof that the allegations do not correspond with the facts proved. *Boudreau vs. Lavender*, S. C., 2 L. C. J., p. 194.

5. A plaintiff on being allowed to amend his declaration, after exception *à la forme* filed, must pay the full costs of the action up to that point. *Boudreau vs. Richer*, S. C., 6

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L. C. R., p. 474. And whenever the amendment is material after issue joined, he must pay full costs. *Syme et al. vs. Howard*, S. C., 6 L. C. J., p. 311.

6. A clerical error in a declaration may be amended at the final hearing on the merits. *Hastie vs. Morland*, S. C., 2 L. C. J., p. 277.

7. And so also it was held in the Q. B., that the Court would correct a clerical error. *Bilodeau and Lefrançois*, 12 L. C. R., p. 25. But a declaration cannot be amended by reason of a fact which has occurred since the institution of the action. *Marsolais vs. Lesage*, S. C., 1 L. C. J., p. 42. Nor will amendments to a declaration be permitted so as to change the nature of the action. *Lambe and Mann et al.*, Q. B., 6 L. C. J., p. 287.

8. And by the practice of our Courts the plaintiff has always a right to plead *de novo*, to an amended declaration. *Mann et al. vs. Lambe*, S. C., 6 L. C. J., p. 301. But if the amendment be the correction of a mere clerical error which could mislead nobody, and the case be *ex parte*, the defendant will not get costs, nor will he be permitted to plead. *Frothingham vs. Gilbert*, S. C., 3 L. C. J., p. 136.*

9. A writ of summons may be amended as well as a declaration. *The Bank of British North America vs. Taylor*, S. C., 1 L. C. R., p. 399. But a variance between a writ of summons and a copy, is a nullity, which cannot be amended without the consent of the defendant; and in such case it is not necessary to inscribe *en faux* against the bailiff's return. *Thèberge vs. Pattenaude*, S. C., 2 L. C. R., p. 110. But in *Blais vs. Lampson*, it was held that the defendant not being properly summoned, the Court had no power or jurisdiction to permit the plaintiff to amend his writ. *Blais and Lampson*, S. C., 12 L. C. R., p. 23.

10. The return of the Sheriff may be amended. And where the return of the Sheriff has been so amended, as to render an opposition filed thereto useless, such opposition will be dismissed on motion, but without costs. *The Trust and Loan Company of Upper Canada vs. Doyle and Stanley*, S. C., 3 L. C. J., p. 138. And an error inadvertently made by the Sheriff may be amended. *Molson et al. and Burroughs*, Q. B., 9 L. C. R., p. 217, and 3 L. C. J., p. 220.

11. A declaration and writ of summons filed in the Prothonotary's office, without a return of service, cannot support a plea of litispendence in a suit and demand containing the same grounds and causes of action. And a party cannot complain of a judgment, dismissing, for reason of absence, a plea by him filed, when the cause was called from the rôle, after the adjudication on an incident, which caused the hearing to be suspended, when the case was called *à tour de rôle*. *Stephens et al. and Tidmarsh*, Q. B., 6 L. C. R., p. 3.

" :—Appearance.—Where the Court did not meet till 11 p. m., on the 7th day of January, 1847, the day when the writ was returnable, although the defendant was called upon and failed to appear, the Court will not allow plaintiff to enter up

* Also, *Leverson et al. vs. Cunningham*, No. 863, S. C. M.

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default and proceed as in a case by default. *The City Bank vs. Saurin*, 2 Rev. de Lég., p. 48.

" :—Preliminary Pleas.—1. All preliminary pleas must be filed within four days after the return of the action. *Cowan vs. Darling*, L. R., p. 105. And a preliminary plea filed on the fifth day, the fourth day being a Sunday, will be rejected on motion. *Brock et al. vs. Th berge*, S. C., 9 L. C. R., p. 231. And where a motion has been made to quash a writ, which motion had been taken *en délibéré*, and dismissed as not being the proper mode of proceeding, after the four days, allowed by 16 Vic., c. 19t, sec. 21, [C. S. L. C., cap. 83, sec. 12,] to file preliminary pleas, had expired, it was held that the defendant was precluded from filing an exception *à la forme* in effect setting up the same matter as the motion. *Macfarlane vs. Worrall*, 4 L. C. R., p. 97, and L. R., p. 6. But the delay for filing an exception *à la forme*, when security for costs is demanded, will run from the day when such security is given. *Smith vs. Merrill*, 5 L. C. R., p. 199. And when a rule, staying all proceedings until plaintiff have put in security for costs, has been granted, and defendant has filed a preliminary plea, plaintiff will not be allowed to proceed to a hearing on such preliminary plea, until security has been given. *Easton vs. Benson*, S. C., 5 L. C. R., p. 342. And the four days delay to file preliminary pleas, do not run in vacation. *Booth vs. The Montreal and Bytown Railway Company*, S. C., 7 L. C. J., p. 296.

2. A motion to reject an exception *à la forme* filed too late, will be granted after issue has been joined by mere lapse of time, in virtue of the 75th sect., cap. 83, C. S. L. C. *McDonald et al. vs. Gamble*, S. C., 7 L. C. J., p. 77.

3. The exception of discussion is a dilatory plea. *Noad et al., vs. Von Exeter*, S. C., 5 L. C. J., p. 102.

4. The exception of discussion ought to be decided before the pleas to the merits. *Cunningham et al., vs. Ferrie et al.*, 2 Rev. de. Lég., p. 169.

5. When a suit is pending in the Admiralty against certain goods, seized as forfeited, and an action of trespass is brought against the seizors, for the illegal seizure of the goods, the defendants may, by an *exception dilatoire*, claim a stay of proceedings in the latter case, until the former is decided. *Hartshorne et al., vs. Scott et al.*, P. R., p. 5. And there is no appeal from a judgment on an exception tending to obtain the suspension of proceedings until a decision is rendered in another cause between the same parties, on similar matters. *Vide* Vo. APPEAL.

6. When an exception *déclinatoire* has been filed requiring proof to support it, and plaintiff, instead of inscribing for *enquête*, inscribed for hearing on the merits of his exception, the exception will be dismissed for want of proof. *Elliott vs. Bastien et al.*, S. C., 2 L. C. J., p. 202.

7. The inscription for hearing on the merits of an *exception déclinatoire*, is regular where there is no answer or replication, the issue being complete without it. *Richard vs. The Champlain and St. Lawrence Railroad*, S. C., 6 L. C. R., p. 480.

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8. In the case of *Jacques vs. Roy et ux*, 2 Rev. de Lég., p. 38, it was held that the copy of an *exception à la forme* should be certified as a "true copy." But in the case of *Dubord vs. Germain*, 2 Rev. de Lég., p. 40, it was held that such certificate was not necessary.

9. According to a fair interpretation of the 25th section of the 12 Vic. c. 38, [Con. St. L. C., cap. 83, sec. 13,] all pleas as well those to the form, as to the merits, should be filed at one and the same time, within the delay specified in that section of the statute. *The British Fire and Life Assurance Company and McCuaig & al.*, Q. B., 1 L. C. R., p. 157. But notwithstanding this case, in *Dubé vs. Proulx and Paquin & al.*, 1 L. C. R., p. 364, the S. C. held that under the 25th section of the 12 Vic. c. 38, [Con. St. L. C., cap. 83, sec. 13,] an *exception à la forme* and an exception of payment cannot be joined and pleaded together at one and the same time.*

10. An affidavit in support of a motion for delay to plead, which sets forth that defendant must search for papers in several registry offices and that such search will occupy him six months, to the best of his belief, and that without such delay he will be unable to prepare his defence in a proper manner, will be sufficient. *Bell & al. vs. Knowlton & al.*, S. C., 13 L. C. R., p. 232.

11. When a preliminary plea has been filed and the plaintiff has demanded a plea to the merits, under the 72nd section of the 20th Vic. c. 44, [Con. Sts. L. C., c. 83, sec. 73,] the plaintiff may foreclose the defendant after the eighth day from such demand, without serving the demand of plea required by the 25th section of the 12 Vic. c. 38, [Con. St. L. C., c. 83, sec. 13.] *McGill vs. Wells*, S. C., 2 L. C. J., p. 290.

12. An *exception à la forme* filed on the grounds that in the copy of the writ served on the defendant, one of the plaintiffs was styled "Rickard" instead of "Ricard," will be dismissed on motion. *Latour & al. vs. Masson*,* S. C., 6 L. C. R., p. 483.

13. An *exception à la forme* in which it is alleged that the contents of a paper-writing, purporting to be a copy of a declaration, are different from the contents of the original declaration and are disconnected, absurd, and unintelligible, is sufficient. *Doutre vs. The Montreal and Bytown Railway Company*, S. C., 5 L. C. R., p. 98.

14. An exception to the effect that there are other heirs must contain the names and place of residence of such heirs, and state that they are alive. *Pagé vs. Carpentier*, 3 Rev de Lég., p. 395.

15. On the hearing of the merits of an *exception à la forme*, it was held that it was not necessary to sue out two original writs addressed to the bailiffs of different districts when it was known in which of two districts the defendants were, and that a writ addressed to "any of the bailiffs of the

* In another case of *Porter vs. Ferrier*, decided in the Superior Court, on the 30th June, 1852, reported in the Montreal *Gazette*, on a motion by plaintiff to reject an *exception à la forme* which the defendant had filed conjointly with pleas to the merits, it was held that pleading to the merits was a waiver of objection to form. The Court further intimated that this opinion had been frequently expressed and that there was a decision to the same effect in the L. C. R. And the motion to reject exception was therefore granted.

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Superior Court for the district of Montreal or Richelieu," is regular. *Guevremont vs. Lamère, fils, & al.*, S. C., 5 L. C. J., p. 253.

16. Where defendant, a married woman, is described as being separated from her husband as to property, it is not necessary to attack the declaration on *exception à la forme*, it may be denied as a fact on the merits, and the plaintiff will be required to prove such allegation, if material, either by producing an antenuptial contract or a copy of a judgment of *séparation de biens*. *Wheeler & al. vs. Burkitt & al.*, S. C., 4 L. C. J., p. 309. Also, *Gagnier vs. Crevier & al.*, S. C., 6 L. C. R., p. 485.

17. The mode of raising an objection as to the sufficiency of the corporate capacity of a company, is by an *exception à la forme*, and not by a *défense au fonds en droit*. *The Saint Lawrence and Ottawa Grand Junction Railroad Company vs. Frothingham & al.*, S. C., 5 L. C. R., p. 140.

18. Any irregularity in an affidavit to attach property or to obtain a *capias ad respondendum*, cannot be taken advantage of by an *exception à la forme*. *Barney vs. Harris*, S. R., p. 52.

19. Misdescription of the land sought to be recovered by a petitory action, should be taken advantage of by an *exception à la forme*. *The Royal Institution vs. Desrivières*, S. R., p. 224, in note.

20. Misnomer cannot be pleaded by *exception à la forme*. *Jones vs. McNally*, S. R., p. 56.

21. An *exception à la forme* cannot be pleaded by parties not styling themselves defendants, and an exception so pleaded will be rejected on motion. *Grinton vs. The Montreal Ocean Steamship Company*, S. C., 1 L. C. J., p. 84.

22. The merits of an *exception à la forme* cannot be tried by motion. *Clarke & al. vs. Clarke & ux.*, S. C., 1 L. C. J., p. 99. And the plaintiff may plead new facts by way of estoppel to such exception, and the sufficiency of such new facts cannot be tried by motion. *The Beacon Fire and Life Assurance Company of London vs. Whyddon*, S. C., 1 L. C. J., p. 178.

23. An *exception à la forme* by which it is alleged that defendant is described in the writ of "St. Hyacinthe" simply, whereas he in fact lives in the parish of "St. Hyacinthe le Confesseur," and that there are three distinct places or localities in the district of Montreal, known respectively as the town of St. Hyacinthe, the parish of St. Hyacinthe and the parish of St. Hyacinthe le Confesseur, was held bad in law. *Lyman & al. vs. Chamard*, 1 L. C. J., p. 183. And an *exception à la forme* by which it is alleged that defendant is described as of "the township of Orford," whereas he in fact lived in the town of Sherbrooke, will not be maintained, when it is proved that the part of Sherbrooke in which defendant resides is really within the limits of the township of Orford. *Morse and Brooks & al.*, Q. B., 2 L. C. J., p. 39. Nor will an *exception à la forme* be maintained by which it is alleged that defendant is described as of St. Jean Baptiste,

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when in fact he resided at St. Jean Baptiste de Rouville. *Gigon vs. Hotte*, S. C., 2 L. C. J., p. 193, and 8 L. C. R., p. 271.

24. When parties are impleaded as defendants *en garantie*, under the designation of "contractors and manufacturers and copartners" with the plaintiffs *en garantie*, they may plead by preliminary exception, that they are not such contractors, &c., and by the same exception attack the correctness of the names and designations assumed by the plaintiffs *en garantie*, and on proof of the allegations of such exception they will be entitled to the dismissal of the action *en garantie*. *Edmonstone & al. vs. Childs & al., and Childs & al.*, plaintiffs *en garantie, vs. Chapman & al.*, defendants *en garantie*, S. C., 1 L. C. J., p. 249. Confirmed in appeal, December Term 1857, the Court being equally divided.

25. The quality of *menuisier* is not irreconcilable with that of *entrepreneur*. *Boucher and Lemoine & al.*, Q. B., 10 L. C. R., p. 456.

26. An *exception à la forme* which contains erasures and marginal notes, unreferred to at the bottom of the plea, is nevertheless good. *Blackiston vs. Rosa*, 10 L. C. R., p. 399.

" :—Pleas to the merits, *Demurrer*.—1. A *défense au fonds en droit* is a plea to the merits and entitles plaintiff to have his costs as in a contested case. *Normand vs. Huot dit St. Laurent*, S. C., 9 L. C. R., p. 405.

2. The plea of a *défense au fonds en droit* is not a preliminary plea, within the meaning of the 16 Vic. c. 194, sec. 21, [C. Sts. L. C., c. 83, sec. 12,] and need not therefore be filed within the delay of the four days fixed by that statute. *Benson vs. Ryan*, S. C., 4 L. C. R., p. 156. Also, *Perrault vs. Mado*, 11 L. C. R., p. 81.

3. The allegation that plaintiff has suffered damages, in consequence of the protest of a bill, drawn upon defendant, is sufficient to support his action on demurrer. *Henry vs. Mitchell*, S. C., 5 L. C. R., p. 489.

4. A *défense en droit* to an action for a specific sum, as the proceeds of a *communauté* between plaintiff and his late wife was held to be good,—the action should have been *en partage*. *Dupuis vs. Dupuis*, S. C., 6 L. C. R., p. 475.

" :—*Exceptions au fonds* and general issue.—1. Pleas to the action must be filed at the same time with the *défense en droit*. And the Court will not enlarge the delay to plead until a demurrer filed to a declaration has been disposed of. *Pirrie vs. McHugh & al.*, S. C., 1 L. C. R., p. 216.

2. A plea denying fraud and *déconfiture* is a plea to the merits. *Leming vs. Robertson*, S. C., 11 L. C. R., p. 492.

3. The plea of a general issue is incompatible with a plea of peremptory exception admitting the making of a promissory note, or the sale and delivery of goods, and alleging payment of the same. The allegations of such an exception are necessarily divisible, otherwise no issue can be raised upon it. *McLean vs. McCormick*, S. C., 1 L. C. R., 369. And in the case of *Casey vs. Villeneuve*, S. C., 1 L. C. J., p. 487, it was held, that the plea of general issue is waived when it is filed with a plea of payment or of compensation. But

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in *Clarke and Johnston*, Q. B., 3 L. C. R., p. 421, it was held that an affirmative plea, such as a plea of sett-off, might be filed together with the general issue. And in the case of *Sarault vs. Ellice*, S. C., 3 L. C. J., p. 137, it was held that the exception of payment and the *défense au fonds en fait*, may be pleaded, together and they are not incompatible or contradictory.

4. Under the 12 Vic. c. 38, sec. 85, [Con. St. L. C. cap. 83, sec. 76,] it is necessary in a *défense au fonds en fait*, expressly to deny every fact alleged in the plaintiff's declaration otherwise such facts will be held to be admitted. *Copps and Copps*, Q. B., 2 L. C. R., p. 105.

5. In an action for false imprisonment, the admission by defendant in one of his pleas that he had caused the arrest of plaintiff, is sufficient evidence of the fact, although defendant has also pleaded the general issue. *Monty vs. Ruiter*, S. C., 5 L. C. J., p. 50.

6. The admission contained in a plea cannot be divided. *Holland and Wilson & al.*, Q. B., 1 L. C. R., p. 60; also *Lefebvre dit Villeneuve vs. DeMontigny*, S. C., 9 L. C. R., p. 233.

7. Several defendants cannot appear together and plead separately. *Stephens & al. vs. Watson & al.*, L. R., p. 82; also *Boswell vs. Lloyd*, S. C., 13 L. C. R., p. 476.

8. A plea by way of exception will not be rejected because it is argumentative, or because facts are set forth in it which could have been given in evidence under the general issue. *Gugy and Ferguson*, Q. B., 11 L. C. R., p. 409.

And a plea in the nature of a justification, in an action for slander, which does not confess the words justified, is good. *Ib.*

9. A plea or exception, which joins law and fact together, will be rejected on motion. *Addison vs. Bergeron & al.*, S. C., 1 L. C. J., p. 196.

10. A hypothetical plea will be rejected on demurrer. *The Montreal Assurance Company and McGillivray*, Q. B., 2 L. C. J., p. 221.

11. Pleas which answer only part of an action and conclude for dismissal of the whole are bad. *McDougal vs. Morgan* L. R., p. 8; also *Boston vs. L'Eriger dit Laplante*, S. C., 4 L. C. R., p. 404.

12. A defendant cannot be allowed to plead specially that which is no more then the general issue. Payment and tender must be pleaded by way of perpetual exception *peremptoire en droit*. *Forbes & al. vs. Atkinson*, P. R., p. 40.

13. A plea to an action of damages for slander, which repeats, and at the same time offers, to retract the slanderous words complained of, is bad in law. *Noel vs. Chabot*, S. C., 8 L. C. R., p. 211.

14. A plea of payment, alleged to have been made at different times without stating when, will be held bad on demurrer. *Les Dames Religieuses de Québec vs. Perry*, S. C., 10 L. C. R., p. 194.

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15. Money paid by the defendant on account, during the pendency of the action should be alleged by plea and not by intervention. *Lyman & al. vs. Perkins and Perkins*, S. C., 2 L. C. R., p. 304.

16. The part of a plea, in an action *en déclaration de paternité*, and for damages, which concludes for trial by jury, will be struck out on motion. *Clarke vs. McGrath*, S. C., 1 L. C. J., p. 5.

17. A plea of temporary exception *peremptoire en droit*, to an action for the recovery of the price of sale, setting forth the existence of a mortgage on the property sold, and the filing of an exception to letters of ratification is a good plea. *O'Sullivan vs. Murphy*, S. C., 7 L. C. R., p. 424.

18. A party may plead the nullity of a deed produced against him, and no direct action nor incidental demand is required for that purpose. *Halero and Delesderniers*, Q. B., 2 L. C. R., p. 325.

19. A plea of perpetual exception by which it is alleged that the sum claimed by the plaintiff is sett-off by a sum claimed by the defendant for damages, suffered by him in consequence of the negligence and carelessness of the plaintiff, in doing certain work and labor by the plaintiff, and for the value of which he claims by his action, is a good plea, and it is not necessary in such a case that damages should be claimed by an incidental cross-demand. *Beaulieu vs. Lee*, S. C., 6 L. C. R., p. 33.

20. A plea of former recovery for the same offence to a penal action, which does not set out that the first action had been instituted before the second, is bad, and is no bar to the action; and such plea will be held bad on demurrer. No matter of defense arising after action brought can properly be pleaded in bar of the action generally, but should be pleaded in bar of further continuance of the action. One action not going on to judgment is no bar to another action for the same offence. *Mountain vs. Dumas*, S. C., 7 L. C. R., p. 430.

21. A declaration and writ of summons filed in the Prothonotary's office, without a return of service, cannot support a plea of litispendence in a suit and demand containing the same grounds and causes of action. And a party cannot complain of a judgment, dismissing, for reason of absence, a plea by him filed, when the cause was called from the role, after the adjudication on an incident, which caused the hearing to be suspended, when the case was called *à tour de rôle*. *Stephens et al. and Tidmarsh*, Q. B., 6 L. C. R., p. 3.

22. Litispendence in a foreign state is no bar to an action instigated in this Province. *Russel et al. vs. Field*, S. R., p. 558.

23. A shareholder of a chartered joint-stock company, to an action brought by such company, may plead a non-compliance with its Act of Incorporation, and that by reason of such non-compliance the company has no legal existence. *The Quebec and Richmond Railroad Company vs. Dawson*, S. C., 1 L. C. R., p. 366.

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24. If a debt which originated in England be tainted with usury, the law of England in relation to this matter ought to be stated in the plea, *Hart & al. and Philipps*, Q. B., 1 L. C. R., p. 90.

25. The affidavit "that all the facts articulated and set forth in the foregoing pleas are, and each of them is true and well founded," is not sufficient to support pleas to an action on a promissory note by which defendant denies having endorsed such note, such affidavit not being in accordance with the requirements of the 20 Vic. c. 44, sec. 87, [Con. St. L. C., cap. 83, sec. 86.] And the defendant will not be allowed to have the *délibéré* discharged in order to file the necessary affidavit. *Dow vs. Browne*, S. C., 10 L. C. R., p. 442.

" :—Answer and Replications.—1. An objection to the legality of an exception or plea cannot be raised but by a *réponse en droit*, containing the grounds to be urged against such exception or plea. *Tradelle vs. Allard*, S. C., 2 L. C. R., p. 178.

2. An exception to matter pleaded by exception may be filed even under the Ordinance 25 Geo. III, c. 2, sec. 13, [Con. St. L. C., cap. 83, sec. 72.] *Paquet vs. Gaspard*, and *Forbes vs. Atkinson*, S. R., pp. 106-116.

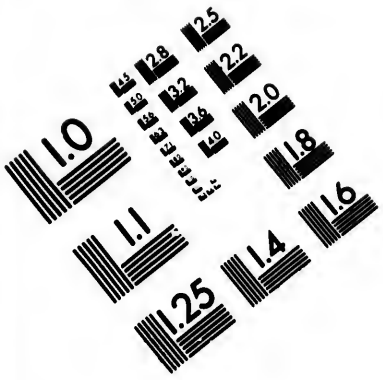
3. A special answer setting out new matter, which ought originally to have been alleged in the declaration, will be rejected on motion and so will a portion of a special answer setting out such new matter be struck out on motion. *McGoey vs. Griffin*, S. C., 1 L. C. J., p. 39. But in an action on a policy of insurance, it may be set up in a special answer to a plea, alleging a misdescription, that such misdescription was due to the agent of the insurers, and such new matter is no departure. *Somers vs. Athenæum Insurance Society*, S. C., 3 L. C. J., p. 67.

4. Where a special answer sets up new matter in contradiction to the declaration the action will be dismissed. *Gault & al. vs. Coté*, S. C., 12 L. C. R., p. 92.

5. And a plaintiff cannot by a special answer to a plea, founded upon a deed to which he was a party and which deed would defeat his action, set up grounds of nullity against such deed and ask the rescision thereof, and that the nullity of such deed should be asked by the declaration. *Martin & vir. vs. Martin*, S. C., 7 L. C. J., p. 293. Also *Brossard vs. Murphy*, S. C., L. R., p. 29.

6. A special replication cannot be filed by a defendant to the special answer of plaintiff. *Morison vs. Kierzkowski*, S. C., 4 L. C. R., p. 419. But in appeal it was held that a special replication may be pleaded to an answer containing facts not stated in the declaration, and this without first obtaining leave from the Court to file the same. *Kierzkowski and Morison*, Q. B., 6 L. C. R., p. 159; also *The Attorney General, pro Reg., vs. Belleau*, S. C., 12 L. C. R., p. 151.

7. A special replication cannot be pleaded to a special answer where the said special matter in the replication could have been included in the plea, and the matter so



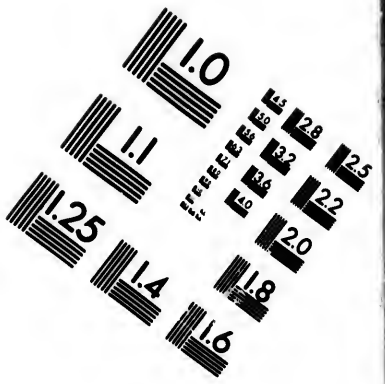
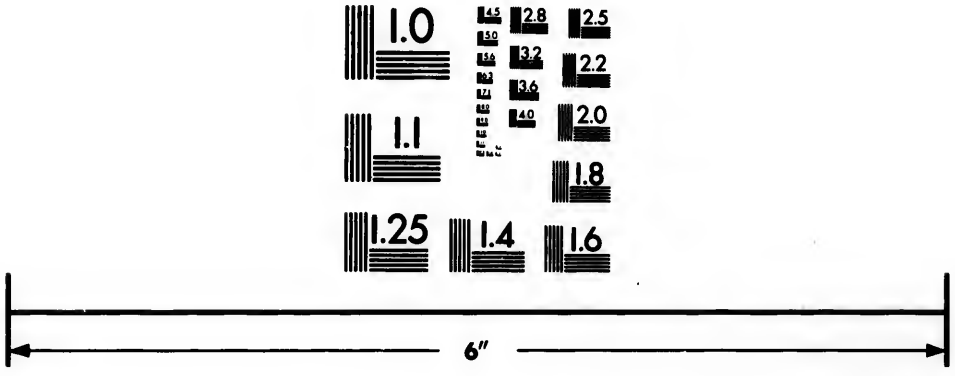
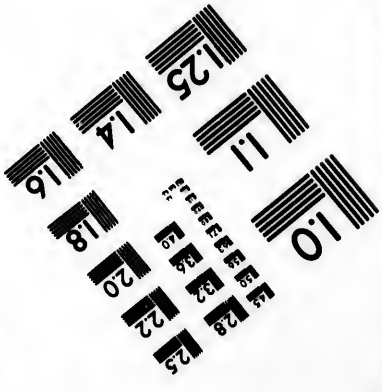


IMAGE EVALUATION TEST TARGET (MT-3)





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irregularly pleaded in replication will be struck out on motion. *Torrance vs. Chapman & al.*, S. C., 5 L. C. J., p. 75.

8. A replication is unneccessary under the Ordinance of 1785. *Boudreau vs. Gascon*, L. R., p. 106. But there must be a replication to a general answer or a regular foreclosure to file such pleading. *Tidmarsh vs. Stephens & al.*, S. C., L. R., p. 65. But the necessity of a replication to the plaintiff's general answer is waived by consent of defendant to subsequent proceedings. *Greenshields & al. vs. Gauthier*, S. C., 2 L. C. J., p. 288; and *Genier vs. Charlebois*, S. C., L. R., p. 1.

9. The general answer to an exception puts the defendant on the proof of the allegations of such plea. *St. John vs. Delisle & al.*, S. C., 2 L. C. R., p. 150.

10. One general answer cannot be pleaded to four separate exceptions. *Bradford vs. Henderson*, S. C., 6 L. C. R., p. 488.

" :—Foreclosure.—1. In the Circuit Court a defendant can foreclose a plaintiff who neglects or refuses to file, within the delay allowed by the Statute, answers to the defendant's pleas, after demand thereof duly made; that thereupon the defendant can inscribe the cause on the *rôle d'enquête*, and when one of the pleas is a *défense au fonds en fait*, he may declare he has no witnesses to examine, and he can then inscribe the case on the *rôle d'enquête*, and the case will be dismissed for want of proof. *Meade vs. Battle*, C. C., 5 L. C. R., p. 58.

2. There must be a judge on the bench when a party is foreclosed at *enquête*. *Lisotte vs. Bulmer*, S. C., L. R., p. 107.

3. A plea filed after foreclosure and before any other proceeding had been taken by plaintiff ought not to be rejected on motion to that effect. *Ostell vs. O'Brien*, S. C., 4 L. C. J., p. 122. And pleas filed by a defendant half an hour after foreclosure from pleading entered by the prothonotary, will not be rejected on motion to that effect made by the plaintiff, though the latter support his motion by an affidavit that the defendant has no defence to his action, and that the pleas are sham pleas, and though the defendant do not resist the motion by counter affidavit to the effect that his pleas are filed *bonâ fide*. *Molson & al. vs. Reuter & al.*, S. C., 4 L. C. J., p. 299.

4. A foreclosure stating that the defendant forecloses the defendant, &c. is null. A party cannot proceed *ex parte* until a valid foreclosure of the defendant has taken place; and that can only be upon application in writing for *acte* of foreclosure, and the granting and recording of such *acte* by the prothonotary. And a judgment entered up by the prothonotary will be set aside on motion, if the proceedings necessary to give that officer jurisdiction have not been legally taken. *Beaufield et al. vs. Wheeler*, S. C., 5 L. C. J., p. 21.*

5. An application by defendants to enlarge the delay to plead, presented after *acte* of foreclosure granted, cannot be

* It would seem that the motion was made within the 15 days; but if the Prothonotary had not jurisdiction, as the Court held without qualification, the motion might be made at any time before any actual acquiescence.

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entertained by a judge while the foreclosure subsists. And the notice of such application, served on the plaintiffs, before the expiration of the delay to plead, does not suspend the plaintiff's right to obtain such foreclosure. *Miller et al. vs. McDonald & al.*, S. C., 8 L. C. R., p. 303.

6. Where a party has been foreclosed and moves to be allowed to plead, and that there are contradictory affidavits as to the circumstances attending the foreclosure, the motion will not be granted. *Galarneau & al., vs. Robitaille*, S. C., L. R., p. 108.

" :—Articulation of Facts.—1. A general articulation of facts will be rejected from the record as contrary to the law, which requires such articulation to be clear and distinct. *The Molsons' Bank vs. Falkner & al., and Falkner & al.*, opposants, S. C., 6 L. C. J., p. 120.

2. An articulation of facts which contains matter not to be found in the pleadings, or matters admitted by the pleading, is nevertheless good. *Rouleau vs. Bacquet*, S. C., 8 L. C. R., p. 154.

3. Where a party in a cause has failed to answer the articulation of facts filed by his adversary, the facts articulated will be taken as admitted. *Owens vs. Dubuc and Campbell*, S. C., 6 L. C. J., p. 121 ; and 12 L. C. R., p. 399.

4. And a plaintiff having made default to answer an articulation of facts filed by a defendant in support of a plea of compensation, such articulation will be taken as admitted under 20 Vic., c. 44, sec. 74. *Archambault and Archambault*, Q. B., 4 L. C. J., p. 284. Also, 10 L. C. R., p. 422.

5. But a party will be allowed to file an answer to an articulation of facts, even after the final hearing of the cause, on payment of costs, on affidavit that such answers had not been produced through an oversight. *Boswell vs. Lloyd*, S. C., 13 L. C. R., p. 121.

6. The default of either party to a suit to produce an articulation of facts, has not the effect of preventing the case from being proceeded with and heard. *Bélanger and Mogé*, Q. B., 6 L. C. J , p. 61.

" :—Inscriptions.—1. Before a party can inscribe on the *rôle de droit* for hearing on law upon a demurrer to a plea, he must join issue upon such demurrer by the usual joinder in demurrer. *Tremblay vs. Tremblay*, S. C., 4 L. C. R., p. 175.

2. An inscription for hearing on the merits of a plea of prescription, alone or separately from the other pleadings, is irregular. *Mangeau vs. Turenne & al.*, S. C., 6 L. C. R., p. 475.

3. An inscription for proof and hearing on the merits of an exception of prescription and sale of litigious rights, is irregular, it being a partial inscription, if made without leave of the court. *Lionnais and Guyon*, Q. B., 11 L. C. R., p. 73.

4. The notice of inscription for *enquête* and merits together must in all cases be of eight days. *Shuter vs. Guyon dit Lemoine*, 5 L. C. J., p. 43.

5. Notice of inscription for *enquête* and hearing to be given to a party foreclosed under the 12 Vic., c. 38, sec. 25,

PLEADING AND PRACTICE :—

[C. St. L. C., cap. 83, sect. 13, ss. 2, and sect. 180, ss. 2,] must specify the particular day on which the *enquête* and hearing will respectively take place. *Smith & al. vs. O'Farrell*, S. C., 9 L. C. R., p. 392.

Vide also *Whitney vs. Badeaux and Dutrisac & al.*, S. C. M., 5 L. C. J., p. 128.

6. An inscription on the *rôle d'enquête* will be discharged if there be no joinder in issue. *The Bank of B. N. America vs. Taylor*, S. C., L. R., p. 58. Also *Tidmarsh vs. Stephens*, No. 2627, S. C., Montreal. *Ib. Contra. Tate & al. vs. Torrance, ib.*, p. 57.

" :—*Vide Patterson vs. Hart*, S. R., p. 52 in note. Also *Supra* PLEADING AND PRACTICE, Preliminary Pleas, No. 18.

" :—Interventions.—1. An intervening party is entitled to plead to the merits of the action in order to the conservation of his rights. *Beaudry vs. Laflamme and Danis*, 3 L. C. J., p. 253.

2. When an intervention filed under the 92nd section of the Judicature Act, 12 Vic. c. 38, [C. Sts. L. C., c. 83, sect. 71,] does not disclose on its face any interest or right in the intervening party, the Court will dismiss it from the record on motion. And a case inscribed for hearing on the merits when such an intervention as the above is filed and disposed of, a new inscription will not be required. *Seymour vs. St. Julien and St. Julien*, S. C., 2 L. C. R., p. 321.

" :—Oppositions.—1. In the case of *Romain vs. Dugal and Jobin*, S. C., 8 L. C. R., p. 209, the immoveable property seized was claimed by the opposant or proprietor in virtue of the will of her deceased husband. The plaintiff pleaded that subsequently to the will, the testator and opposant, by him duly authorized, had made donation of the property seized on the defendant. The opposant replied specially that the deed of donation was, subsequently, and before the death of her late husband, resiliated by consent of all parties thereto. And it was held that such special answer was not demurrable on the ground that it invoked a different title from that alleged in the opposition; that the special answer did not invoke the res liation as a title, but that in consequence of it her title had revived.

2. A contestation raised between two opposants forms a distinct issue *quo ad* such parties, and all documentary evidence relative to the issues raised by the contestation, must be filed by such opposants, and it is not sufficient that the same evidence is already filed by other parties to the record. *Kelly vs. Fraser*, S. C., 2 L. C. R., p. 368.

3. Under the 22 Vic. c. 5, sect. 14, [C. Sts. L. C., c. 83, sect. 117,] and 23 Vic. c. 57, sect. 46, [C. Sts. L. C., c. 83, sect. 116,] the opposition to a judgment rendered in vacation need not be accompanied with a deposit of the advocates fees. It is sufficient to deposit the costs incurred from the return of the action exclusively, up to judgment. And the opposant is not obliged to furnish plaintiff with a copy of the affidavit. *Gauthier vs. Marchand*, S. C., 5 L. C. J., p. 101.

4. The contestation by opposant of opposition of another opposant, will not be dismissed on demurrer, although con-

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testation does not set forth any claim or privilege on the part of the contestant. *Walker & al. vs. Ferns*, S. C., 12 L. C. R., p. 406.

5. Any opposant may force an *adjudicataire* to deposit the price of his adjudication, although such opposant has no right to these moneys. *Pacaud vs. Dubé and the Syndics, &c.*, S. C., 7 L. C. J., p. 279.

" :—Collocation.—1. A contestation to two separate and distinct items of collocation in a report of distribution, interesting different parties, cannot be raised in one and the same paper, and copies must be served on the parties whose claims are contested. The eight days within which a contestation is required to be filed are not juridical days. Ex parte *Burroughs*, S. C., 2 L. C. R., p. 9. And in *Desbarats vs. Lagrange and Fisher*, S. C., L. R., p. 31, it was held that the contestation of an opposition and subsidiarily thereto, the contestation of the report of distribution cannot be made by one and the same pleading. But this was reversed in the Q. B., 4 L. C. R., p. 305.

2. The costs of distribution of money proceeds of the sale of immoveable property, are not distributed on each lot equally but according to the price of sale. *Pacaud vs. Dube and the Syndics, &c.*, S. C., 7 L. C. J., p. 279.

" :—Saisie-Arret.—1. Under the 95th rule of practice, a contestation by plaintiff of the declaration of a *tiers-saisi* on an attachment after judgment, will be rejected, if it be not made within the eight days limited by the rule. *Masson et al., vs. Tassé et al.*, S. C., 6 L. C. R., p. 71.

2. A *saisie-arret* after judgment cannot be issued into Upper Canada. *McKenzie et al., vs. Douglas et al.*, S. C., 5 L. C. J., p. 329.

" :—Miscellaneous.—1. A party whose property has been attached by *saisie-revendication*, and who has obtained *main-levée* of the same, may proceed against the Sheriff for the recovery of the said goods, as well by rule of Court in the case, as by action against the Sheriff to obtain the said property, or the value thereof, together with such damages as may have been suffered by reason of the non-delivery of the same. *Irwin and Boston et al.*, Q. B., 5 L. C. R., p. 397.

2. When a *gardien* in answer to a rule for *contrainte par corps* pleads that the property is only worth a particular amount, the Court *avant faire droit* should order proof of the fact. *Leverson et al., and Boston*, Q. B., 2 L. C. J., p. 297.

3. Notice of motion received by one of two attorneys after the elevation of one, a previous partner, to the Bench, is sufficient. *Dubois vs. Dubois*, Q. B., 5 L. C. R., p. 167.

4. Petition and not a motion is the proper proceeding to be adopted by parties representing themselves to be the universal legatees of an intervening party deceased whose *instance* they seek to take up *Gillespie et al., vs. Gray and Hutchinson*, S. C., 6 L. C. J., p. 29.

5. When the delay of twenty-five days allowed by law for the service of the copy of a petition and notice of appeal from the Circuit Court, expires on a legal holiday, the service thereof may be made on the day following. And it is

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no valid objection to the service of an appeal that a copy of the petition and notice has not been served on the Clerk of the Circuit Court, nor is it a reason for dismissing the appeal that the copy of petition and notice served upon the respondent's attorney bears date previous to the rendering of the judgment appealed from. *Dean and Jackson*, Q. B., 5 L. C. R., p. 164.

6. A motion on the part of a plaintiff who sued *in formâ pauperis* and obtained judgment, to be allowed to execute *in formâ pauperis*, will not be granted. *Harrington vs. McCaul*, S. C., 6 L. C. R., p. 426.

7. A party who proceeds *in formâ pauperis*, is nevertheless bound to pay tax imposed by law on proceedings. *Olsen vs. Forstersen*, S. C., 12 L. C. R., p. 226.

8. Proceedings *in formâ pauperis*. See *Chisholme vs. Bergeron et al.*, 2 Rev. de Lég., p. 306.

9. Trifling irregularities in procedure must be taken notice of at once. *Tidmarsh vs. Stephens et al.*, L. R., p. 107.

" :—In the Court of Vice-Admiralty.—1. In a suit for an injury done on the waters of the St. Lawrence, near the City of Quebec, a declinatory exception, in which it was averred that the *locus in quo* of the pretended injury was within the body of the county of Quebec, and solely cognizable in the Court of Queen's Bench for the District of Quebec, dismissed with costs; and decree pronounced maintaining the ancient jurisdiction of the Admiralty over the river St. Lawrence. *The Camillus*, p. 383, S. V. A. R.

2. The allegations of a party must be such as to apprise his adversary of the nature of the evidence to be adduced in support of them. *The Agnes*, p. 56, S. V. A. R.

Less strictness required in pleading in this than in other courts. *Ib.*

All the essential particulars of the defence should be distinctly set forth in the pleadings. *Ib.*

The evidence must be confined to the matter put in issue, and the decree must follow the allegations and the proofs. *Ib.*

The defendant not pleading a judgment rendered in another court, waives such ground of defence. *Ib.*

Where the misconduct of a mariner is relied on as a ground of defence in an action for wages, it should be specifically put in issue. *Ib.*

3. Demand for watch, &c., taken by the the master from the seaman's chest, may be joined to the demand for wages, *The Sarah*, p. 87, S. V. A. R.

4. In a cause of damage, in which the proceedings were by plea and proof, acts appearing on the face of the libel to have been committed at a place which is not within the jurisdiction of the Court, rejected as inadmissible. *The Friends*, p. 112, S. V. A. R.

The practice to be observed in suits and proceedings in the Courts of Vice-Admiralty abroad, is governed by certain rules and regulations established by an order in council under 2 Will. 4, c. 51, pp. 1 to 52, S. V. A. R.

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The Court will require the libel to be produced at a short day, if the late period of the season, or other cause renders it necessary. *The Newham*, p. 70, S. V. A. R.

6. When the judge has any doubts in regard to the manner of navigating ship's course, position and situation, he will call for the assistance of persons conversant in nautical affairs to explain. *The Cumberland*, p. 78, S. V. A. R.

7. Upon points submitted for the professional opinion of nautical persons, their opinion should be as definite as possible. *The Niagara—The Elizabeth*, p. 320, S. V. A. R.

In certain cases the Court will direct the questions to be reconsidered and more definitely answered. *Ib.*

8. Probatory terms are in general peremptory, but may be restored for sufficient cause. *The Adventure*, p. 99, S. V. A. R.

9. As to the practice of examining witnesses under a release. *The Lord John Russell*, p. 194, S. V. A. R.

10. Amendment in the warrant of attachment not allowed for an alleged error not apparent in the acts and proceedings in the suit. *The Aid*, p. 210, S. V. A. R.

11. Suppletory oath ordered in a suit for subtraction of wages. *The Josepha*, p. 212, S. V. A. R.

12. Where the court has clearly no jurisdiction, it will prohibit itself. *The Mary Jane*, p. 267, S. V. A. R.

13. In salvage cases the protest made by the master, containing a narrative of facts when they are fresh in his memory, should be produced. *The Electric*, p. 333, S. V. A. R.

14. In courts of civil law the parties themselves have strickly no authority over the cause after their regular appearance by an attorney or proctor. *The Thetis*, p. 365. S. V. A. R.

The attorney or proctor is so far regarded as the *dominus litis*, that no proceeding can be taken except by him, or by his written consent, until a final decree or revocation of his authority. *Ib.*

" :—*Vide* APPEAL.
" :— " ASSESSORS.
" :— " ATTACHMENT.
" :— " CAPIAS.
" :— " CONTEMPT.
" :— " CORPORATION.
" :— " COSTS.
" :— " DEFAULT.
" :— " ERREUR DE DROIT.
" :— " EVIDENCE.
" :— " HYPOTHÈQUE.
" :— " JUSTIFICATION.
" :— " LIBEL.
" :— " NEW CONCLUSIONS.
" :— " NUMBER.
" :— " PROMISSORY NOTE.
" :— " PROXIES.
" :— " SAISIE-ARRET,
" :— " WITNESS.

POLICY OF INSURANCE:—*Vide* INSURANCE.

PORT:—Probable derivation of this nautical term. *The Leonidas*, p. 235, in note, S. V. A. R.

POSSESSION:—1. The feigned or symbolical tradition may supply the actual tradition to enable a purchaser to maintain an *action pétitoire*, more particularly as respects wild lands. A mere natural possession, such as that of a squatter, without title or color of title, raises no presumption of a right of property, and therefore it is necessary that a purchaser, claiming under a valid title, should rebut such possession by shewing a title in his vendor. *Stuart and Ives*, Q. B., 1 L. C. R., p. 193. But in the case of sales of waste lands, tradition is necessary to convey the right of property, and when the purchaser, by private sale of such lands, does not take possession of the same, such lands may be legally seized and sold as belonging to the vendor; and the new purchaser becomes seized of such lands to the exclusion of the purchaser, who has neglected to take possession.

2. A partition among co-heirs, duly homologated, is evidence against third parties, of the quality assumed by such heirs, and it is not necessary that certificates of baptism and of marriage should be produced. *Mallory and Hart*, Q. B., 2 L. C. R., p. 345.

3. An allegation of possession by a plaintiff, of the land claimed by him is sufficient, in an action of *réintégrande* without alleging a *possession annale*. *Stuart vs. Langley et al.*, S. C., 1 L. C. R., p. 338.

4. The possession of a parcel of land required for a mill site, and once formally delivered, is not lost, and an adverse possession is not acquired by such parcel of land not being separated from the farm from which it is taken, and a *trouble* in the possession dates from the time it is sought to appropriate it to such purpose as would deprive the purchaser of the power of using it for the purposes for which it was acquired. *Elwin vs. Royston*, S. C., 4 L. C. J., p. 53.

5. No delivery is necessary to pass the property of goods sold at a judicial sale. *Tacite reconduction* in relation to moveables only arises when the lessor is a dealer and makes a business of letting moveables. Parties remaining in possession of moveables after the expiry of a lease, will be deemed to hold them as owners. *Bell vs. Rigney et al. and Milne*, S. C., 3 L. C. J., p. 122.*

6. The possession of moveables gives rise to a presumption of property therein, and therefore (except in cases of theft, violence and perhaps accidental loss,) the purchaser in good faith, in the usual course of trade, acquires the property of them, although they may have been sold by one who was not the owner thereof. *Fawcett et al. and Thompson et al.* Q. B., 6 L. C. J., p. 139. And so a horse sold in open market to a purchaser in good faith will only be restored to the owner on his re-imbursing to the purchaser the price he paid for the horse. *Morrill vs. Unwin*, S. C., L. R., p. 60. But in *Matheus vs. Senecal*, it was held in the S. C., that

* This case, I am informed, went to appeal & was confirmed; but the Q. B., refrained from giving any decision on the question of *Tacite reconduction*.

POSSESSION :—

the sale of a moveable by a party in possession of it as lessee, will not be maintained, and that an action by the real proprietor will be maintained against an innocent purchaser. 7 L. C. J., p. 222. And a horse lost and purchased *bonâ fide* in the usual course of trade, in a hotel yard in Montreal, where horse dealers are in the habit of selling daily a number of horses does not become the property of the purchaser as against the owner who lost it. *Hughes vs. Reed*, S. C., 6 L. C. J., p. 294.

7. A writ of possession, in the case of a sheriff's sale, cannot be issued against a person not a party to the cause, and such person, expelled under such writ, may proceed by possessory action, and claim damages. *Delesderniers and Boudreau*, Q. B., 9 L. C. R., p. 201.

8. Possession of a ship awarded to the master appointed by the owner, to the exclusion of the master named by the shippers of the cargo. *The Mary and Dorothy*, p. 187, S. V. A. R.

Power given to any Court having Admiralty jurisdiction in any of Her Majesty's dominions, to remove the master of any ship, being within the jurisdiction of such court, and to appoint a new master in his stead. 17 and 18 Vic., c. 104, s. 240, p. 189, in note.

" :—*Vide* ACTION PETITOIRE.
" :— " ADJUDICATAIRE.
" :— " ATTACHMENT.
" :— " PARTAGE.
" :— " SERMENT DECISOIRE.
" :— " TIERS-SAISIE.
" :— " WRIT.
" :— " WRIT OF POSSESSION.

POSSESSORY ACTION :—*Vide* ACTION POSSESSOIRE.

POSTHUMOUS CHILD :—*Vide* WILL.

POWER OF ATTORNEY :—A petitory action will be dismissed, the notarial deed to plaintiff of the lands in question being made under a power of attorney, executed before witnesses in England and affirmed before the Lord Mayor of London, produced in the case but not proved. *Turington vs. Higgins*, S. C., 6 L. C. R., p. 481. But proof of a letter of attorney executed *sous seing privé*, is not required where a deed executed by the attorney in virtue thereof is proved, if the principal by any subsequent use he has made of the deed has ratified it. *The Royal Institution vs. Desrivières*, S. R., p. 224.

" :—*Vide* SALE.
" :— " PLEADING AND PRACTICE.

PREROGATIVE :—Where the greater rights and prerogative of the Crown are in question, recourse must be had to the public law of the empire, by which alone they can be determined; but when minor prerogatives and interest are in question, they will be regulated by the established law of the place where the demand is made. *The King vs. Black*, S. R., p. 324.

PRESCRIPTION:—1. The prescription of six months under the 8 Vic. c. 25, s. 49, does not apply to actions for personal injuries. *Marshall vs. The Grand Trunk Railway Company*, S. C., 1 L. C. J., p. 6, and 5 L. C. R., p. 339.

2. The prescription of six months under the 16 Vic., c. 46, sec. 29, does not apply to actions for personal injuries. *Germain vs. The Montreal and New York Railroad Company*, S. C., 1 L. C. J., p. 7, and 6 L. C. R., p. 172.

3. Damages claimed from Grand Trunk Railway Company, by reason of the alleged negligence of their servants in destroying the rubbish collected on their line of railroad, being the final act of the construction of a portion of the line of railway, are subject to the prescription of six months, under the 8 Vic., c. 25, s. 49, and such prescription is available to the company under the general issue. *Boucherville vs. The Grand Trunk Railway Company*, S. C., 1 L. C. J., p. 179.

4. An action against a Justice of the Peace for false imprisonment, must, under the provisions of the 14 and 15 Vic., c. 54, sec. 8, [C. S. L. C., cap. 95, sect. 19,] be commenced within six months after the act committed; and the notice of such action is no commencement of the action. *Lavoie vs. Grégoire*, S. C., 9 L. C. R., p. 255.

5. In an action of damages for malicious arrest in a criminal prosecution, the absence of any allegation to the effect that the arrest was made without probable cause, is fatal to the declaration. *Tuft vs. Irwin*, S. C., 5 L. C. J., p. 340.

6. An action against the Corporation of Montreal for damages, resulting from the want of fences and ditches, which the Corporation was bound to make under the act authorizing the construction of the aqueduct for the Montreal water works, is prescribed by the lapse of six months. *Pigeon and the Mayor, &c., of the City of Montreal*, Q. B., 3 L. C. J., p. 294, and 9 L. C. R., p. 334.

7. The prescription of six months under the 126th article of the *Coutume de Paris*, and the prescription of a year under the 127th article, do not extend to farmers who raise what they sell. *Gagné vs. Bonneau*, P. R., p. 39.

8. Servants' wages are prescribed by one year. *Bubin et ux, vs. Caron*, 2 Rev. de Lég., p. 166. But in *Glouteney vs. Lussier et al.*, S. C., 2 L. C. J., p. 185, and 8 L. C. R., p. 295, it was held that the prescription of a year under the 127th article of the *coutume*, only applies to wages or salary claimed by a servant who has ceased to be in the employ of the master during one year. But this case was reversed in appeal, where it was held, that the action of servants for their wages is prescriptible by one year. Q. B., 3 L.C. J., p. 299, and 9 L. C. R., p. 433.

9. The prescription established by the article of the *Coutume de Paris*, does not apply to seamen's wages. *Barbeau vs. Grant*, S. C., 4 L. C. J., p. 297.

10. The plea of prescription in an action for wages ought to be accompanied by a tender of defendant's oath as to payment, and by an averment that a book was kept in which the payments were duly entered. *Hogan et al., vs.*

PRESCRIPTION :—

Scott et al., S. C., 1 L. C. J., p. 83, and so also in *Barbeau vs. Grant*, S. C., 4 L. C. J., p. 297, in so far as regards tender of oath.

11. When prescription is pleaded under the 125th article of the *coutume*, the oath of the defendant may be demanded *sur faits et articles*. *Buchanan et al., vs. Cormack*, S. C., 1 L. C. J., p. 181.*

12. The action of teachers in public schools is prescribed by one year. *La Corporation of the College of Ste. Anne vs. Taschereau*, 1 Rev. de Lég., p. 112.

13. The prescription of one year under the *coutume* does not affect debts due to merchants, which are not barred by a less period than six years. *Morrogh vs. Munn*, S. R. p. 44.

14. *Dixmes* are not subject to the prescription of a year. *Blanchet vs. Martin et al.*, 3 Rev. de Lég., p. 73. And *Brunet vs. Desjardins*, S. C., 3 L. C. R., p. 81. But in a later case *Théberge vs. Vilbon*, S. C., 3 L. C. R., p. 196, it was held, that the action for tithes is subject to the prescription of a year. But *Vide Appendix Vbo.* DIXMES.

15. In an action for damages by a tutrix to minors, in consequence of the death of their father, through the negligence of the defendant, the demand is subject to the prescription of one year. *Filiatrault vs. The Grand Trunk Railway Company of Canada*, S. C., 2 L. C. J., p. 97.

16. In an action for slander. *Vide Evidence* No. 49.

17. The remuneration of Advocates and Attorneys is not prescribed by a lapse of two years. *Andrews vs. Birch*, 1 Rev. de Lég., p. 148. Also, *Huot vs. Parent et al., ib.* p. 150.

18. The prescription of three years established by the Ordinance of 1510, declared by the 12 Vic. c. 44, [C. S. L. C., cap. 82, sect. 34,] to form part of the Civil Law of Lower Canada, is not an absolute prescription, but merely a presumption of payment; and in pleading prescription, under the said Ordinance and Statute, it is necessary to plead payment and tender the oath. *Scott & al., vs. Stuart*, S. C., 1 L. C. R., p. 167. But in a more recent case of *Lepailleur vs. Scott & al.*, it was held, that the prescriptions under the 12 Vic. c. 44, are an absolute bar to any action, and do not require to be supported by the tender of the oath of the party invoking them. S. C., 1 L. C. J., p. 275; and 6 L. C. R., p. 59. And in an action where such prescription is pleaded, it must be proved in support of the prescription, that final judgment was rendered in each and every cause, for more than three years, before the institution of the action. *Perrault & al. vs. Bacquet*, S. C., 1 L. C. R., p. 328. But in a case of *Ross vs. Quinn*, it was again held at Quebec, that prescription under the 12 Vic., c. 44, was not an absolute bar and that if the oath were not tendered by the plea that the plea would be dismissed on demurrer. *Ross vs. Quinn*, S. C., 11 L. C. R., p. 175.

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* The reporter properly observes that at the time of this action the 125th article of the Coutume had been repealed by the 10 and 11 Vic. c. 26, sec. 16, [C. S. L. C., cap. 71, Sect. 15.] But it is probable that the learned Judge in giving judgment, which turned upon another point, intended the reservation "even if the 125th article were in force," it would not have altered the result.

PRESCRIPTION :—

The prescription of three years, in cases of moveables, cannot be maintained without proof of good faith. *Herbert and Farrell*, Q. B., 7 L. C. J., p. 302. The knowledge of the party invoking such prescription that the person from whom he claims to have acquired a moveable was not the owner thereof is evidence of bad faith. *Ib.*

19. But it was also held at Quebec in the S. C., that the prescription of 5 years for the fees due a Physician under the 10 and 11 Vic. c. 26, sec. 16, [C. Sts. L. C., c. 71, sec. 15,] is an absolute bar. *Bardy vs. Huot*, 11 L. C. R., p. 200.

20. Arrears of house rent are liable to a prescription of five years. *Sinjohn vs. Ross and Christ pherson*, S. C., 8 L. C. R., p. 509; and also *Delisle vs. McGinnis*, S. C., 4 L. C. J., p. 145. And so also for *prix de baux à ferme*. *Dame Vinet vs. Gauvin*, 1 Rev. de Lég., p. 237. And the plea of prescription is an absolute bar to the action for rent. *Laurent vs. Stevenson*, 1 Rev. de Lég., p. 190. Also, *Delisle vs. McGinnis*, S. C., 4 L. C. J., p. 145.

21. The prescription of five years cannot be pleaded in a petitory action as an answer to a demand for rents, issues and profits. *Lampson vs. Taylor & al. and Hughes & al.*, S. C., 13 L. C. R., p. 154.

22. Prescription of five years is interrupted by the defendant's having said within five years immediately preceding the action, upon being asked for payment, that he believed he had a larger account against plaintiff. *Delisle vs. McGinnis*, S. C., 4 L. C. J., p. 145.

23. No prescription exists as to promissory notes due and payable more than five years before the coming into force of the Act 12 Vic. c. 22, [C. Sts. L. C., cap. 64, sect. 31.] *Wing vs. Wing*, 4 L. C. R., p. 261. And in *Macfarlane vs. Rutherford*, L. R., p. 11, it was held that the 12 Vic. c. 22, [C. Sts. L. C., cap. 64, sect. 31,] is not a bar *within* five years after its coming into force, to the recovery of notes matured previous to that act taking effect. But in an action for the recovery of the amount due on a promissory note made in 1824, brought in December, 1853, the plea that at the time of the institution of the said action more than five years had elapsed since the said note became due, and that therefore, the said note must be taken and considered to be paid and discharged is a good plea under the 12 Vic. c. 22, [C. Sts. L. C., cap. 64, sect. 31.] *Hoyle and Torrance & al.*, Q. B., 7 L. C. R., p. 312. And in the case of *Lavoie vs. Crevier*, Q. B., 9 L. C. R., p. 418, it was held, that the prescription of five years, established by the Act of 12 Vic. c. 22, [C. Sts. L. C., cap. 64, sect. 31,] is applicable to non-negotiable notes previously made, and that it is not necessary to prove payment by oath. In *Côté & al. vs. Morrison*, S. C., 2 L. C. J., p. 206, it was held that prescription of five years, under the 12 Vic. c. 22, [C. Sts. L. C., cap. 64, sect. 31,] applies to a note due before the passing of that Statute, and on which no action is brought within five years after it came into force. Also, 8 L. C. R., p. 252.

24. And the prescription of five years against a promissory note acquired before the coming into force of the Statute

PRESCRIPTION :—

of the 12 Vic., c. 22, may be pleaded to an action for the recovery of such note, notwithstanding the repeal of the 34 Geo. III, c. 2, under which the said prescription has been acquired. *Glackemeyer et al., and Perault*, Q. B., 4 L. C. R., p. 397.

25. A promissory note made *en brevet* is prescriptible by five years. *Crevier vs. Sauriole dit Sansouci*, S. C., 6 L. C. J., p. 257. But in *Gravelle vs. Beaudoin*, it was held that such a note was not prescriptible by five years. C. C., 8 L. C. J., p. 289. And so also in *Lacoste vs. Chauvin*, S. C., 7 L. C. J., p. 339.

26. An action on a promissory note, in which are included general counts for goods sold and delivered, will not be dismissed on a plea of prescription of five years, if on the general counts, the original consideration be proved, and in such case an unpaid promissory note is not payment. *Beaudoin vs. Dalmasse*, S. C., 7 L. C. R., p. 47.

27. A promissory note payable on demand is due from the day of its date, and prescription runs against it from that time. *Laroeque et al., vs. Andres et al.*, S. C., 2 L. C. R., p. 335.

28. The interruption of prescription of a note will be considered proved by the production of a letter from defendant making reference to a note of his, without specifying it particularly, if no evidence to the contrary be adduced, to the effect, that the letter had reference to some other note. *Thompson vs. McLeod*, S. C., 1 L. C. J., p. 155.

29. Payment on account of a promissory note within five years, interrupts the Statutory prescription, notwithstanding no action brought within that period. *Torrance vs. Philbin*, S. C., 4 L. C. J., p. 287. And so also it was held in *Benjamin et al., vs. Duchesnay et vir*, that under the Statute of Limitations, partial payments on an open account interrupt prescription. S. C., 5 L. C. J., p. 168.

A letter acknowledging the receipt of a sum of money as a loan, and promising to repay it on demand, with interest, is not a promissory note within the meaning of the Statute 12 Vic. cap. 22, sec. 31, [C. S. L. C., cap. 64, sect. 31.] And in an action on such letter described as a writing *sous seing privé*, the prescription of five years under the said Statute does not apply. *Whishaw vs. Gilmour et al.*, S. C., 6 L. C. J., p. 319. And 13 L. C. R., p. 94.

30. Prescription of six years under the 10th & 11th Vic., c. 11, [Con. St. L. C., cap. 67,] is applicable to the action of a purser of a steamboat for wages, and such plea is not waived by pleas of payment and compensation. *Strother vs. Torrance*, S. C., 2 L. C. J., p. 163, and 8 L. C. R., p. 302.

31. A claim for medical attendance is not liable to the prescription of six years, under the 10th & 11th Vic., c. 11, [Con. St. L. C., cap. 67.] *Buchanan & al. vs. Cormuck*, S. C., 1 L. C. J., p. 181.

32. In the case of *Asselin vs. Monjeau*, it was held that there is no prescription of six years for money lent between parties who are not traders. 5 L. C. J., p. 26. Or by a non-trader to a commercial firm. *Whishaw vs. Gilmour*, S. C., 6 L. C. J., p. 319.

PRESCRIPTION :—

33. The prescription of six years may be invoked in an action for goods sold and delivered between parties traders. *Molson & al. and Walmsley*, 5 L. C. J., p. 26.

34. The prescription of ten years does not run during the minority of the party to whom it is opposed. *Deroyau vs. Watson & al.*, Q. B., 2 L. C. J., p. 137. Nor until dower is open ; and so he who acquires an immoveable property burthened with customary dower requires a prescription of ten years to purge the dower, dating from the death of the father and mother of the heirs. *Bisson & al. vs. Michaud & al.*, S. C., 12 L. C. R., p. 214. And payment to one of them under a judgment does not interrupt the prescription as to the others. *Ib.*

35. In an hypothecary action, the prescription of ten years will be available although the party against whom it is pleaded resides in the district of Quebec, and the property be situated in the district of Montreal. *Stuart and Blair*, Q. B., 2 L. C. J., p. 123, and 6 L. C. R., p. 433.

36. The burthen of proof falls on the party pleading the prescription of ten years. *Lina & al. vs. Boyer*, S. C., 1 L. C. R., p. 139.*

37. In an action *en rescision*, which was met by a plea of prescription, the answer that the *dol* only became known within 10 years, is good. *Picault vs. Demers*, S. C., 2 L. C. J., p. 207. And so also in an action for slander, the plea that the slanderous expression only became known to plaintiffs within a year and a day before the commencement of the action, is sufficient. *Ferguson and Gilmour*, Q. B., 1 L. C. J., p. 131.

38. Proof of a thirty years possession, dispenses the party proving it, from the necessity of shewing that he possessed *animo domini* or *de bonne foi*, until the contrary be proved by the plaintiff. *The Seminary of Quebec vs. Patterson*, S. R., p. 146.

39. If property is claimed under a prescription of 30 years possession of the claimant and his *auteurs*, the names of such *auteurs* must be given. *Lampson and Taylor & al., and Hughes & al.*, S. C., 13 L. C. R., p. 154.

40. But it was held in the Superior Court that in opposing the prescription of 30 years, the holder might plead the prescription of those who were not his *auteurs ;* but the Court of Appeals held the contrary. *Stoddard & al. and Lefebvre*, Q. B., 13 L. C. R., p. 481.

41. The Crown may acquire property in Canada, by prescription of thirty years and upwards, and the real owner might have interrupted such prescription by a petition of rights, a remedy as applicable in the colony as in the mother country. A tract of land which had been acquired and used for the defence of the country for upwards of thirty years cannot be claimed by a petitory action ; it had ceased to be *in commercio*. *Laporte and The Principal Officers of Her Majesty's Ordnance*, Q. B., 7 L. C. R., p. 486.

* That is to say, the party pleading the ten years prescription must show that it applies to him. In the present case plaintiffs pleaded specially that one of them was absent, and *Vanfelson*, J., dissenting, held that plaintiffs should have proved this allegation. But clearly they were not so obliged, as they were not bound to plead any thing but the general answer.

PRESCRIPTION:—

42. An hypothecary action joined to a personal one, is prescribed by a lapse of thirty years. *Delard vs. Paré & ux.*, S. C., 1 L. C. J., p. 271.

43. The arrears of a constituted rent for the alienation and the price of an immoveable are only prescriptible by thirty years. *Turcotte vs. Papans & ux.*, 7 L. C. J., p. 272.

44. To acquire a title by prescription there must be an actual physical possession. *Stuart & al., vs. Bowman*, S. C., 2 L. C. R., p. 369.

45. Prior to the passing of the 4th Vic. c. 30, Sect. 16, [Con. St. L. C., c. 37, s. 37,] arrears of interest upon the price of immoveable property sold were only prescribed by thirty years and not by five years. *Brown vs. Clarke and Montizambert*, S. C., 10 L. C. R., p. 379.

46. Prescription is not interrupted by admissions in an action which, though contested, was afterwards *perimée*. *Malo vs. O'Heir*, S. C., 7 L. C. J., p. 79.

47. The prescription of the matrimonial rights of the wife, does not run during the marriage and while she is in the power of the husband. *Gauthier vs. Menéclier de Morochon*, S. C., 7 L. C. J., p. 320.

48. Interruption of. *Vide Mire vs. Létourneau*, S. C., L. R., p. 28.

49. Prescription of penal actions.—*Vide* PARTNERSHIP.

" :—*Vide* PROMISSORY NOTE.

" :— " REGISTRATION.

PRESENTS:—*Vide* PRESCRIPTION.

PRESUMPTION:—1. The rights of co-vendors selling in different qualities will not be presumed. *Holland vs. Thibaudeau*, S. C., 4 L. C. R., p. 121.

2. Where a ship at anchor is run down by another vessel under sail, the presumption is that the latter vessel is in fault, *The Miramichi*, p. 240, S. V. A. R.

3. If the protest be not produced, salvors are entitled to the inference that it is withheld because it would be too favorable to them. *The Electric*, p. 333, S. V. A. R.

PREUVE:—*Vide* EVIDENCE.

PREUVE AVANT FAIRE DROIT:—*Vide Perrault vs Malo*, S. C., 11 L. C. R., p. 81.

PRIEST:—*Vide* MARRIAGE.

PRIMOGENITURE:—*Vide* DROIT D'AINESSE.

" :— " HEIRS.

" :— " IMPROVEMENTS.

PRIMROSE, (Hon. FRANCIS WARD):—Was appointed Deputy Judge Surrogate and Commissary of the Vice-Admiralty Court for Lower Canada, by an instrument under the hand and seal of the Hon. James Kerr, Judge thereof, on his being about to proceed to England, dated the 30th of August, 1833. Discharged the duties of judge from that time until the removal of Mr. Kerr, in October 1834. Continued afterwards to do so, under the authority of the Imperial Act, (56 Geo. III., c. 82,) to render valid the judicial acts of Surrogates of Vice-Admiralty Courts abroad, during vacancies in the office of

PRIMROSE, (HON. FRANCIS WARD):—
Judges of such Court,—down to the time of the appointment of Mr. Kerr's successor, on the 21st of September, 1836. *Vide* cases of *The John and Mary* and *The London*.

PRINCIPAL AND AGENT:—*Vide* AGENT.

PRIVILEGE:—A conventional privilege on moveables will be restrained within the precise limits of the agreement creating it. *Whitney vs. Craig, and Craig and Whitney*, S. C., 1 L. C. J., p. 97.

PRIVILEGED COMMUNICATION:—1. A privileged communication cannot be made the subject matter of an action of damages for verbal slander, and such is a communication made by an employer, in his own private office, to one of his clerks, regarding the conduct or character of a party in connexion with her relations to another of the employer's clerks. *Ferguson and Gilmour*, Q. B. 1 L. C. J., p. 131.

2. The private bank account of a party in any cause may be shewn, where it is established that money at issue in the cause has been lodged by the party at the bankers to the credit of his private account. *Mackenzie vs Taylor*, S. C., 6 L. C. J., p. 83.

3. A state paper is a privileged communication which the Provincial Secretary may refuse to produce. *Gugy and Maguire*, Q. B., 12 L. C. R., p. 33.

PRIVILEGED COSTS:—*Vide* HYPOTHÈQUE.
" " :— " COSTS.

PRIVITY OF CONTRACT:—1. Where a third person promises to one of the parties to a contract that he will assume it, that promise can only be binding upon him to whom the promise was made; and a contract to deliver to certain persons all the malt they may want for their brewery, can only be binding so long as malt may be required for the brewery, and therefore the insolvency of such persons, and the ceasing to employ the brewery terminated the contract, and no damages can be claimed upon the ground of subsequent non-performance. *Oakley vs. Morrogh and Dunn*, P. R., p. 74.

2. In a hypothecary action against the defendant as *détenteur actuel* of a lot of land sold by the plaintiff to C., defendant cannot set up a judgment obtained by his *auteur* C., against himself as settling the indebtedness of the land towards plaintiff, such judgment being *res inter alios acta*. *Katham and Dunn*, Q. B., 12 L. C. R., p. 85. And defendant can only impute an amount collected out of the estate of C. on a judgment rendered in 1849 in favour of plaintiff, from the time of the payment, that is to say, 1858. *Ib.*

" :—*Vide* DONATION.
" :—LEGATEE.
" :—SHERIFF.

PRIVY COUNCIL:—*Vide* APPEAL.

PROBATE:—*Vide* WILL.

PROBATORY TERM:—*Vide* PLEADING AND PRACTICE.

PROCEDURE:—*Vide* PLEADING AND PRACTICE.

PROCTOR:—A settlement without the concurrence or knowledge of the promoter's proctor, does not bar the claim for costs; and the Court will inquire whether the arrangement was or was not reasonable and just, and relieve the proctor if it were not. *The Thetis*, p. 363, S. V. A. R.

PROHIBITION:—A writ of prohibition ought to be granted as of right whenever a Commissioners' Court has exceeded its jurisdiction. Ex parte *Burke*, S. C., 7 L. C. R., p. 403.

" :—*Vide* VICE-ADMIRALTY.

PROHIBITION TO ALIENATE:—'In a deed of gift' the prohibition to alienate in the following terms is obligatory:—"This donation made upon the express condition, that the lands given shall remain *propres* to the donee and to his immediate heirs, *de son coté et estoc*, without the power of either selling or mortgaging the same." And in such a case the hypothees granted by the donee are null. *Fafard vs. Bélanger*, S. C., 4 L. C. R., p. 215. Also, *Bourassa and Bedard*, Q. B., 13 L. C. R., p. 251, and 7 L. C. J., p. 158. And where such a donation has been made, a bequest by the donee, deceased during the lifetime of the donor, to his wife of the immoveable, is null. *Ib.*

2. And so also it is held where moveables have been sold subject to the condition that the purchaser should not sell them. *Lynch and Hainault*, Q. B., 5 L. C. J., p. 306.

3. The prohibition to alienate contained in a will, whereby it is provided that the legatees, children of the testator, should in no manner charge, incumber, hypothecate, sell, barter or otherwise alienate the real estate to them bequeathed until the expiration of twenty-years after the decease of the testator, is valid, and is neither impossible nor prohibited by law, nor is it *contra bonos mores*. *Guillet dit Tourangeau and Renaud*, Q. B., 13 L. C. R., p. 278 and p. 350.

PROMESSE DE VENTE:—*Gaulin and ux. vs. Pichette et al.*, 3 Rev. de Lég., p. 261. *Vide* SALE.

PROMISSORY NOTE:—1. Verbal notice of protest is insufficient to bind endorser. *Cowan vs. Turgeon*, 1 Rev. de Leg., p. 230.

2. In order to vitiate the payment by the maker of a promissory note endorsed in blank, *bad faith* must be shewn; payment under circumstances of suspicion is not enough. The maker is only bound to assure himself of the genuineness of the signatures, and is not bound to make any enquiry. *Ferrie vs. Wardens of the House of Industry*, 1 Rev. de Lég., p. 27.

3. A promissory note signed by a cross in presence of one witness is good. *Collins vs. Bradshaw*, C. C., 10 L. C. R., p. 366. And an endorsement by cross before one witness is valid. *Noad vs. Chateauvert et al.*, 1 Rev. de Lég., p. 229.

4. An I. O. U. is a promissory note, and is negotiable as a note payable to bearer. *Beaudry vs. Laflamme and Davis*, S. C., 6 L. C. J., p. 307.

5. A promissory note made *en brevet* before notaries, payable to order, is negotiable by endorsement in the ordinary way. *Morin vs. Legault dit Deslauriers*, 3 L. C. J., p. 55.

6. A promissory note may be made *en brevet* in the actual presence of one notary; it may be countersigned out of the presence of the parties. *Dalpé dit Pariseau vs. Pelletier dit Bellefleur*, S. C., 5 L. C. J., p. 77.

7. An insurance note is not a promissory note falling within the commercial code. The endorser is an ordinary *caution solidaire*. *Montreal Mutual Assurance Company vs. Dufresne*, S. C., L. R., p. 55.

PROMISSORY NOTE :—

8. Where agent of Railway Company had given his own notes to an Insurance Company for premiums of Insurance on iron, belonging to Railway Company, Company is nevertheless liable in direct action for amount of premiums; and renewal notes given by firm of which agent was partner will be declared inoperative against such firm. *The Montreal Fire Insurance Company vs. The Stanstead, Shefford and Chambly Railway Company*, S. C., 13 L. C. R., p. 233.

9. In *Wood & al. vs. Shaw*, S. C., 3 L. C. J., p. 169, it was held, that a promissory note payable to the order of an insurance company, and given in payment of a premium of insurance is negotiable, and a memorandum at its foot, indicating its consideration, does not limit its negotiability. The indorsement of such note by the Secretary of the Company, in that capacity, was sufficient to pass the title of the note to plaintiffs,—an implied authority in him so to do, having been shown by proof of the ordinary course of business of the Company,—that the Directors had effected the arrangement with the plaintiffs of which the transfer of the note formed part,—and that the Company had received the consideration for such transfer.

10. An exchange of negotiable paper is sufficient to constitute each party to such exchange, a holder for value of the paper he receives. *Ib.*

11. A wife signing a promissory note with her husband, a trader, although the note does not purport to be made jointly and severally, becomes the *caution solidaire* of her husband to the extent of the note. *Pozer vs. Green*, 1 Rev. de Lég., p. 186.

12. A promissory note made by a married woman *séparée de biens et marchande publique*, without the authority of her husband is good. *Beaubien and Husson*, Q. B., 12 L. C. R., p. 47.

13. And both husband and wife *séparée de biens* are jointly and severally liable for a joint note made in the course of a business in which they were both jointly interested. *Girouard vs. Lachapelle et vir.*, C. C., 7 L. C. J., p. 289.

14. A promissory note made by a wife, separated as to property from her husband, in favor of her husband, and endorsed by him, for groceries and other necessaries of family use purchased by her, is valid. *Cholet vs. Duplessis & al.*, S. C., 6 L. C. J., p. 81. And this without proof of express authority to her to sign the same. 12 L. C. R., p. 303.

15. A promissory note may be made on Sunday. *Kearney vs. Kinch & al.*, S. C., 7 L. C. J., p. 31. But in *Coté vs. Lemieux*, S. C., 9 L. C. R., p. 221, it was held that a promissory note made on Sunday and given in payment of a horse purchased on the same day, is null and void under the 45 Geo. III., c. 10, and 18 Vic. c. 117, [C. Sts. L. C., c. 23.]

16. A note of hand subscribed with the mark only of the drawer, endorsed over, gives no action to the endorser against the drawer, but the endorser on his endorsement is liable to the endorsee as for moneys had and received. *Jones vs. Hart*, 2 Rev. de Lég., p. 58.

PROMISSORY NOTE :—

17. In an action of assumpsit by the endorsee against the endorser upon a note endorsed for a sum less than that made payable by the note, the plaintiff cannot recover. *McLeod vs. Meek*, S. R., p. 456.

18. The endorsee and holder of a promissory note for the purpose of collection, may recover against the maker and previous endorser. *Mills vs. Phillin & al.*, 3 Rev. de Lég., p. 255.

19. Endorsements in blank are only validly made by bankers, merchants and brokers. *The Bank of Montreal vs. Langlois*, 3 Rev. de Lég., p. 88.

20. In a suit in the C. C., *Smith J.* held that a note given for a gambling debt was null in the hands of an innocent holder. *Biroleau vs. Derouin*, C. C., 7 L. C. J., p. 128. And a married woman's note is a nullity as regards her ; but the endorser may be liable to the endorsee. *Leblanc vs. Rollin & ux.*, S. C., L. R., p. 56.

21. And a note made by a married woman *séparée de biens* is null, notwithstanding it be given for purchases made by herself. *Badeau vs. Brant & ux.*, S. C., 1 L. C. J., p. 171.

22. A promissory note made by a married woman conjointly with her husband with the view of becoming security for him is null and void as regards her under the 36th section of the Registry Ordinance 4 Vic. c. 30, [C. Sts. L. C., c. 37, sect. 55.] *Shearer vs. Compain & ux.*, S. C., 5 L. C. J., p. 47.

23. A paper-writing undertaking to pay A. B., or bearer, a certain sum of money, one half in cash and the other half in grain, is not a promissory note and therefore not negotiable. *Gillin and Cutler*, S. C., 1 L. C. J., p. 277.

24. The maker of a promissory note may set up in compensation to the payee and bearer of such note, another note made by the same payee more than five years before, but endorsed to the maker of the first note before the expiration of the time required for prescription thereof. And in such case prescription cannot be invoked. Such compensation takes place without any notice of the endorsement and transfer of the note set up in compensation being required. The date appearing on such endorsement is sufficient evidence thereof in the absence of contradictory proof, and when it is not specially denied. *Hays and David*, Q. B., 3 L. C. R., p. 112.

25. As against the maker of a promissory note, no demand of payment is necessary, though the note is made payable at a particular place. Evidence of no funds at the place of payment will excuse the plaintiff from proving a previous demand. A particular payment is a waiver of all obligation as to want of demand of payment. *Rice vs. Bowker et al.*, S. C., 3 L. C. R., p. 305.

26. And so in a suit against the maker of a promissory note to order, payable at a certain place, it is not necessary to prove that demand was made at the place of maturity. And when funds were provided at the place indicated for payment of the note, to meet the note which was not presented for payment, the maker must urge the same specially

PROMISSORY NOTE:—

by exception and adduce evidence thereof. *Mount and Dunn*, Q. B., 4 L. C. R., p. 348.

27. The maker of a promissory note, payable to order of the defendant, and by the defendant endorsed to the plaintiffs, is a competent witness for the defendant. The maker of a promissory note is not liable for costs of action against an endorser. *McDonald et al. vs. Seymour*, S. C., 6 L. C. R., p. 102.

28. An action can be maintained against the widow of the maker of a bill or promissory note under cross, payable to McDonald & Co., or order, and by them endorsed in blank to the plaintiffs, the maker, endorser and plaintiff being described as traders. *Anderson vs. Park*, S. C., 6 L. C. R., p. 479.

29. Proof of fraud in the making of a promissory note, casts upon the plaintiff the burthen of showing that he is a *bonâ fide* holder for valuable consideration. *Withall vs. Ruston et al.*, S. C., 7 L. C. R., p. 399.

30. An action connot be maintained on a promissory note, if it be proved that it was given, and the proceeds thereof were applied, to bribe the electors of a county. *Gugy and Larkin*, Q. B., 7 L. C. R., p. 11.

31. A promissory note given to a *tiers-détenteur* to discharge an hypothec on real estate is given without consideration if the hypothec was created by a person who had no title. *Phillips and Sanborn*, Q. B., 6 L. C. J., p. 252.

32. A joint action brought against the maker of a note, by two persons to whom the same is made payable by endorsement signed by the payee, to whom, or order, the note was originally made payable, is good on demurrer, though it is not alleged in the declaration that the plaintiffs are co-partners, or have the right to sue jointly. *Stevenson et al. vs. Bisset*, 8 L. C. R., p 191.

33. The endorser may be liable to the endorsee although the note be a nullity. *Leblanc vs. Rollin et ux*, S. C., L. R. p. 56.

34. The endorsation of a promissory note by error is sufficient. *Thurber vs. Desève*, S. C., L. R., p. 103.

35. In an action against the endorser of a promissory note, the duplicate notice of protest must be produced and filed, and the certificate of the notary that he has served due notice upon the endorser, is insufficient. *Seed vs. Courtney*, S. C., 3 L. C. R., p. 303.

36. A party who endorses a promissory note is liable, althought he intended at the time to do so as the attorney of another, the error not being pleaded, and the sole proof of the endorser being the defendant's answer to interrogatories on *faits et articles* the plaintiffs are entitled to have the answer divided, and that part, in which one of the defendants seeks to explain the character in which he signed, rejected, the facts not having been pleaded. *Seymour et al. vs. Wright et al.*, S. C., 3 L. C. R., p. 454.

37. In an action against the endorser of a promissory note, payable to the order of the maker, and endorsed by him to such endorser, the following notice of dishonor addressed to

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maker and endorser conjointly, is sufficient, in the absence of any proof by the defendant of the existence of another note: "Your promissory note for £30 Cy., dated at Montreal, the 2nd September, 1856, payable three months after date, to your order, and endorsed by you, was this day, at the request of Messrs. Handyside, Sinclair and Company, of this city, merchants, protested for non-payment." *Handyside et al. vs. Courtney et al.*, S. C. 1 L. C. J., p. 250.

38. A person appointed to a temporary office in a place where such party went alone, leaving his family at the domicile occupied by him at the time of his appointment, is not supposed to have lost such domicile, and notice of protest of a promissory note at such domicile is valid. *Ryan et al. and Malo*, Q. B., 12 L. C. R., p. 8.

39. The notary is not admissible as a witness to contradict notice of protest filed by plaintiff. *Dorwin vs. Evens et al.*, S. C., 1 L. C. R., p. 100.

40. A verbal promise by an endorser to pay note, which has not been protested is valid, if made after knowledge of no protest made. Such promise may be proved by parol evidence; and the promise made to an agent has the same effect as if made to creditor. *Johnson et al. vs. Geoffrion*, 13 L. C. R., p. 161, and 7 L. C. J., p. 125.

41. Under the 14th clause of the Promissory Note Act, 12 Vic., c. 22, [C. Sts. L. C., c. 64, sect. 16,] the omission to state in the protest, that demand was made in the afternoon of the day of protest, is fatal. *Joseph vs. Delisle et al.*, S. C., 1 L. C. R., p. 244.

42. The non-exhibition of a promissory note to the maker (who is notoriously insolvent) at the time of the protest, will not invalidate the protest. *Venner vs. Futvoye et al.*, S. C., 13 L. C. R., p. 307.

43. In the case of a protest of a promissory note, dated at Montreal, and payable at a bank in Albany, in the State of New York, a notice of protest, mailed by a notary at Albany, addressed to an endorser at Montreal, (protest being made and notice mailed according to the laws of the State,) is not sufficient, the postal arrangements between the two countries at the time being such, that letters could not pass through the post-office without pre-payment of postage from Albany to the line. Notice sent to the endorser, at the place where the note was dated, is sufficient diligence, the place of abode being sufficient indication of the endorser's domicile, to warrant the holder in sending such notice, the endorsement being unrestricted. *Howard vs. Sabourin*, 2 L. C. R., p. 121. Confirmed in Appeal, 5 L. C. R., p. 45.

44. Notice of protest addressed to a female endorser beginning "Sir" is bad, and the action against such endorser will be dismissed. *Seymour et al. vs. Wright et al.*, S. C., 3 L. C. R., p. 454.

45. The *donneur d'aval* is not entitled to notice of protest. *Merritt vs. Lynch*, S. C., 9 L. C. R., p. 353.

46. A promissory note payable on demand, is due from the day of its date, and prescription runs against it from that time. *Larocque et al. vs. Andres et al.*, S. C., 2 L. C. R., p. 335.

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47. Delay granted by the holder to the maker of a promissory note, cannot be opposed as against the endorser, who has paid the note subsequently to the granting of such delay. *Massue vs. Crebassa*, S. C., 7 L. C. J., p. 211.

And the granting of such delay does not liberate the endorser. *Ib.*

And such endorser is not bound to offer with his action the notes subsequently given to the original holder of the note for such delay. *Ib.*

48. In an action on a promissory note, where defendant pleads that he had sent in renewal to plaintiffs, and that they never returned it, and plaintiffs' reply that they had refused to accept the note as a renewal, defendant will be held to have been bound, on such refusal, to call and take away the note he had so sent in renewal, and the mere fact of plaintiffs not returning it, will not be construed into an agreement to renew. *Lyman et al. vs. Chamard*, S. C., 1 L. C. J., p. 285.

49. A promissory note having two years to run, will become exigible in case of *déconfiture*. *Lovell vs. Meikle*, S. C., 2 L. C. J., p. 69.

50. In an action on a promissory note, instituted before the coming into force of the 20th Vic., c. 44, but in which the plea was filed after the act was in force, the 87th section [Con. Sts. L. C., c. 83, Sect. 86,] as regards denial and poof of signature applies. *Jameson vs. Larose*, S. C., 2 L. C. J., p. 73.

51. Where an endorsement on a promissory not is made by an agent, his agency must be established ; as such case does not come within the provisions of the 20th Vic., c. 44, sec. 87, [C. S. L. C., cap. 83, sect. 86.] *Joseph et al vs. Hutton*, S. C., 9 L. C. R., p. 299.

52. In the case of *Hobbs et al. vs. Hart et al.*, it was held that defendant is not obliged to file an affidavit in support of a plea setting forth want of notice of protest, when it appears by the certificate written by the notary himself that the notice he served was utterly useless and null. S. C., 5 L. C. J., p. 52.

53. But in the Q. B. it was held that a protest of a promissory note, although insufficient on the face of it, must nevertheless be held to have been legally made, unless the plea setting up the objection be supported by affidavit, under the 20 Vic., c. 44, sec. 87, [C. S. L. C., cap. 83, sect. 86.] *Chamberlin and Ball*, 5 L. C. J., p. 88, and 11 L. C. R., p. 50.

54. A plea which admits the signature to a promissory note, but sets forth that it was obtained by surprise, and without sufficient value, does not require to be accompanied by an affidavit. *McCarthy et al. vs. Barthe*, S. C., 6 L. C. J., p. 130. And the affidavit in support of a plea setting forth that a note was a forgery, may be sufficient, although not in the words of the statute. *Browne and Dow*, Q. B., 11 L. C. R., p. 273.

55. An endorser of a promissory note who pleads that notice of protest was served at a place which was not his

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legal domicile, must support his plea by the affidavit required under 20 Vic., c. 44, sec. 87, [C. S. L. C., cap. 83, sect. 86.] *Ryan et al. vs. Malo*, Q. B., 12 L. C. R., p. 8.

56. In an action for the amount of a promissory note, for value received, the holder need not prove that value was given. *Larocque et al. and the Franklin County Bank*, Q. B., 8 L. C. R., p. 328.

57. In a declaration on a promissory note, it need not be alleged that value was given; but the fact of the giving of the value is a matter of proof. *Whitney vs. Burke*, S. C., 4 L. C. J., p. 308.

58. The second endorser of a non-negotiable promissory note has no action against the first endorser, but the first endorser has against the drawer. *Jones vs. Whitty*, S. C., 9 L. C. R., p. 191.

59. The order of signatures by endorsation upon a note, is a mere presumption of the undertakings of the endorsers, which may be destroyed by proof to the contrary. *Day and Sculthorpe*, Q. B., 11 L. C. R., p. 269.

60. An action cannot be maintained upon notes given in payment for the sale of certain shares in a joint stock company, on payment of which notes, shares were to be transferred to promissor, unless the holder offer by his action to make such transfer. *Hempsted & Drummond & al.*, Q. B., 10 L. C. R., p. 27.

61. A promissory note made as an indemnity for assuming liability for a third party at the request of the maker is valid as such indemnity. And the party indemnified may sue as soon as troubled, and before paying the debt for which he has become liable. *Perry vs. Milne*, S. C., 5 L. C. J., p. 121.

62. And the plaintiff, holder of notes, not payable to bearer, no endorsation being alleged, will be non-suited. *Hempsted & Drummond & al.*, Q. B., 10 L. C. R., p. 27.

63. The retirement before due, of a note by a prior endorser, does not discharge a subsequent endorser as against a holder for value if there was no real payment, but a mere exchange of securities with express retention of the liability of the parties to the note. *Bull vs. Curillier et al.*, S. C., 5 L. C. J., p. 127.*

64. A banker who has discounted a promissory note, and then given it back to the maker for a check, without value, cannot afterwards charge such note to the account of an endorser. *The Quebec Bank vs. Maxham et al.*, 11 L. C. R., p. 97.

65. A holder of negotiable paper as collateral security transferred after it became due, is subject to all the equities. *Delisle vs. McDonald & McDonald*, S. C., L. R., p. 52, and so the makers of a note transferred after it was due, may plead to the holders of the note all the exceptions which might have been pleaded to the former owners. *Brooks et al. vs. Clegg*, Q. B., 12 L. C. R., p. 461.

* Does this decision amount to anything more than this, that a note, while in circulation, and before it is due, may return to the hands of one of the parties to the note and be again re-issued by him? It happens constantly with bank notes, which are after all only promissory notes payable on demand.

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But a holder of negotiable paper as collateral security, before it became due, is not affected by any equities between the original parties. *Hood et al. vs. Shaw*, S. C., 3 L. C. J., p. 169.

66. A promissory note given under a condition to this effect, " the value received being contingent upon no claim being made to the logs," cannot be recovered on, if the logs belong to another party, and even although such other party have revendicated the logs, and that the revendication have been set aside on *exception à la forme*, if it appears on the merits that the parties revendicating were really the owners of the timber. *Gamsby et al. and Chapman*, Q. B., 13 L. C. R., p. 239.

67. In an action on a promissory note, the contract is sufficiently set out if it be alleged that the note was made, without adding that it was signed, and it is sufficient to allege that it was delivered to plaintiff, without saying to the said C. and M. *Bullitt et al. vs. Shaw et al.*, S. C., 7 L. C. J., p. 47.

68. It is not competent for the payee of a promissory note, signed with the name of a co-partnership, to bring an action against one of the partners alone, without alleging specially that the co-partnership had been dissolved. *Carsant vs. Perry*, S. C., 7 L. C. J., p. 108.

69. A written undertaking to pass on a subsequent day, a notarial obligation, is not a promissory note, but an agreement, and must be declared on as such. *Côté vs. Lemieux*, S. C., 9 L. C. R., p. 221. *Vide Johnson vs. Clarke*, S. C., L. R., p. 88.

" :—*Vide* AGENT.
" :— " AVAL.
" :— " BON.
" :— " CAPIAS AD RESPONDENDUM.
" :— " COMPENSATION.
" :— " EVIDENCE.
" :— " INTEREST.
" :— " PRESCRIPTION.

PROOF :—*Vide* EVIDENCE.

PROOF OF PARTNERSHIP :—*Vide* EVIDENCE.

PROPRE :— *Vide* AMEUBLISSEMENT.

PROPRIETOR :— *Vide* TRESPASS.

PROTEST :—The production of the protest is necessary in all cases, whether of collision or salvage, but more particularly so in cases of salvage. *The Electric*, p. 333, S. V. A. R.

PROTHONOTARY :—1. A Prothonotary cannot under the 22 Vic., c. 5, sec. 11, [C. Sts. L. C., c. 83, sect. 113,] enter up a judgment in vacation in a case between trader and trader, although the action be brought upon account stated in detail, if the demand be not for goods sold and delivered, or for any article sold and delivered, or for money lent. *Cochran and Benson et al.*, Q. B., 12 L. C. R., p. 74.

2. The Prothonotary is not entitled to the fee mentioned in the 6th item of the tariff of March, 1861, on filing the contestation of a registrar's certificate. *Ninteau vs. Tremain and Huot*, S. C., 12 L. C. R., p. 209; also, *Langlois vs.*

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Walton, S. C., 12 L. C. R., p. 236. And where it has been paid, on motion, the Court will order it to be paid back. *Ib.*

3. The Prothonotary has not the right to exact payment of his fees before rendering the services for which such fees are due. *Plamondon et al., vs. Sauvageau*, S. C., 12 L. C. R., p. 333.

4. The Prothonotary is not entitled to the fee of $2 on collocations in reports of distribution, if such collocations have been set aside by the Court and another report prepared. *Exp. Dawson*, S. C., 12 L. C. R., p. 414.

5. The Prothonotary has no powor to receive any bond, but a bond in appeal. *The Canadian Inland Steam Navigation Company vs. Reffenstein*, S. C., 13 L. C. R., p. 370.

" :—*Vide* PLEADING AND PRACTICE. *Vide Exp. Langlois*, L. C. R., p. 463.

PROXIES :—In order to prevent proctors from proceeding in causes, on instructions from parties not having a legal *personæ standi* to prosecute a cause, the Court may require the production of proxies. *The Dumsfriesshire*, p. 245, S. V. A. R.

Report of the law officers of the Crown in Canada on this subject. *Ib.*, p. 247, in notes.

PUBLIC LAW :—*Vide* CODE MARIN.

" :— " PREROGATIVE.

PUBLIC POLICY :—*Vide* AGREEMENT.

PUBLIC OFFICER :—Where a person contracts as a public officer, he is not personally responsible, unless there be some peculiar cause to charge him. *Scott vs. Lindsay*, S. R., p. 68.

" :—*Vide* COMMISSIONER.

" :— " FEES.

" :— " NOTICE OF ACTION.

" :— " REGISTERS.

" :— " TRESPASS.

PUBLIC POUND :—*Vide* MUNICIPAL COUNCILS.

PURCHASER :—*Vide* SALE.

QUANTUM MERUIT :—A tradesman cannot maintain an action of general *indebitatus assumpsit* as for a *quantum meruit*, for work and labor performed, and materials furnished by him, if such work and labor and materials were for extra work to be valued under an express authentic written agreement or specialty, according to a specified standard; viz : the contract price. In other words the law does not permit an action of *indebitatus assumpsit* to be brought on a specialty or deed; nor on any special agreement in execution of which any thing remains to be done. *Stuart and Trépannier*, 1 Rev. de Lég., p. 297.

" :—*Vide* ARCHITECT.

" :— " ASSESSORS.

" :— " COMPENSATION.

" :— " WATER.

QUEBEC :—1. The river St. Lawrence, from the west end of the Island of Anticosti to the eastern line of the district of Three Rivers, is within the District of Quebec. *Hamilton & al. vs. Fraser & al.*, S. R., p. 21.

QUEBEC :—

2. The corporation of the city of Quebec has the right in virtue of the 8 Vic. c. 60, sec. 7, to make by-laws concerning the markets, and to ordain that persons found upon such markets offending against such by-laws shall be removed; and that the corporation has that right independently of any statute conferring upon it such right, and it is within the powers of a municipal corporation to make such a by-law. *Dumontier vs. Baudon dit Lavivière*, S. C., 1 L. C. R., p. 473.

3. In the exercise of the powers conferred on a corporation by statute, affecting the property of individuals, such as the power conferred on the corporation of the city of Quebec by the 10th Vic. c. 113, and 13th & 14th Vic. c. 100, sec. 7, of acquiring the right of way or servitude necessary for the construction of the Quebec Water Works, the course sanctioned and pointed out by the legislature must be strictly pursued and adhered to, and any departure from such course will vitiate the proceedings; and the taking of land for such purpose must be under the conditions mentioned by the statute, and not under any other conditions, if such taking be compulsory. *Macpherson vs. The Mayor, &c. of the City of Quebec*, S. C., 4 L. C. R., p. 429.

QUEBEC AND RICHMOND RAILROAD COMPANY :—*Vide* PLEADING AND PRACTICE.

QUEEN'S BENCH :—The Court of Q. B., appeal side, after having been seized of a cause in appeal, and having rendered a judgment thereon, from which an appeal was again had to the Privy Council, who overruled the judgment of the Q. B., has no longer any power to take cognizance of the said cause, the exercise of the power of the Court and its competency having terminated with its judgment on the appeal. *The Montreal Assurance Company and McGillivray*, Q. B., 5 L. C. J., p. 164.

QUI TAM :—*Vide* FORFEITURE.

QUO WARRANTO :—On demurrer to a *défense* proceeding in the nature of a *quo warranto*, the Court was of opinion that it was sufficient for the defendant to allege his *mandat* as municipal councillor; but on the merits that it was necessary for him to do more than show that he had been notified of his election, and that the report of such election had been duly made to the secretary-treasurer. *Beliveau vs. Juneau*, S. C., 7 L. C. J., p. 63. He must show that the election was legally made. *Talbot vs. Pacaud*, S. C., 7 L. C. J., p. 67.

" :—*Vide* JUDGE.

RAILWAY CASES :—1. Where by the charter of a railway company, it is not bound to erect barriers at those points where the line crosses the public road, the company is not liable for injury done to cattle straying on the line from the public road; but the parties allowing their cattle so to stray are answerable to the railway company for damages done to the carriages thrown off the track by collision with such cattle. *Rocheleau vs. The St. Lawrence and Atlantic Railway Company*, S. C., 2 L. C. R., p. 337.

2. In an action of damages arising from a railway accident, which resulted in the death of a party, and the destruction

RAILWAY CASES :—

of his horse and waggon, no damages will be allowed beyond the value of such horse and waggon, unless there be specific proof of the value of the party's life to his family. *Ravary vs. The Grand Trunk Railway Company of Canada*, S. C., 1 L. C. J., p. 280.

3. The breaking of a bolt, whereby the rear wheels of a railway carriage were separated from the carriage, which was thrown off the track, is sufficient evidence of negligence and the insufficiency of the car conveying passengers,—the train having first left the station, and proceeding at the rate of five miles an hour, and there being no obstruction on the track, and nothing out of the usual course of things to account otherwise for the breaking of the bolt, notwithstanding evidence by the servants of the company that the carriage had been examined and that no indication presented itself to the eye of any defect either in the bolt or carriage. And the plaintiff being a laborer in the service of the company, and paying nothing for his fare, does not alter the case. *Germain vs. The Montreal and New York Railroad Company*, S. C., 6 L. C. R., p. 172.

4. The capital of the indemnity paid into Court on the expropriation by a railway company of land included in a *bail emphytéotique*, is to be awarded to the lessee on giving security in preference to the lessor. The lessee under a *bail emphytéotique* is proprietor of the land leased, and he is not obliged to be content with the interest of moneys deposited. Ex parte *The Grand Trunk Railway Company of Canada*, S. C., 6 L. C. R., p. 54.

5. Service of process against the Grand Trunk Railway Company of Canada, at one of its stations, is insufficient ; such service ought to be made at its principal place of business. *Legendre vs. The Grand Trunk Railway Company of Canada*, S. C., 6 L. C. R., p. 105.

6. Under a clause in an agreement between a contractor and a railroad company, the contractor was allowed to collect, for his own benefit and profit, arrears due by certain stockholders for the price of their stock, to a certain specified amount. Held that the stockholders cannot be sued in the name of the contractor, and that the company is not liable to warrant or defend such contractor against a plea by a stockholder, alleging facts to shew that he was not indebted to the Company. *White vs. Daly* ; also, *White vs. The Industry Village and Rawdon Railroad Company*, S. C., 7 L. C. R., p. 360.

7. Under the statute of incorporation of the Grand Trunk Railway Company, the Province of Canada had the first hypothec upon the road for £3,111,500 sterling, and the first preference bondholders are subrogated in that right to the extent of £2,000,000, nevertheless the Court will not declare the road to be so hypothecated.

The law regarding the sequestration of property does not extend to the judicial sequestration of the property of bodies corporate ; and so the Court has no power to appoint a *sequestre* or receiver to the Grand Trunk Railway. *Morrison vs. The Grand Trunk Railway Company of Canada*, S. C., 5 L. C. J., 313.

RAILWAY CASES :—

8. An action of damages alleged to have been suffered by the plaintiff by reason of the construction of a railway over his property, must be directed against the company building such railway, and not against the contractors of the works, unless by their misfeasance they have rendered themselves personally liable. *Jackson & al. and Paquet*, Q. B., 4 L. C. R., p. 495.

" :— *Vide* ARBITRATION.
" :— " CONTRACTORS.
" :— " DAMAGES.
" :— " MANDAMUS.
" :— " MAIN-MORTE.
" :— " PRESCRIPTION.

RATIFICATION OF TITLE :—1. The proceedings for ratification of title according to the dispositions of the 9 Geo IV., c. 20, [Con. Stat. L. C., cap. 36,] is not in any way analogous to that which was followed in France under the edict of 1771. The object of the statute is only to discover and make known *hypothèques*, by preserving them on the real property, while the Edict of 1771, was for the purpose of purging them, and was so far equal to a *décret*. According to our system the opposing creditors have not an absolute right to cause the price to be deposited, and to demand that, in default of petitioner doing so, he may be declared subject to *contrainte par corps*. *Douglas vs. Dupré*, 2 Rev. de Lég., p. 229.

2. But in *Glackemeyer vs. The Mayor, &c., of the City of Quebec*, S. C., 11 L. C. R., p. 18, it was held, that the only effect of judgments of confirmation of title is to do away with mortgages, without in any manner fortifying the title deed, the ratification of which is demanded; which deed, notwithstanding such ratification, remains with all its imperfections.

3. The petitioner for ratification of title may desist from his proceeding *en tout état de cause*. Ex parte *Chabot and divers opposants*, 1 Rev de Lég., p. 224.

4. Simple chirography creditors cannot oppose sentence of ratification of title. Ex parte *Harbour Commissioners and Fisher*, S. C., L. R., p. 84.

5. The hypothecary creditor indicated in the deed of sale is not bound to file an opposition *afin de conserver* to the proceedings in ratification of title. Such an opposition will be maintained but without costs. Ex parte *Lenoir and Lamothe & al.*, S. C., 3 L. C. J., p. 303.

The parties interested in the contestation or issue joined on a ratification of title, are alone to be made parties to an appeal.

In a demand for ratification of a deed of sale of several lots of ground (affected with distinct charges and mortgages for one price,) the hypothecary creditors cannot be foreclosed from over-bidding until the price of each lot has been determined by a *ventilation*, and the petitioner cannot obtain the ratification of title, until such ventilation has taken place.

This ventilation must be homologated by the court before the moneys deposited can be distributed. *Dewitt and Burroughs*, S. C., 5 L. C. R., p. 70.

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6. The lengthy contestations arising out of the overbid made to the price of sale by an opposing creditor to the proceedings for a ratification, and the delays consequent upon the contestations of oppositions, have not the effect of discharging the purchaser from the payment of interest upon the purchase money, which interest becomes payable after the lapse of the four months for giving the public notice necessary for obtaining letters of ratification, and which interest he is only bound to pay up to the day of the payment of the money into Court, although at that period the contestations had not been disposed of. The omission of some of the formalities required by the Provincial Statute of the 9 Geo. IV., c. 20, [Con. Stat. L. C., cap. 36,] to be admitted to overbid upon the price of sale, does not entail nulity of the proceedings. *Ruston and Blanchard*, S. C., 5 L. C. R., p. 390.

7. The vendor who covenants that the purchaser shall obtain a ratification of title, before making payment, becomes thereby a party to the proceeding for ratification, and consequently the purchaser is not bound to call in the vendor *en garantie* to give an opportunity of contesting claims filed in the proceedings. *Ib.*

8. A purchaser seeking for ratification of title must deposit the price if the opposing creditors require it. Exp. *Cantin*, 1 Rev. de Lég., p. 42.

9. In cases of demand of letters of ratification of title, the action *en garantie* lies to remove opposition, unless an express stipulation to the contrary be inserted in the deed of sale. *Douglas and Dinning*, Q B., 8 L. C. R., p. 501.

10. An opposition to an application for ratification of title, not containing any engagement on the part of the vendor to obtain such ratification, or on its being asked for by the vendee to cause all opposition to be removed amounts in law to a *trouble*, and entitles the applicant to sue his vendor *en garantie* to compel him to intervene and hold him harmless from such opposition. Ex parte *Judah and Judah*, plaintiff *en garantie, and Rolland*, S. C., 1 L. C. J., p. 194. And again in the case of *Douglas and Dinning*, Q. B., 3 L. C. J., p. 33, it was held that a new proprietor who is troubled in his demand in ratification of title, is well founded in bringing an action *en garantie* against his vendor. And the purchaser is not obliged to deposit the interest of the price of his acquisition in order to obtain a sentence of ratification of title and to purge the *hypothèques* affecting the property. Ex parte *Hart*, S. C., 3 L. C. J., p. 40; also 9 L. C. R., p. 310. And a temporary exception *peremptoire en droit* to an action for the recovery of a price of sale, setting forth the existence of a mortgage on the property sold, and the filing of an opposition to letters of ratification is a good plea. *O'Sullivan vs. Murphy*, S. C., 7 L. C. R., p. 424.

11. When the registrar's certificate discloses hypothecs existing on the land referred to in a petition for confirmation of title, a motion by an intervening party, praying to be allowed to file discharges, and that the hypothecs be declared to be satisfied, cannot be granted. Ex parte *Robinson*, S. C., 12 L. C. R., p. 431.

RATIFICATION OF TITLE:—

12. Effect of bankruptcy Ord. on lands hypothecated. Exp. *Chabot*, 1 Rev. de Lég., p. 265.

" :—*Vide* INSINUATION.

RATIFICATION:—*Vide* LETTER OF ATTORNEY.

REBELLION A JUSTICE:—1. In the case of a *saisie exécution*, where a defendant is outside his dwelling house, the door of which is locked, and within which are his wife and family, who are visible from the outside, and who neglect to open the door, on being called on by the bailiff to do so, the statement by such defendant to the bailiff that he cannot open the door, amounts to a refusal to do so. *Kemp vs. Kemp*, S. C., 2 L. C. J., p. 279. But the neglect of a defendant to open the door of his dwelling house, under the circumstances above described, does not amount to a *rebellion à justice*. *Kemp vs. Kemp*, S. C., 2 L. C. J., p. 280.

2. No mitigating circumstances can prevent the issuing of a *contrainte par corps* in the case of a *rebellion à justice*. *Campbell & al. vs. Beattie*, S. C., 3 L. C. J., p. 118.

3. It is no *rebellion à justice* to refuse to allow a bailiff to enter to make the sale of goods seized under an execution which had been allowed to lie dormant for more than two months. *Scholefield & al. vs. Rodden & al.*, S. C., 5 L. C. J., p. 332.

RECEIPT BY CROSS:—*Vide* CROSS,—EVIDENCE.

RECEIPT IN FULL:—1. A receipt in full is not taken as conclusive in this Court, but is open to explanation, and upon satisfactory evidence may be restrained in its operation. *The Sophia*, p. 219, S. V. A. R.

2. When receipts and discharges of claims are given by the crew of a vessel, they are not to be taken in the Admiralty as conclusive; and where the settlements and receipts are made under undue and oppressive influence, and without free consent, they ought not to bar an equitable claim for compensation beyond what the crew have received. *The Jane*, p. 256, S. V. A. R.

3. In actions by seamen for wages the Court will not of course sanction settlements made with parties out of Court, unless their proctors are consulted and approve them. *The Thetis*, p. 363, S. V. A. R.

" :—*Vide* COSTS.

" :— " PROCTOR.

RECEL:—The omission of two mortgages in the inventory of a succession is not of itself sufficient proof of fraud to make the party lose his right in the succession. *Shaw & al. vs. Cooper*, S. C., 6 L. C. J., p. 38.

RECOGNIZANCE:—The omission in a recognizance of special bail of the following condition required by the Provincial Statute 5 Geo. IV, c. 2, "it being nevertheless expressly provided, in conformity to the statute in such case made and provided, that we, the cognizors for the said defendant in this cause, shall not, by virtue of the undertaking hereinbefore stated, become liable, unless the said defendant shall leave the Province, without having paid the debt, interest and costs," makes such recognizance null and void. *Stewart vs. Hamel and Dubord*, 1 Rev. de Lég., p. 212.

RECORDER:—The recorder of Montreal is not bound to make any record whatever of evidence adduced before him, and consequently the Superior Court has no means of testing a question of jurisdiction, the solution of which depends on the precise character of such evidence. *Reg. on Pet. of Gould for Cert. vs. the Hon. Joseph Bourret*, S. C., 1 L. C. J., p. 162. But see a later case of Ex parte *Ledoux* for *certiorari*, S. C., 8 L. C. R., p. 255., Supra Vo. Conviction, where a conviction by the Recorder was set aside, there being no evidence set up to shew that the Recorder had jurisdiction. As to appeals from General Sessions of the Peace. *Gilchen and Eaton*, Recorder's Court, Quebec, 13 L. C. R., p. 471.

RECORS:—*Vide* EXECUTION.

" :— " SAISIE-REVENDICATION.

RECOUPEMENT:—1. The mate of a vessel is chargeable for the value of articles lost by his inattention, and the amount may be deducted from his wages. *The Papineau*, p. 94, S. V. A. R.

2. Damages occasioned to the ship by the mismanagement of the pilot may be set off against his claim for pilotage. *The Sophia*, p. 96, S. V. A. R.

RECUSATION:—1. The judge recused is competent to decide as to the validity of his recusation. *Canada Assurance Company vs. Freeman*, 3 Rev. de Lég., p. 85.

2. The recusation contemplated by the ordinance of 1667, tit. 24, art. 23, can only be made in writing. The *inimitié capitale* mentioned in the 8th article of the same title, to give rise to a recusation, must be hatred on the part of the judge, and must be so alleged and proved, failing which the reasons of recusation will be held to be impertinent; and the causes of such hatred must be declared. And such hatred must be clear, manifest and known, the result of the killing of some near relative of the person urging such recusation, or the result of differences, personal encounters, or matters of large interest between such person and the judge, which could create a feeling of revenge which might lead to using the opportunity of destroying the life, the honor or the personal advantages of an enemy. *Renaud and Gugy*, Q. B., 8 L. C. R., p. 246.

3. The relationship of a judge with a shareholder of an incorporated Company, party to the suit, does not render the judge incompetent. *Canada Assurance Company vs. Freeman*, 3 Rev. de Lég., p. 85.

4. A judge appointed to act as a Commissioner under the 20 Vic. c. 43, [C. S. L. C., cap. 2.] (Codification Act,) renders him incompetent to sit as one of the Judges of the Court of Q. B., 5 L. C. J., p. 79.

REGISTERS:—1. Change of master, not endorsed on register, and no bond given by new master, according to the 26 Geo. III, c. 60, sec. 18, and 27 Geo. III, c. 19, s. 7, operates a forfeiture. *Perceval vs. The Harrower*, S. R., p. 80.

2. A dissenting minister of a protestant congregation, not being a public officer, nor a person in Holy Orders, recognized to be such by the law, is not entitled to and cannot keep a parish register for baptisms, burials and marriages. Ex parte *Spratt*, S. R., p. 90.

REGISTERS :—

3. The word "Protestant Churches or Congregations," used in the Statute 35 Geo. III, c. 4, [C. Sts. L. C., c. 20,] which requires rectors of parishes, &c., from 1st January, 1796, to keep two registers, both of which are authentic, only embraces such churches and congregations as had their existence in the Province when the Statute was passed. *Spratt vs. The King*, S. R., p. 149.

4. A minister of a presbyterian congregation in communion with the Church of Scotland is entitled to keep registers for marriages, baptisms and burials, notwithstanding that in the place, where he officiates, another church, also in communion with the Church of Scotland has been previously established under the authority of Government. Ex parte *Clugston*, S. R. p. 448.

5. The certificate of baptism, will not be set aside upon *inscription de faux*, unless falsity or incorrectness is alleged and proved. That although not an extract from the registers which the American Presbyterian Church was by law allowed to keep, it was not therefore a *pièce fausse*. But the only extracts which can carry authenticity are those extracted from the registers allowed and ordained by law to be kept. *Shaw et al. vs. Sykes*, S. C., 5 L. C. J., p. 124.

And it will be left for the parties to make such proof respecting it as they may make by law. *Ib.*

REGISTRAR :—A registrar is responsible for the loss caused by his neglect to enregister a mortgage, or by a certificate given by him wherein an omission occurs, from the effect of which a purchaser *de bonne foi* is troubled in his possession. *Montizambert and Talbot dit Gervais*, Q. B., 10 L. C. R., p. 269.

And the action in such case should be an *action en garantie*, the registrar being the *garant* of the party to whom he has directly caused damage. *Ib.*

REGISTRATION :—1. A tutor cannot maintain an action at law until his tutorship has been registered. *Langlands vs. Stansfield et al.*, S. C., 7 L. C. J., p. 45.

2. And in an action brought by the Tutor of a minor, it is essential that the declaration contain an allegation that the appointment of said Tutor, or a memorial of such appointment, has been registered. *Murray vs. Gorman*, 2 L. C. R., p. 3. But in *Chouinard vs. Demers*, S. C., 5 L. C. R., p. 401, it was held, that an opposition to the sale of real estate by a Tutor *ad hoc*, authorized to act for minors, is maintainable without reference to such *acte de tutelle*, the 24th section of the registry ordinance not applying to such oppositions.

A purchaser who has been put in possession of an immoveable, and who has since caused his title to be registered, may invoke the prescription and possession of ten years as against the claim of a purchaser who had previously registered his title, but was never put in possession. *Thouin and Leblanc*, Q. B., 10 L. C. R., p. 370.

3. A judgment rendered against the *auteur* of a party, who is in open and public possession of immoveable property, but who has not registered his title, creates no *hypothèque* on such property. Ex parte *Gamble, Pet. for Conf. of Title*, S. C., 6 L. C. J., p. 169.

REGISTRATION :—

4. And in the case of *Chaumont and Grenier*, Q. B., 12 L. C. R., p. 125, it was held, that a deed, passed since the registry ordinance came into force, creating an hypothec is invoked as against a subsequent purchaser, and where the title creating the hypothec and that of the purchaser have been enregistered at the same time, the hypothecary creditor not having registered before the subsequent purchaser, had lost his right, and this although the purchaser was aware of the hypothec.

5. Where a debtor by fraud has incorrectly stated his christian name in a deed which is enregistered, the loss will fall on the creditor and not on the *tiers détenteur* in good faith. *Lafleur vs. Donegani et al.*, Q. B., (1849) 7 L. C. J., p. 102.

6. Subsequent obligation enregistered preferred to donation not insinuated prior to obligation. *Principal Officers of Art. & Pemberton*, 2 Rev. de Lég. p. 299.

7. Hypothecs resulting from deed of lease need not be registered, according to the terms of the 4 Vic., cap. 30, sect. 17. [C. Sts. L. C., cap. 37, sect. 10.] *Brown vs. McInenly*, S. C., 3 L. C. R., p. 291.

8. The privilege granted as to letters patent by the proviso of sec. 4, 4 Vic. cap. 30, [C. Sts. L. C., cap. 37, sect. 3, subsect. 3] only applies to the immoveable property granted by such letters patent. *Morrin & al. vs. Smith*, S. C., 6 L. C. R., p. 279.

9. The crown has no privilege for fire debentures, given to any one who was not a sufferer by the fire, without registration. *Reg. & Bois*, Q. B., 7 L. C. R., p. 471. *Vide Tremblay vs. Bouchard*, 1 Rev. de Lég., p. 47.

" :—*Vide* HYPOTHÈQUE.

" :— " PARTNERSHIPS.

REGISTRY ORDINANCE :— *Vide* CRIMINAL LAW.

REGISTRY OF VESSELS :—A title to a Steamer derived from a sale of the vessel and tackle, under warrant of distress issued by a Justice of the Peace, under the act 6 Will. IV, c. 28, [C. S. L. C., cap. 57,] for the recovery of seamen's wages, is insufficient to maintain an action *en revendication*, the Steamer not being shewn to belong to, or to have been registered in Lower Canada. And the Statute cannot be extended to vessels not belonging to, or registered in Lower Canada. Where the Statute authorizes the sale of a vessel, or tackle and apparel thereof, a warrant ordering the sale of the vessel, and the tackle and apparel thereof is illegal. *Kerr vs. Gilders'eeve*, 8 L. C. R., p. 266, and 3 L. C. J., p. 304.

RÉINTÉGRANDE :—To institute the action of *réintégrande*, the plaintiff should have been in possession a year and a day, particularly if his possession results from a trespass or a *voie de fait*. *Samson vs. Bolduc*, 3 Rev. de Lég. p. 361.

" :—POSSESSION.

RELATIONSHIP :—The opinions of two members of a Court, in the degree of relationship of brothers-in-law, cannot be reckoned as one under the Edict of 1681, and the declaration of the King of France of 1708. *Fleming vs. The Seminary of Montreal*, S. R., p. 184.

RELEASE:—Witnesses examined under a release. *The Lord John Russell*, p. 194, S. V. A. R.

RELIGIOUS BODIES:—*Vide* CORPORATIONS.

RELIGIOUS CONGREGATION:—One member of a religious congregation, cannot by an action at law compel the trustees of the church property to adopt the formalities necessary to secure the appointment of a new trustee to fill a vacancy, the remedy being by prerogative writ and not by action. *Smith vs. Fisher et al.*, S. C., 2 L. C. J., p. 74.

RÉMÉRÉ:—The purchaser of an immoveable property, subject to the right of redemption, cannot eject the lessee whose lease has not expired. *Russell vs. Jenkins*, 3 L. C. R., p. 417. But see Appendix *Vbo.* LEASE.

REMISE:—In the contract in the nature of a *remise*, the consideration need not be expressed; and with respect to such contracts the formalities required by law in relation to donations are not necessary *à peine de nullité*. *Robertson vs. Jones*, S. C., 8 L. C. R., p. 364.

RENEWAL:—*Vide* PROMISSORY NOTES.

RENTE CONSTITUÉE:—1. The hypothecary creditor who opposes the *décret* of a constituted rent, created as the price of an immoveable, and who is collocated on the produce of the sale, cannot again make his opposition when the property is sold to the prejudice of the purchaser of the rent. *Audet vs. Hamel*, 2 Rev. de Lég., p. 256.

2. A *rente constituée* included among the charges subject to which real estate was sold by *décret* cannot be claimed in capital after sale by an opposition *afin de conserver*. *Murphy et al., vs. Wall and Montizambert*, S. C., 12 L. C. R., p. 194. Confirmed in appeal 13 L. C. R., p. 97.

3. The sale by *decret* of a constituted rent does not operate any novation of such rent and has not the effect of changing its nature. *Turcotte vs. Papans et al.*, S. C., 7 L. C. J., p. 272.

The proprietors *par indivis* of the property hypothecated for the payment of the arrears of such rent which are indivisible, are jointly and severally bound for the payment of such arrears. *Ib.*

" :—*Vide* HYPOTHEQUE.

RENTE FONCIERE:—*Vide* DEGUERPISSEMENT.

RENT:—*Vide* LESSOR AND LESSEE.

RENUNCIATION:—1. The presumptive heiress, having collected moneys due to the deceased, and kept in her hands moneys left by him, could not renounce to the succession, and such renunciation would be of no effect. *Orr and Fisher*, Q. B., 6 L. C. R., p. 28.

2. An *acte* of renunciation is necessary to discharge the *héritier* from liability in a suit although he has done no *acte d'héritier*; and an action against him, if he appears and renounces before judgment, will be dismissed, but with costs against him. *The Montreal City and District Building Society vs. Kerfut et al.*, S. C., 4 L. C. J., p. 54.

When option is equivalent to renunciation. *Lefebvre vs. Demers*. S. C., L. R., p. 56. *Vide Bissonnette & Bissonnette*, Q. B., L. R., p. 61.

REPLY:—In public prosecutions for felony, the Law Officers of the Crown, and those who represent them, are entitled to reply, although no evidence is produced on the part of the prisoner. *The Queen vs. Quattrepattes*, 1 L. C. R., p. 317.

REPRISE D'INSTANCE:—1. An association which has been incorporated by a provincial act during the pendency of a suit, is entitled to take up the instance as a corporation. *Faribault and St. Louis et al., and La Compagnie du Richelieu*, S. C., 3. L. C. J., p. 51.

2. A petitioner praying to be allowed to appear and take up the *instance* of a party deceased, will be first allowed to appear and file his petition, but the Court does not thereby admit his right which may afterwerds be a subject of contestation. *McKillip et al. and Kauntz et al.*, 1 Rev. de Lég., p. 152; *Gillespie et al. vs. Spragg et al., and Mann et al., Pet. for reprise d'instance.* 6 L. C. J., p. 29.

3. A person cannot be held to appear in a cause and take up the instance in place of the defendant, deceased, by a rule *nisi*, but by an ordinary writ of summons and petition in due form. *Lafond et al. vs. Chagnon and La Chambre d'Agriculture and Hood*, S. C., 7 L. C. J., p. 112.

4. Where suggestion of death of one of several defendants is filed of record, a motion to force remaining defendants to substitute an attorney in place of one who had been promoted to the bench, will not be granted until such suggestion is removed or disposed of. *Sauvageau vs. Robertson et al.*, S. C., 9 L. C R., p. 224.

REPRISES MATRIMONIALES:—The prescription of *reprises matrimoniales* does not run during the marriage, or while the wife is under the power of the husband. *Gauthier vs. Ménéclier de Morochond*, S. C., 7 L. C. J., p. 320.

And the universal usufructuary legatee of the wife separated as to property, may claim such matrimonial *reprises* after thirty years elapsed during the marriage and since the rendering of the judgment. *Ib.*

The clause of the husband's will, instituting his wife as his universal usufructuary legatee, subject to the charge of paying the debts of the testator, has not the effect in such case of operating any confusion in the person of his wife, as regards such matrimonial *reprises* by such acceptance. *Ib.*

REQUETE CIVILE:—The *requête civile* cannot be received against a final judgment, rendered *en dernier ressort* and without appeal. *Valin vs. La Corporation du Comté de Terrebonne*, S. C., 4 L. C. J., p. 14; also, *Martin vs. Moreau*, S. C., 4 L. C. J., p. 121.

REQUETE LIBELLÉE:—1. In a proceeding by *requête libellée*, praying ouster of the defendant from an office held by him as councillor of the city of Montreal, and further that the informant be declared to be entitled to said office, the mode of impleading defendant is by writ of summons, under the statute 12 Vic., c. 41, [C. S. L. C., cap. 88,] and not by a Judge's order, under the 14 and 15 Vic., c. 128. *Lynch vs. Papin*, S. C., 4 L. C. R., p. 81, and L. R., p. 9. But on a *requête libellée*, on which was granted an order for a writ of summons to issue against defendant, it was held on *exception à la forme*, that the Judges in vacation have no jurisdiction

REQUETE LIBELLÉE :—

over the subject matter of the petition, and the *exception a la forme* was maintained. *Adam and Duhamel*, S. C., in vacation, 10 L. C. R., p. 14.

2. The petition or *requête libellée* required by the 12 Vic., c. 41, [C. S. L. C., cap. 88,] for the issuing of a writ of *quo warranto*, which sets forth generally the ground of complaint, is sufficient, without setting forth the details. *Fraser et al. vs. Buteau*, Q. B., 10 L. C. R., p. 289.

3. A party elected to be councillor in the corporation of the city of Montreal, not being possessed to his own use and benefit of real and personal estate within the city of Montreal, after payment of his just debts, of the value of £500 Cy., is not qualified to be so elected. *Rolland vs. Bristow*, S. C., 4 L. C. J., p. 281.

That a party elected to be such councillor, and becoming insolvent during his occupancy of said office, is by such insolvency disqualified to hold such office. *Ib.*

And in the same case it was held that there was no appeal from the judgment of the Superior Court acting under the statute 12 Vic., c. 41, [C. S. L. C., cap 88.] Q. B., 4 L. C. J., p. 283.*

RESCISION :—*Vide* ACTION RESOLUTOIRE.

RESILIATION :—*Vide* ACTION RESOLUTOIRE.

" :— " DONATION.

" :— " PLEADING AND PRACTICE.

RES JUDICATA :—1. An interlocutory judgment adopting without opposition the account of the succession prepared by its order, passes *in rem judicatum*, and it is not competent to the representatives of a minor who was legally a party to the suit, to revise the proceedings, and contest any particular item of the account. The Court may however rectify any error of calculation. *Plenderleath vs. McGillivray*, S. R., p. 470.

2. A judgment rendered against a principal debtor upon an issue raised by him, is *res judicata* against a surety, who was not party to the original cause. *Brush et al. vs. Wilson et al.*, S. C., 2 L. C. R., p. 249.

3. A judgment dismissing an hypothecary action for want of proof of possession by the defendant, of the property hypothecated, cannot be opposed by exception *rei judicatæ*, to a subsequent demand, founded on actual possession,—possession being a fact which is renewed day by day. *Nye and Colville et al.*, Q. B., 5 L. C. R., p. 408.

4. For a case in which a motion was refused on the ground that the subject matter was *res judicata*. *Benjamin vs. Wilson*, S. C., 6 L. C. J., p. 246.

5. *Res judicata* is properly pleaded to an action founded on judgment against the defendant in favor of third parties, who have assigned these judgments to the plaintiff. *Whelan vs. Keeler*, S. C., 13 L. C. R., p. 363.

6. Defence grounded on a *res judicata*, must be specially pleaded. *The Agnes*, p. 53, S. V. A. R.

* But see the case of *Fraser et al. vs. Buteau*, where it would seem the Q. B. had actually given a judgment on the merits of the petition.

RES JUDICATA :—

7. Where there had been a previous judgment of the Trinity House upon the same cause of demand, the Court declined to exercise jurisdiction. *The Phœbe*, p. 59, S. V. A. R.

A Court of competent jurisdiction having decided the facts which were directly in issue, the party is stopped from trying the same facts again. *Ib.*, p. 60.

To allow several suits for the same cause of action in two several Courts, would lead to a worse than useless multiplication of law suits, would be highly vexatious to parties, and would subject Courts to discredit from contrariety of co-existing decisions of equal authority in separate tribunals upon the same matters. *Ib.*, p, 61. *Vide* OPPOSITION No. 30.

RES PUBLICI ET DIVINI JURIS :—*Vide* COMPLAINTE.

RETRAIT CONVENTIONNEL :—The abolition of the *retrait conventionnel* by the 18 Vic., c. 103, sec. 4, [C. Sts. L. C., cap. 41, sec. 45,] has no retroactive effect, and the *retrait* may be exercised upon immoveables sold before the passing of the said Act. The advertisement of the Sheriff, stating that the immoveables will be sold, subject to the *cens et rentes* and other seigniorial and conventional dues and charges, according to the original title deeds of concession, is sufficient to preserve the *droit de retrait*, and in such a case an opposition *afin de charge* was not required. *Garon and Casgrain*, Q. B., 8 L. C. R., p. 397 ; also, *Harwood et ux. and Whitlock et al.*, Q. B., 6 L. C. J., p. 259 ; also, 12 L. C. R., p. 294.

RETRAIT LIGNAGER :—Abolished by 18 Vic., c. 102, [C. Sts. L. C., c. 53.] See a reported case, 5 L. C. J., p. 71, *Danserean vs. Collette.*

RETROCESSION :—*Vide* DONATION.

RETURN DAY :—The defendant must be called on the return day of the Writ of Summons ; but the writ and declaration may be brought in any day on motion of either party. *Dalton vs. Sanders*, 1 Rev. de Lég., p. 400.

" :—*Vide* CAPIAS.

RETURNING OFFICER :—By the Statutes of 12 Vic., c. 27, [C. S. C., cap. 6,] and 14 and 15 Vic., c. 1, [C. S. C., cap. 7,] returning officers and their deputies have been and are subject to punishment by the House of Assembly for malversation,—malversation on their part being a special breach of the privilege of the House, as an attempt to put in or keep out a member unjustly ; and the general power accorded in cases not provided for in the statutes, must almost always relate to the returning officer or his deputy, or to some person, not a member, in respect of whom the House is authorized to make such orders, as to the House may seem proper, necessarily implying a power in the House to enforce such order. The House of Assembly has the power, as being necessary to its existence, and the proper exercise of its functions, of determining judicially, all matters touching the election of its own members, including therein the performance of the duty of those officers, who are entrusted with the regulation of the election of its members. And Courts of Law cannot

RETURNING OFFICER :—

enquire into the cause of commitment by either House of Parliament, nor discharge nor bail a person, who is in execution by the judgment of any other tribunal; yet if the commitment should not profess to be for a contempt, but is evidently arbitrary, unjust and contrary to every principle of positive law or natural justice, the Court will not only be competent but bound to discharge the party; a commitment by either House of Parliament, may be examined upon a return to a writ of *Habeas Corpus*. The Justices here, as those in England, possess and have exercised the power to issue writs of *Habeas Corpus* in matters of commitment by either House of Parliament. The Provincial Statutes 12 Vic., c. 27, [C. S. C., cap. 6,] and 14 and 15 Vic., c. 1, [C. S. C., cap. 7,] invest the House of Assembly with power to punish, by imprisonment, a Deputy Returning Officer for malfeasance or breach of privilege. *Ex parte Lavoie*, S. C., 5 L. C. R., p. 99.

REVENDICATION :—1. Where in cases of revendication, the affidavit is manifestly bad, the writ and seizure may be quashed on motion; but where the affidavit invites an issue on the allegations, the proper proceeding is by *exception à la forme*. *Routh et al. vs. McPherson*, S. C., 9 L. C. R., p. 413.

2. An action of revendication will lie to recover possession of moveables illegally seized. *Langlois vs. The Corporation of the Parish of St. Roch et al.*, S. C., 13 L. C. R., p. 317.

3. A shipper may revendicate his property in the hands of the master of a vessel, who will not sign bills of lading. *McCulloch et al. and Hatfield*, Q. B., 13 L. C. R., p. 321, and 7 L. C. J., p. 229.

And if the Bills of Lading are signed after the issuing of the writ, but before its execution, the shipper may return the action for costs alone. *Ib.*

4. In an action of revendication, the omission to leave a copy of the *procès-verbal* of seizure, is not fatal, inasmuch as the Ord. of 1667 only requires this formality in cases of *saisie exécution*. *Moisan and Jorgensen*, S. C., 13 L. C. R., p. 399.

" :—*Vide* COMPLAINTE.

" :— " MOVEABLES.

REVENUE CASES :—*Vide* ADMIRALTY.

REVOCATION :—*Vide* HYPOTHÈQUE.

" :— " WILL.

REVOCATORY ACTION :—*Vide* ACTION REVOCATOIRE.

" " :— " DAMAGES.

RIPARIAN PROPRIETOR :—1. Riparian proprietors are not entitled as a matter of right, to obtain a grant of beach lots in the River St. Lawrence, fronting their property, in preference to any other, and in particular cases the Crown can grant such beach lots to those who are not the riparian proprietors. *Reg. vs. Baird*, S. C., 4 L. C. R., p. 325.

2. An action by a riparian proprietor against a neighbour, also a riparian proprietor, to compel him to demolish a wharf will not be maintained, unless it be built in the bed of the river and be calculated to injure the complainant. A riparian proprietor has a right to build a wharf to recover land

RIPARIAN PROPRIETOR :—
that may have been encroached upon by the river, if by so doing he does not injure his neighbours. *Brown and Gugy*, Q. B., 11 L. C. R., p. 401.

" :—*Vide* ACCESSION.

RIVERS :—1. Rivers, whether navigable or not, are vested in the Crown for the benefit of the public, and no person, seignior or other, can exercise any right over them without a grant from the Crown. In an action of damages by the stopping of communication on a river, with a boom and chain, it appearing from an agreement between the parties, after the commencement of the action, that the placing of the boom and chain tended to their mutual benefit, the action was dismissed. *Boissonnault and Oliva*, S. R., p. 564.

2. But in the case of *Boswell and Denis*, Q. B., 10 L. C. R., p. 294, it was held, that rivers *non-navigables et non-flottables*, are the private property of the riparian proprietors, who have consequently the exclusive control over the same and the exclusive right of fishing therein.

3. A seignior by his grant from the Crown acquires a right of property in the soil over which a river not navigable flows; but on running water he has only a right of servitude while it passes through or before the land he retains in his possession, which does not authorize him to direct the stream, or use the water, to the prejudice of the other proprietors above or below him. *St. Louis vs. St. Louis*, S. R., p. 575. And an action by a seignior against his co-seignior for the improper use of the common estate can be maintained. *Ib.* Confirmed in the Privy Council, 3 Rev. de Lég., p. 329, also 3 Moore's Rep., p. 398.

4. In the case of *Minor vs. Gilmour*, S. C., 9 L. C. R., p. 115, it was held, that by the general law applicable to running streams, every riparian proprietor has a right to what may be called the ordinary use of the water flowing past his land, for instance to the reasonable use of the water for his domestic purposes and for his cattle, and this without regard to the effect which such use may have in case of a deficiency, upon proprietors lower down the stream. And further he has a right to the use of it for any purpose, or what may be deemed the extraordinary use of it, provided that he does not thereby interfere with the rights of proprietors either above or below him. Subject to this condition he may dam up the stream for the purposes of irrigation; but he has no right to interrupt the regular flow of the stream, if he thereby interferes with the lawful use of the water by other proprietors and inflicts upon them a sensible injury. And 12 Moore's Rep., p. 131.

5. Under the provisions of the 19 & 20 Vic., c. 104, [Con. St. L. C., cap. 51.] a proprietor has no right to erect across a water-course, a dam abutting on the land of the opposite proprietor; and if so erected it will be demolished at the instance of the latter. *Joly vs. Gagnon*, S. C., 9 L. C. R., p. 166.

6. A boom stretched across a floatable or navigable river is a public nuisance which may be abated by any one. *Reg. vs. Patton*, Q. B., Cr. side, 13 L. C. R., p. 311.

" :—*Vide* SERVITUDE.

ROAD:—1. An action will lie by the assignee of a road officer against an absent proprietor, to recover an amount due for making a road through his lands. *Ellison vs. Dunn*, S. C., 1 L. C. R., p. 340.

2. Municipal Councils making by-laws for the opening of roads, &c., &c., are bound in compliance with the provisions of the 36 Geo. III, c. 9, [repealed,] commonly called the Road Act, to give the notices required by that Act. And if the road be a by-road (*route*) it is necessary that the price of the land should be paid or tendered to the proprietor. However long a road may have been opened and used by the public, no right is thereby acquired, and the proprietor of the soil can, at any time, when a *procès-verbal* is made recognizing the road as a public road, claim to be indemnified for the value of the land. Ex parte *Foran & al.*, C. C., 4 L. C. R., p. 52.

ROAD TAX:—An overseer of roads has no authority to sue for penalties under a by-law of a municipal corporation, imposing a road-tax and by the Act 10 & 11 Vic., c. 7, [repealed,] the powers formerly vested in the overseers of roads have been transferred to the municipal councils. Ex parte *Rocheleau*, and Ex parte *Eisenhart*, S. C., 3 L. C. R., p. 497.

ROMAN CATHOLIC:—A Roman Catholic who has become a Protestant, cannot be held liable for his share of the rate levied for the building a church, although he may have done acts which a Roman Catholic could alone do, and that he had demanded the building of the church in question. *Les Syndics de Lachine vs. Laflamme*, S. C., 6 L. C. J., p. 226.

2. A person born in the Roman Catholic faith cannot discharge himself of the civil obligations attaching to Roman Catholics, by the fact of his having ceased to practise his religion and having followed the worship of a Protestant church, and such a person may be interrogated as to his belief, and his refusal to answer will be taken as an admission of his not having changed his religion. *Les Syndics de la paroisse de Lachine vs. Fallon*, S. C., 6 L. C. J., p. 258.

" :—*Vide* DIXMES.

RULE:—It is by rule and not by a direct action that the clerk of the Court, in whose hands a deposit has been made, should be called on to pay over moneys. *Merizzi and Cowan*, Q. B., 6 L. C. J., p. 62.

RULE OF PRACTICE:—1. In default of any proof that the Rules of Practice of the Superior Court prepared and signed on the 17th Dec., 1850, have been registered in the district of Gaspé, the Court here will not apply any such rules to any act done within that district. *Macfarlane vs. McCracken*, S. C., 5 L. C. J., p. 254.* *Vide* 2 L. C. J., p. 287.

2. The 26th rule of Practice of the Circuit Court, with respect to figures used in a return of service, is not *à peine de nullité*. *Lamothe and Garceau*, Q. B., 13 L. C. R., p. 88.

3. A practising attorney cannot become bail or surety in any proceedings cognizable by Superior Court. *Routier and*

* Is not the Superior Court sitting in the district of Gaspé a part of the Superior Court sitting in the district of Montreal? If so, is not the Court (i. e. the whole Court) obliged to know its own registers? Again should it not be presumed, at all events, that the Court at Gaspé had performed its duty and enregistered these Rules of Practice?

RULE OF PRACTICE:—

Gingras, S. C., 3 L. C. R., p. 57; nor in Appeals from the Superior Court to the Queen's Bench, without contravening the 6th rule of practice. *Lemelin and Larue*, Q. B., 10 L. C. R., p. 190.

4. The part of the 7th Rule of Practice which prescribes "that all writs of appeal and error shall bear the signature of the attorney suing out the appeal" is merely directory and not peremptory. The rules of a Court are within its control, and it will relax them where a rigid enforcement of them will operate an absolute injustice. *Ross and Scott*, Q. B., 9 L. C. R., p. 270. And so on motion for leave to examine witnesses, a notice of such motion served on Saturday, will be considered sufficient for its presentation on the Monday, notwithstanding the 11th Rule of Practice of the Superior Court. *Byrne & al. vs. Fitzsimmons and Fisher*, S. C., 10 L. C. R., p. 388.

5. A motion for leave to examine a witness about to leave the Province, is exempted from the operation of the 11th Rule of Practice; and a notice of such motion, served on Saturday, is sufficient for the presentation of such motion on the Monday. *Byrne et al. vs. Fitzsimmons and Fisher*, S. C., 10 L. C. R., p. 383.

6. Sufficient notice of a petition for discharge from a *capias* is given if it be served on Saturday between 4 and 5 P. M. for Monday morning. *Trobridge vs. Morange*, S. C., 6 L. C. J., p. 312.

7. Service at six in the morning is insufficient. *McFarlane vs. Jameson*, S. C., L. R., p. 89. And service of summons before 8 A. M., is null, the 18th Rule of Practice being enjoined *à peine de nullité*. *Kinney and Perkins*, Q. B., 13 L. C. R., p. 302. And 7 L. C. J., p. 207. But the service of process *ad respondendum*, made after sunset, if made before eight in the evening is valid. *Robinson vs. McCormick*, S. C., 1 L. C. R., p. 27.

8. The 76th section of the Judicature Act of 1857, 20 Vic. c. 44, [Con. Stat. L. C., cap. 83, sect. 88,] has virtually repealed the 24th Rule of Practice of the Superior Court, requiring the filing of exhibits, on which a declaration or other pleading is founded, at the time such pleading is filed. *Denis vs. Crawford*, S. C., 4 L. C. J., p. 147.

9. But omission to file a bill of particulars, even where defendant is in gaol under *capias*, will not entitle defendant, under the 30th rule of practice, to dismissal of the action. *Henderson vs. Enness*, S. C. 2 L. C. J., p. 187.

10. By the 43rd Rule of Practice the inscription for *enquête* is general, so when plaintiff has finished taking his evidence, if defendant be not present, the *enquête* will be closed if plaintiff requires it. *Bowker vs. McCorkill & Graham*, S. C., L. R., p. 1.

11. Under the 95th rule of practice, a contestation by plaintiff of the declaration of a *tiers-saisi* on an attachment after judgment, will be rejected, if it be not made within the eight days limited by the rule. *Masson et al., vs. Tassé et al.*, S. C., 6 L. C. R., p. 71.

RULE OF PRACTICE:—

12. The report of distribution cannot be contested after the delay fixed by rules of practice, even where a special case is shewn, supported by affidavits. *Forsyth vs. Morin et al., and divers* oppts., S. C., 2 L. C. J., p. 59. But in the case of *Woodman vs. Letourneau and Letourneau*, S. C., 3 L. C. J., p. 27, it was held, that with the permission of the Court, on cause shewn, an opposition *afin de conserver* might be filed at any time before the homologation of the report of distribution. And in the case of *Prevost vs. Delesderniers and Frothingham*, S. C., 3 L. C. J., p. 165, it was held, that the contestation of a judgment of distribution will be permitted at any time before its homologation, on cause being shewn and payment of costs. And so also in *Clapin vs. Nagle and Nagle*, S. C., 4. L. C. J., p. 286. But in *Ramsay vs. Hitchins and Ramsay*, S. C., 4 L. C. J., p. 285, it was held, that where the omission was not due to the oversight of the attorney, the Court will not allow the opposition to be filed so as to disturb the parties collocated, but will admit it so as to give the new opposant the moneys not distributed.

" :—*Vide Vo.* DISTRIBUTION.

RULE OF THE SEA:—1. It is a generally received opinion among seamen, that it is imprudent and improper to anchor directly a-head or directly astern of another vessel in the direction of the tides or prevailing winds, unless at such or so great a distance as would allow time for either vessel to take measures to avoid collision in the event of either driving from her anchors. *The Cumberland*, p. 79, S. V. A. R.

It is moreover the usual practice not to anchor near to and directly in another vessel's hawse, that is, directly a-head and in the direction of the wind and tide; and in the books which treat on seamanship it is mentioned as a thing to be avoided, not only to prevent accidents from driving in bad weather, but also in order that either vessel may be able to get under weigh without risk of collision with the other. *Ib.*, p. 80.

2. It is a rule universally received among seamen, and to be found in books on seamanship, that when there is doubt, the vessel on the larboard tack is to bear up or heave about for the vessel on the starboard tack. *The Nelson Village*, p. 156, S. V. A. R.

3. When a vessel is in stays, or in the act of going about, she becomes for the time unmanageable, and in this case it is the duty of every ship that is near her to give sufficient room. *The Leonidas*, p. 229, S. V. A. R.

When a ship goes about very near to another, it is her duty to give a preparatory indication, from which that other can, under the circumstances, be warned in time to make the necessary preparations for giving room. *Ib.*

4. When two vessels are approaching each other, both having the wind large, and are approaching each other so that if each continued in her course there would be danger of collision, each shall port helm so as to leave the other on the larboard hand in passing. *The Nigara*, p. 315, *ib.*

But it is not necessary, that because two vessels are proceeding in opposite directions, there being plenty of room,

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the one vessel should cross the course of the other, in order to pass her on the larboard. *Ib.*

5. It is the duty of every vessel seeing another at anchor, whether in a proper or improper place, and whether properly or improperly anchored to avoid, if practicable and consistent with her own safety, any collision. *The John Munn*, p. 266, S. V. A. R., in notes.

6. One who has the management of a ship is not allowed to follow that rule to the injury of the vessel of another, when he could avoid the injury by a different course. *The Niagara—The Elizabeth*, p. 323, S. V. A. R.

7. Rule as to ships meeting each other, Merchant Shipping Act 1854, which came into operation on 1st May 1855, (17 & 18 Vic. c. 104, sec. 296.) *The Inga*, p. 335, S. V. A. R.

8. Where two ships, close hauled, on opposite tacks meet, and there would be danger of collision if each continued her course, the one on the port tack shall give way, and the other shall hold her course, unless by so doing she would cause unnecessary risk to the other. *The Mary Bannatyne*, p. 353, S. V. A. R.

Nor is the other bound to obey the rule, if by so doing she would run into unavoidable or imminent danger; but if there be no such danger, the one on the starboard tack is entitled to the benefit of the rule. *Ib.*

RULES AND REGULATIONS:—Made in pursuance of the Imperial Statute, 2 Will. IV, c. 51, touching the practice to be observed in suits and proceedings in the several Courts of Vice-Admiralty abroad, and established by his late Majesty's Order in Council, at the Court of St. James's, the 27th of June, 1832, pp. 1 to 51, S. V. A. R.

Supplementary rules established by Her Majesty's Order in Council, at the Court of Buckingham Palace, the 2nd of March, 1848, p. 52, *Ib.*

RULING OF A JUDGE IN CHAMBERS:—*Vide* APPEAL.

SAISIE-ARRET:—1. An attachment will lie against two persons appointed by commission from the Crown to the office of Sheriff for the non-payment of moneys levied by one of them, although the other may not have assumed the duties of the office or acted in any manner under the commission. *Black vs. Newton & al.*, S. R., p. 298.

The defendant has a right to contest the validity of an affidavit and *saisie-arrêt* before judgment on an *exception à la forme*. *Biroleau dit Lafleur vs. Lebel*, C. C., 6 L. C. J., p. 168. And this independently of the contestation which may be raised upon the summons *ad respondendum*. *Leslie & al. and Molson's Bank*, Q. B., 12 L. C. R., p. 265.

3. Or the validity of the affidavit may be contested on motion. *Robertson & al. vs. Atwell and McDougall*, S. C., 7 L. C. J., p. 48.

The jurat of an affidavit must contain the words "sworn before *me*" or "*us*," as the case may be. *Ib.*

4. The Court will not quash a writ of attachment because the jurat of the affidavit upon which it issues is subscribed

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by the prothonotary of the Court, the office being held by two persons, and the oath is stated to have been taken "before me"; nor will the affidavit be held bad because of erasures, not mentioned in the jurat of immaterial words, or of words without which the affidavit is complete. *The City Bank vs. Hunter and Maitland*, 2 Rev. de Lég., p. 171. And an affidavit for *saisie-arrêt* in which the word "*celer*" is used instead of the word "receler," and the latter word erased in the body of the affidavit, and the former put in the margin, and not referred to in the margin, is good. *Bourrassa vs. Haws*, 8 L. C. R., p. 135.

5. An affidavit to obtain a writ of *saisie-arrêt* before judgment, stating that the sum of money due is for the price of immoveable property, which the plaintiff promised to sell and the defendant promised to purchase, is a sufficient cause of indebtedness. And in such an affidavit it is sufficient for deponent to swear that he is credibly informed, and verily in his conscience believes, that the defendant is immediately about to secrete his estate, &c., and that without the benefit of a writ of attachment he may lose his debt or sustain damage, &c. *Shaw vs. McConnell*, S. C., 4 L. C. R., p. 49.

6. An affidavit for a writ of *saisie-arrêt simple*, in which it is alleged "that deponent is credibly informed, hath every reason to believe, and doth verily in his conscience believe, that the defendant hath secreted, and is about to secrete his estate, debts and effects, with intent, &c." is sufficient, and in accordance with the 27 Geo. III, c. 4, s. 10, [Con. St. L. C. cap. 83, sec. 46.] And the form given in the 9 Geo. IV, c. 27, [Con. St. L. C., cap. 83, sects. 53-4-5-6.] *Laing & al. vs. Bresler*, S. C., 5 L. C. R., p. 195.

7. An affidavit for an attachment, *saisie-arrêt*, must be made in the terms and according to the provisions of the 27 Geo. III, c. 4, s. 10, [Con. St. L. C., cap. 83, sec. 46,] otherwise such attachment will be quashed. *Leverson & al. vs. Cunningham*, S. C., 5 L. C. R., p. 198. And so also it was held in *Boudrot vs. Locke & al.*, S. C., 13 L. C. R., p. 469. And the appointment of the plaintiff in such case as guardian to the effects seized will not vitiate the seizure. *Ib.* And if the estate, debts and effects are seized in the hands of some other person the attachment will be set aside, if he is not summoned to appear as also the defendant. It will also be set aside if it contain an injunction from the judge to the sheriff to retain the effects seized to abide the judgment of the Court; or if it appears by the declaration that the debt sworn to has been cancelled. *Richardson vs. Molson & al.*, S. R., p. 376. And if a motion to set aside an attachment by the sheriff of books of account and papers, be rejected in a Court of original jurisdiction, and its judgment to that effect be reversed in appeal, the Court of Appeals will not grant a rule for an attachment against a judge for putting a *scellé* upon such books and papers, before they are restored by the sheriff to the person in whose possession they were seized, nor against the sheriff for delivering them to the judge for that purpose, nor against the party or his attorney at whose instance the *scellé* was carried into execution. *Ib.*, 393.

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8. An affidavit for *saisie-arrêt* in which it is said "Deponent is credibly informed, hath every reason to believe and doth verily in his conscience believe, that the defendant is immediately about to secrete his estate, debts and effects with intent to defraud," &c., is sufficient. *Wurtele vs. Price*, S. C., 5 L. C. R., p. 214.

9. In such affidavit the omission of the words "will lose his debt," is not fatal, and no reasons other than those set forth in the motion to quash will be considered by the Court. *Godin vs. McConnell*, C. C., 13 L. C. R., p. 465.

10. An affidavit for *saisie-arrêt simple* in which it is said "that deponent hath every reason to believe, and doth verily believe that the defendants are immediately about to secrete their estate, debts and effects with intent to defraud," &c., is insufficient, and not in accordance with the 27 Geo. III, c. 4, [Con. St. L. C., cap. 83 sec. 46,] or the form prescribed by the 9 Geo. IV, c. 27, [Con. St. L. C. cap. 83, sects. 53-4-5-6.] *Baile vs. Nelson*, S. C., 5 L. C. R., p. 216. *Vide* also *Laing vs. Bresler*, Supra No. 6.

11. An affidavit for a *saisie-arrêt simple* in which it is said "that deponent is credibly informed, and doth verily believe that the said defendant is immediately about to secrete his estate, debts and effects with an intent to defraud," is insufficient, and not in conformity with the requirements of the Statutes 27 Geo. III, c. 4 [Con. St. L. C., cap. 83, sec. 46,] and 9 Geo. IV, c. 27, [Con. St. L. C., cap. 83, sects. 53-4-5 6.] *Maguire vs. Harvey*, S. C., 5 L. C. R., p. 251.

12. An affidavit for a writ of *saisie-arrêt* in which it is stated: "That deponent is credibly informed, hath every reason to believe, and doth verily in his conscience believe, &c.," is sufficient being in accordance with the form laid down in the 9 Geo. IV, c. 27, [C. St. L. C., cap. 83, sects. 53-4-5-6.] *Hayes vs. Kelly*, S. C., 5 L. C. R., p. 336.

13. An affidavit for *saisie-arrêt* in which it is alleged: "That deponent is credibly informed, hath every reason to believe, and doth verily in his soul and conscience believe, &c." is sufficient. *Fitzback et al vs. Chalifoux*, S. C., 5 L. C. R., p. 385.

14. A writ of *saisie-arrêt* issued upon an affidavit sworn before a Commissioner of the Superior Court, without an order from a Judge of the said Court to that effect, is void, and such writ of *saisie-arrêt* will be set aside and quashed. The Deputy Prothonotary will not be permitted to substitute the words, "Deputy Pro. S. Ct.," for the words, "Comr. S. C.," affixed by error at the bottom of an affidavit for a writ of *saisie-arrêt*, because such act having a retroactive effect might prejudice the interests of the defendant. *Gagnon vs. Rouseau*, S. C., 6 L. C. R., p. 461.

15. Clerks of Commissioners' Courts have no authority under the 14 and 15 Vic. c. 18, to receive the necessary affidavit and to issue writs of attachment before judgment Ex-parte. *Carpentier*, S. C., 6 L. C. R., p. 319, also L. R., p. 66.

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16. A *saisie-arrêt* issued for the recovery of a debt not due, but which became due during the pendency of the suit, is properly declared good and valid by the final judgment in the case; and the truth of the contents of the affidavit cannot in any way be attacked in such suit. *Préfontaine and Prevost et al.*, Q. B., 1 L. C. J., p. 104.

17. An affidavit for *saisie-arrêt* before judgment must be certain and positive in its terms, so an affidavit which says that without the benefit of a writ, &c., plaintiffs *may* lose their debt or sustain damage, is bad. *Robertson et al., vs. Attwell and McDougall*, S. C., 7 L. C. J., p. 48.

But an affidavit for an attachment before judgment concluding with the averment in the disjunctive, that the plaintiff without the benefit of an attachment will loose his debt or sustain damage is not bad for uncertainty; also, that although such an affidavit conforming to the 48 section 22 Vic. c. 5, [C. S. L. C., cap. 83, s. 47,] contains special reasons which are in themselves insufficient, yet if there be averments to answer the requirements of the 10th section of the ordinance 25 Geo. III., c. 2, [C. S. L. C., c. 82, sec. 17,] or equivalent thereto, the attachment will be supported under the latter law, notwithstanding it contains the allegation that the defendants continue to carry on their business. *Milne vs. Ross et al.*, S. C., 4 L. C. J., p. 3.

18. And an affidavit upon which a *saisie-arrêt* before judgment is issued, must state the cause of indebtedness with sufficient clearness to make it appear that the defendant is indebted, and the omission of a material fact will not be cured by a general allegation of defendants' indebtedness. So where it was said that "goods, wares, and merchandize," were sold and delivered by plaintiffs, without saying *to whom* the affidavit will be held to be bad. *Beaufield et al., vs. Wheeler*, S. C., 5 L. C. J., p. 44.

19. A motion to quash the writ *d'assignation et saisie-arrêt*, cannot be received, because it tends to dismiss the action and that even if applicable to the writ, it came too late, the writ being returnable on the 22nd July, and the motion being made on the 22nd September. *Marchand vs. Cinq Mars* S. C., 6 L. C. R., p. 473. But a motion to quash a *saisie-arrêt*, made on the fourth day of the term next after its return is in time. And where two motions were made and the first was taken *en delibéré*, the second will be received and filed so that it may be disposed of after the first is adjudicated upon. *Beaufield et al., vs. Wheeler*, 5 L. C. J., p. 44.

20. To obtain a writ of attachment *en main tierce* it is not necessary in the affidavit to mention the name of the garnishee. *The City Bank vs. Hunter and Maitland*, 2 Rev. de Lég., p. 171. But if the name of the garnishee be mentioned in the writ and the sheriff seize in the hands of another the seizure will be null. *Davis and Beaudry*, Q. B., 6 L. C. J., p. 163.

21. The court will quash an attachment by writ of *arrêt-simple* whereby any other person than the defendant is divested of possession of his property. *Wood and Gates et al.*, S. R., p. 536. And in *Lee vs. Taylor*, S. R., 538, it was held

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that if an attachment be issued to attach goods in the hands of A., and under the writ the Sheriff attaches goods in the hands of B., the seizure is null *propter defectum auctoritatis*, and the court will restore the property to B., without enquiry into his title to it.

22. The appellant leased a vessel to defendant in the court below, to trade from Labrador to Quebec. On the arrival of the vessel at Quebec, the defendant delivered to respondents, consignees of certain part of the cargo, the merchandize shipped to their account. While the respondents were receiving from the wharf the cargo so delivered, the appellant caused it to be seized for the hire of the vessel. Respondents intervened claiming the goods. In the Q. B., confirming the judgment of the S. C., it was held, that the goods seized were in the possession of the respondents, who were not indebted to the appellant and the seizure was set aside. *Tremblay and Noad et al.*, Q. B., 8 L. C. R., p. 340.

23. According to the provisions of the 12 Vic. c. 38, sec. 79. [C. S. L. C., cap. 80, s. 15, cap. 83, secs. 43, 174, 189,] a writ of *saisie-arrêt* after judgment, may be made returnable in vacation, if it issue in an appealable case, and it is the duty of the bailiff executing such writ to deliver it on or before the return day, either to the attorney or to the party from whom he received it, or to the file in the office of the Clerk of the Court, into which it is returnable, although he was not specially requested so to do. And having received such a writ as bailiff, to execute it, he will not be permitted to urge the want of proof in the record, of his being a bailiff. The proof of the amount of the debt due by the *tiers-saisi* to the defendant, of the attachment of it in the hands of such *tiers-saisi*, and of the payment of such amount to others than the plaintiff, the plaintiff's judgment remaining unsatisfied, is sufficient to entitle the plaintiff to recover damages to the extent of the amount due by such garnishees, without direct evidence of the defendants insolvency. *Lampson vs. Barret*, S. C., 2 L. C. R., p. 77.

24. Where defendant has left the Province after action brought, it is unnecessary to serve him with a writ of *saisie-arrêt* after judgment. *Mettayer et al. vs. McGarvey*, S. C., 6 L. C. R., p. 148. Also, *Jones vs. Saumur dit Mars and Leroux*, S. C., 2 L. C. J., p. 60. But see *contra Hogan vs. Gordon and the Bank of Montreal*, S. C., 10 L. C. R., p. 21. And the service must be with the same delay as a writ of summons. *McLaren et al. vs. Hutcheson and Fraser*, C. C., 6 L. C. J., p. 45.

25. Where the defendant has left the district of Montreal since the service of the original process, a writ of *saisie-arrêt* after judgment may be legally served on a Clerk in the office of the Clerk of the Circuit Court at Montreal. *Kearney vs. McHale and Pariseault*, S. C., 7 L. C. J., p. 227.

26. Irregularities and informalities in a *saisie-arrêt* after judgment cannot be attacked by an *exception à la forme*, and such an exception will be rejected on motion. *Molson vs. Burroughs and the Bank of Montreal*, S. C., 3 L. C. J., p. 93. And in the same case it was also decided that a

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saisie-arrêt cannot be dismissed on motion for irregularities, S. C., 3 L. C. J., p. 97. But in a note at page 95 of the same volume mention is made of a case of *Pinsonneault vs. Mailloux and L'Heureux*, No. 334, S. C., as being in contradiction to the ruling in the case of *Molson vs. Burroughs*. In it the reporter maintains that the defendant pleaded by exception that the *tiers-saisi* was not the *véritable débiteur*. That nevertheless in spite of the objections of plaintiff's counsel, to the effect that defendant had no interest in preventing the T. S. from paying the debt, and that a *saisie-arrêt* could not be attacked by an exception, the Court held that the *saisie-arrêt* was irregular and insufficient and that the exception was well founded in law and the *saisie-arrêt* was declared null and void.* And generally the debtor has an interest to contest the *saisie-arrêt*. *La Banque du Peuple vs. Donegani*, S. C., 1 L. C. R., p. 107. But a defendant has no interest in contesting the declaration of a *tiers-saisi*, on the ground that the goods of such *tiers-saisi* are under seizure for the amount admitted by him in his declaration to be due to the defendant, and that such a contestation will be dismissed on demurrer filed by the *tiers-saisi* himself. *Constable & al. vs. Gilbert & al. and Simpson & al.*, S. C., 4 L. C. J., p. 299.

27. On *certiorari* it was held that a justice of the peace has no right to issue a writ of *saisie-arrêt* after judgment. Ex parte *The Corporation of St. Phillippe*, S. C., 6 L. C. R., p. 484.

28. Affidavit for an attachment under the 177 Article of the Custom is not *de rigueur*. *Sinclair vs. Ferguson*, also, *Mills & al. vs. Ferguson*, S. C., 2 L. C. J., p. 101; also, *Leduc vs. Tourigny*, 6 L. C. J., p. 24. But the reverse was held at Quebec, in the case of *Poston & al. vs. Thompson*, C. C., 12 L. C. R., p. 252.

29. An affidavit for *saisie-arrêt* sworn before a commissioner of the Superior Court is irregular. *Fleming vs. Fleming*, S. C., 6 L. C. R., p. 473, also, *Gagnon vs. Rousseau*, *Ib.*, p. 461.

30. A *saisie-arrêt* after judgment cannot be executed in Upper Canada, *McKenzie & al. vs. Douglas & al.*, S. C., 5 L. C. J., p. 329.

31. Plaintiff who has attached moneys in the hands of a garnishee cannot by motion obtain an order of Court directing garnishee to pay money to plaintiff. The proper course is to inscribe the cause for judgment on the merits of the attachment. *Februyer vs. Poirier and Decaré*, S. C., 7 L. C. J., p. 44.

* Having acted as counsel at the argument of this case and having by me a manuscript note of it, I may be permitted to state my view of this case which differs in some respects from that of the reporter. In the first place defendant took exception to plaintiff's proceedings by a pleading in the nature of an opposition *afin d'annuller*, and plaintiff made no objection to the nature of this proceeding by his answer. Then the pleading of the defendant set up that this *tiers-saisi* was not his debtor but that he was attempting to answer for a Fabrique, of which he pretended he was one of the *marguilliers*, and the name of the parish was not such as given in the writ. The judgment turned upon this, that the defendant had an interest that the intrinsic formalities should be observed, which they evidently had not been. But under no view could this case form any contradiction to that of *Molson vs. Burroughs*, for it was not attempted to attack the S. A. by motion, and issue was joined on defendant's pleading without any objection being made.

SAISIE-ARRET :—*Vide* ABSENTEE.
" :— " BILL OF EXCHANGE.
" :— " DAMAGES.
" :— " TIERS-SAISI.

SAISIE-GAGERIE :—1. The goods and merchandize placed on a wharf may be seized by process of *saisie-gagerie* for the rent of such wharf. *Jones vs. Lemesurier & al.*, 2 Rev. de Lég., p. 317.

2. In an action for rent of a wharf, a certain quantity of fire-bricks and hearthstones were seized by process of *saisie-gagerie*. To the action the defendant pleaded payment; a third party had intervened and claimed the bricks and the hearthstones as his property, and the Superior Court held that the plea had been made out, and the action was thereupon dismissed and the intervention maintained. On appeal it was held that the plea of payment was not made out, that the fire-bricks and hearthstones deposited upon the said wharf and seized in the possession of the said defendant, for rent of the wharf, were legally seized, under process of *saisie-gagerie*, to secure a lawful demand for rent of said wharf in arrear; that the said bricks and hearthstones were liable and subject by law to the privilege of landlord *super invectis et illatis*, as goods and merchandize stored, kept and placed, for deposit and sale, upon the said wharf, by the agent and factor of the owner, who under the Statute 10 & 11 Vic., c. 10, had the power to pledge the goods of his consignor. *Jones and Anderson*, Q. B., 2 L. C. R., p. 154. *Vide* Appendix, LESSOR, Nos. 1 and 2.

3. In an action for rent the *saisie-gagerie* may be left at the domicile of the defendant, although he be absent, and such defendant may be legally constituted the guardian of the effects seized, and may be compelled by *contrainte par corps* to produce the same, unless he can establish that when the *saisie-gagerie* first became known to him the goods were not in his possession. *Munn vs. Halferty*, S. C., 1 L. C. R., p. 170.

4. Damages cannot be recovered for suing out maliciously, and with marked rigor a writ of *saisie-gagerie* where the rent was really due. *David and Thomas*, Q. B., 1 L. C. J., p. 69.

5. The proceeding for *saisie-gagerie* and ejectment under the Act 18 Vic., c. 108, sec. 16, [Con. St. L. C., cap. 40, sec. 16,] cannot be maintained, unless founded on a lease, or on proof of occupation by and with the consent and leave of the apparent proprietor. *Dubeau and Dubeau*, Q. B., 8 L. C. R., p. 217.

6. A landlord has a right of *gagerie* over all the goods of a tenant, which furnish the premises leased, and can prevent them being carried away or sold until he is paid the rent due, and the other terms for the year if he have a notarial lease. *Bell vs. Conlin and Sincennes*, S. C., 5 L. C. J., p. 337. *Vide* Appendix, LEASE, No. 1.

7. And a lessor has a right to cause the moveable effects and household furniture upon which he has acquired a lien or privilege for rent, and which are removed from the premises leased, to be *saisie-arrêtés* by process of *saisie-gagerie* or *saisie-gagerie en mains tierces par droit de suite*, and this as well for the rent due, if their be any due, as for the rent to accrue thereafter, if none be due. *Aylwin et al. and Gilloran*,

SAISIE-GAGERIE :—

Q. B., 4 L. C. R., p. 360. Also *Rodier vs. Jolly*, S. C., 4 L. C. J., p. 15. But it need not be stated in the writ to what place the goods were removed. *Ib.* However the lessee must be a party to the proceeding. *Auld vs. Laurent et al.*, C. C., 7 L. C. J., p. 49.

8. But to exercise the right of *saisie-gagerie par droit de suite*, plaintiff must show that not enough of furniture was left in the house to guarantee the payment of the rent. *Zeigler vs. McMahon*, 1 Rev. de Lég., p. 95.*

9. An action will lie by a landlord against a tenant who has abandoned a house leased to him for a term of years under a notarial contract, in consequence of the bad state of repairs of the same, and the tenant is liable for the rent for the whole term of the lease; and a *saisie-gagerie par droit de suite* will be declared good, though no rent was due at the time of the abandonment. *Boulanget vs. Doutre*, S. C., 4 L. C. R., p. 170.

10. In August, 1853, Bonner took out a *saisie-gagerie* against the goods and chattels of Hamilton, his tenant. In September, 1854, he obtained judgment but did not then execute. In May, 1855, the goods attached were moved into the possession of Johnston, and no *saisie-arrêt par droit de suite* was taken out by Bonner within eight days after the removal; but sometime after the expiration of the eight days he took out a writ of *venditioni exponas*, in virtue of which, after several contestations, the goods and chattels in question were sold. It was held in the Q. B., reversing the judgment of the S. C., 6 L. C. R., p. 42, that Bonner had lost his privilege as lessor, and that Johnston had acquired a privilege upon the said goods and chattels to his prejudice. *Johnston and Bonner*, Q. B., 7 L. C. R., p. 80; also 1 L. C. J., p. 116.

11. But the *droit de suite* may be exercised after eight days, as between landlord and tenant, during the existence of the lease. *Mondelet vs. Power*, Q. B., 1 L. C. J., p. 276. *Vide Idler vs. Clarke*, S. C., 11 L. C. R., p. 490.

SAISIE MOBILIÈRE :—*Vide* EXECUTION.

" :— " REBELLION A JUSTICE.

SAISIE REVENDICATION :—1. In cases of revendication where the affidavit is manifestly bad, the writ will be quashed on motion; but where the affidavit invites an issue on the allegations, the proper proceeding is by exception *à la forme*. *Routh et al. vs. McPherson*, S. C., 9 L. C. R., p. 413.

2. An affidavit to the effect that the lessee of a vessel to run between Montreal and Upper Canada, had incurred liabilities on the vessel at a United States port, that he has become insolvent, *en déconfiture*, and that should the boat run to Upper Canada, she would in due course call at such port of the United States, and be, in all probability, seized there for the payment of such liabilities, is sufficient to sustain an attachment or *saisie revendication* of the vessel by the lessor. *Routh et al. vs. McPherson*, S. C., 4 L. C. J., p. 45.

3. After the dissolution of a partnership, one of the late partners cannot revendicate his portion of the goods of the

* This was an action of *saisie-gagerie par droit de suite* for rent *not* due.

SAISIE REVENDICATION :—

late partnership, which may have fallen into the hands of the late co-partner, even although the latter be on the point of converting them to his own use. *Maguire vs Bradley*, 1 Rev. de Lég., p. 367.

4. In an action *en revendication* against an individual who has taken timber off wild lands without authority, the plaintiffs sufficiently establish their proprietorship by acts of possession of the land at different times without producing title deeds. *The British American Land Company vs. Stimpson*, L. C., 3 L. C. R., p. 90.

5. The validity of a *saisie revendication* cannot be affected by the absence of *recors*. *Desjardins vs. Dubois*, S. C., 1 L. C. J., p. 81.

6. Goods sold for cash, but not paid for, may be followed and claimed, in the hands of a third party, in an action of revendication, provided that the action be commenced within eight days after the transactions, and that the goods have remained until then in the state in which they were delivered. *Aylwin vs. McNally*, S. R., p. 541, in note. And so also it was held in *Sénécal vs. Mills et al and Taylor et al.*, S. C., 4 L. C. J., p. 307.

7. It is for the third party to show that the goods were sold *à terme*, else they will be presumed to have been sold for cash. *Ib.*

And the fact that the grain has been mixed with other grain of a like kind, will not prevent the revendication.* *Ib.*

8. A. sells a quantity of timber to B., a part of the price only to be paid on delivery of the timber, A. makes a delivery and B. omits to pay any part of the price. Thereupon B. brings an action to rescind the contract of sale and by process of *saisie-revendication* attaches the timber. This action was maintained and the timber so far as it could be identified was ordered to be restored. *Moor et al. vs. Dyke et al.*, S. R., p. 538.

9. And even if the goods be sold *avec terme*, the vendor has a privilege in preference to the other creditors upon the goods by him so sold and not paid for, and which have been seized in the possession of the debtor, and the vendor can stop the sale. *McClure vs. Kelly et al.* 2 Rev. de Leg., p. 126, and *Baldwin vs. Binmore et al.*, S. C., 6 L. C. J., p. 297. And the vendor has a privilege for the price of all moveables sold in the possession of his debtor, even although the vendee had made repairs to such moveables, provided they can be identified; and the payment by promissory notes which have not been paid at maturity, and are produced, will not defeat the vendor's privilege. *Noad and Lampson* Q. B., 11 L. C. R., p. 29; and so also it was held in *Douglass vs. Parent and Larue*, S. C., 12 L. C. R., p. 142. And in *Robertson et al. vs Fergusson*, 8 L. C. R., p. 239, it was held that the vendor of goods sold *avec terme*, may revendicate the goods in the possession of the vendee, who has become insolvent; and the privilege exists though the goods have

* There seems to be a slight discrepancy between the ruling in the case of *Aylwin vs. McNally*, and this case, as far as regards the condition of the goods revendicated; grain mixed with other grain, even of a like kind, can hardly be considered as being in the same state in which it was delivered. Nevertheless the decision is in conformity with the distinctions of the Roman Law which gave the action *in rem* in this very case. Inst. II, § 28.

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ceased to be wholly in the possession of the vendee. And an affidavit for a *saisie revendication* is not necessary in such cases, (*Leduc vs. Tourigny*, 6 L. C. J., p. 24,) and service of the declaration may be made at the Sheriff's office, under the 7 Geo. IV, c. 8, [C. S. L. C., cap. 83, sect. 57] ; also, 2 L. C. J., p. 101. *Vide* also *ib. Sinclair vs. Fergusson* : also, *Mills et al. vs. Fergusson.* But *contra Boston et al. vs. Thompson*, C. C., 12 L. C. R., p. 252. Also, in *Torrance et al. vs. Thomas*, S. C., 2 L. C. J., p. 99, it was held, that the privilege of the vendor on goods sold *avec terme*, and delivered to the vendee, and still in his possession, he having become insolvent, is such that the said goods may be attached by a conservatory process to prevent their disappearing. *Leduc vs. Tourigny*, S. C., 5. L. C. J., p. 123, and 6 L. C. J., p. 324. And where plaintiff makes an affidavit in support of the attachment, in which he alleges that the defendant is insolvent, the affidavit is sufficient proof of such insolvency, unless it is denied by the defendant in a special plea. *Jackson vs. Paige et al.*, S. C., 6 L. C. J., p. 105.

10. Privilege of vendor for goods sold and not paid for. What constitutes an alteration of the condition of the goods to destroy the privilege of the vendor. *Tétu & al. vs. Fairchilds & al.* S. C., 6 L. C. J., p. 269.

11. An attachment under the 177th article of the Custom, cannot be tried by motion. *Torrance et al. vs. Thomas*, S. C., 2 L. C. J., p. 98.

12. A thing seized on process of *saisie revendication*, and given over to the charge of a *gardien*, may be restored to the plaintiff on his application, by a Judge in Chancery. *La Société Canadienne de Montréal vs. Lamontagne*, S. C., 3 L. C. J., p. 185.

13. And in a case of *Baldwin vs. Binmore et al.*, it was held, that the plaintiff has a right to obtain delivery of flour seized by him as a vendor under a writ of *saisie conservatoire*, on giving security that the flour will be forthcoming, to abide the future order of the Court, or the value thereof duly accounted for by the plaintiff. S. C., 6 L. C. J., p. 299. And in the same case it was held that the value to be so accounted for, is the value at the time of its being given to plaintiff, from which date the plaintiff shall be accountable therefor with interest. S. C., 6 L. C. J., p. 297.

" :—*Vide* CURATOR.
" :— " DAMAGES.
" :— " REGISTRY OF VESSELS.

SALARY :—1. Salary not due at the time of service of writ of attachment, cannot be seized. *Malo vs. Adhémar and La Banque du Peuple*, C. C., 1 L. C. J., p. 270.

2. Salary or wages accrued subsequent to dismissal, and prior to termination of agreement, cannot be recovered by a merchant's clerk dismissed for absence without leave. *Charbonneau vs. Benjamin*, S. C., 2 L. C. J., p. 103. And so also where a servant refused to obey a lawful order of his master, and is discharged in consequence. *Hastie vs. Morland*, S. C., 2 L. C. J., p. 277 ; but where a clerk employed for the year be dismissed without a cause, he may bring his

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action for the balance of wages, and not for the damages. *Ouellet vs. Fournier dit Préfontaine*, S. C., 6 L. C. J., p. 118.

" :—*Vide* ASSESSORS.

SALE :—1. The sale of goods by admensuration is only conditional, until the mensurement actually takes place; so that if in the meantime such goods were destroyed by fire, the loss would fall on the vendor, the risk *(periculum rei venditæ)* still being his. *Lemesurier et al. vs. Logan et al.*, 1 Rev. de Lég., p. 176. And if something more were required to be done in order to identify the goods they are not in a fit state for actual delivery. *Boswell and Kilborn et al.*, P. C., 12 L. C. R., p. 161. But property after a sale perfected, though not delivered, is at the risk of the purchaser. *McDouall vs. Fraser*, S. R., p. 101.* Actual delivery is not necessary to give full effect to a sale of flour, so as to be at the risk of the purchaser. *Boyer & al. vs. Pricur & al.*, C. C., 7 L. C. J., p. 52.

2. A sale of salt on board a vessel lying in the river being complete, the vendor may resell it at the risk of the purchaser, who will be liable for the difference between the price of sale and resale if the latter be less. *Jackson vs. Fraser*, S. C., 12 L. C. R., p. 108.

3. A sale *omnium bonorum* made by a trader whilst notoriously insolvent, and after meetings of his creditors, which failed to result in any unanimous arrangement, to two of his creditors who, (as the sole consideration for such sale) became responsible for the payment of the dividend he was desirous of paying by giving their notes for an amount sufficient to cover the dividend, all of which notes actually paid, were so paid, out of the proceeds of the sales of a portion of the goods consigned, is not either a simulated sale or a sale *in fraudem creditorum*. *Cumming & al. vs. Mann and Smith & al.*, S. C., 2 L. C. J., p. 195. But this case was reversed in appeal. 10 L. C. R., p. 122, and 5 L. C. J., p. 1.

4. A deed purporting to be a promise of sale, but containing *saisine* in favor of the purchaser, and transfer of possession by the vendor, is in fact a deed of sale, notwithstanding the condition to give a title only after payment of the first instalment. *Kerr and Livingston*, Q. B., 1 L. C. R., p. 275. And such a sale of immoveables gives rise to *lods et ventes*. *The Seminary of Quebec vs. Maguire*, S. C., 9 L. C. R., p. 272. And a promise of sale, followed by possession, is equivalent to an absolute sale; and an hypothecary claim created against the vendor, subsequently to such promise of sale, is inoperative against the property so sold. *Gosselin vs. La Compagnie du Grand Tronc*, Q. B., 9 L. C. R., p. 315. And where such purchaser brings an action against a third party, to whom he has resold a portion of the property, as

* These two cases appear to be contradictory, but they are not really so. The principle is that the sale is not complete without tradition. Now where the goods have to be measured, there can evidently be no tradition until the measurement has taken place. It is in fact the sale of a *corps incertain*. In the second case, the words "though not delivered" are used in an untechnical sense. The goods were not all physically in the possession of the purchaser, but he had had tradition of them, that is, they were at his disposition, and he had actually removed a part.

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well in his quality of proprietor as of agent of his vendor, he will have judgment as proprietor. *Ib.*

5. In *Gaulin and Pichette* (*Vide* PROMESSE DE VENTE) it was held that a verbal promise of sale, followed by tradition, was not equal to a sale. But in *Pinsonnault and Dubé*, Q. B., 3 L. C. J., p. 176, it was held that the promise of sale, though verbal, if followed by tradition, is equal to a sale.

6. In an action to compel a party to execute a deed of sale, the plaintiff is not bound to tender by his action and to deposit in Court, the purchase money, more particularly if the defendant pleads that he his unable to execute the required deed. *Perrault vs. Arcand*, S. C., 4 L. C. R., p. 449.

7. A horse sold in open market to a purchaser in good faith will only be restored to the owner on his re-imbursing to the purchaser the price he paid for the horse. *Morrill vs. Unwin*, S. C., L. R., p. 60. And this is in conformity, with the ruling in *Fawcett & al. and Thompson & al.*, Q. B., 6 L. C. J., p. 139.

8. But in *Mathew vs. Senecal*, it was held in the S. C., that the sale of a moveable by a party in possession of it as lessee, will n t be maintained, and that an actio n by the real proprietor will be maintained against an innocent purchaser. 7 L. C. J., p. 222. And a horse lost and purchased *bonâ fide* in the usual course of trade, in a hotel yard in Montreal, where horse dealers are in the habit of selling daily a number of horses, does not become the property of the purchaser as against the owner who lost it. *Hughes vs. Reed*, S. C., 6 L. C. J., p. 294.

9. The sale by the sheriff of immoveable property, which does not contain the extent of ground described gives the purchaser the right of demanding a reduction of the price proportionate to the extent of ground deficient. *Paradis vs. Allain*, S. C., 2 L. C. R., p. 194 ; also *Grey vs. Todd & al.*, 2 Rev. de Lég. p. 57. And of recovering money paid from the party *poursuivant le decret* who has received the proceeds. S. C., 9 L. C. R., p. 108, and 3 L. C. J., p. 75. But he would not have the right to seek the nullity of the sale. *Grey vs. Todd & al.*, 2 Rev. de Lég. p. 57. But it would be otherwise if the lands were described as having buildings on them, when in effect there were none. *Lloyd vs. Clapham*, 2 Rev. de Lég., p. 179.

10. The costs of sale of immoveables by sheriff are shared in proportion to the value and not to the extent. *Pacaud vs. Dubé*, S. C., 7 L. C. J., p. 279. And so are the costs of distribution. *Ib.* Any opposant may force an *adjudicataire* to deposit the price of his adjudication, although such opposant had no right to the moneys. *Ib.*

11. An action cannot be maintained by a vendor to recover an instalment on the *prix de vente*, the deed containing a stipulation that the vendor should furnish to the purchaser, before payment of the instalment, a certificate from the registrar of the county within which the land is situated, that there are no mortgages or incumbrances on the land. And there being no proof that such certificate was furnished, notwithstanding proof adduced with the plaintiff's answers

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to the pleas, of a notarial receipt, not registered, dated previously to the sale, discharging the mortgage or *bailleur de fonds* claim alleged by the defendant's pleas to exist on the land in question. *Bunker vs. Carter*, S. C., 5 L. C. R., p. 291.

12. A *lettre missive* is a sufficient power of attorney for the sale of the lands therein mentioned. And a writing in the form of a letter is a sufficient conveyance of land, although such letter was executed by a firm, one of the partners in which was the person mentioned in the power of attorney, and although the terms of payment for the lands in question were different from those mentioned in the *lettre missive*. *Cummings and Quintal*, Q. B., 7 L. C. R., p. 139.

13. Questions as to the validity of the sale of real estate will be determined by the law of the local domicile of the parties, and therefore a sale of real estate in Lower Canada, made in the United States, by a married woman whose matrimonial domicile was Lower Canada, without the express authorization of her husband, is valid. *Laviollette vs. Martin*, S. C., 2 L. C. J., p. 61.

14. The sale of an immoveable property subject to a *rente viagère* is susceptible of the same stipulations as an onerous donation. And in such a sale the prohibition to alienate may be validly imposed on the purchaser with a resolutory clause in case of contravention. And a voluntary resolution is valid against third parties, even when it does not appear to have been caused by the occurence provided for in the resolutory clause ; and such a voluntary resolution effected for good and valid consideration will have the same effect as a resolution judicially pronounced. And an hypothec created in favor of a third party by the purchaser, during his possession, is distinguished by such voluntary resolution although not caused by the event provided for, and although made in the form of retrocession for good and valid consideration. *Lynch and Hainaut*, Q. B., 5 L. C. J., p. 306.

15. When there is a sale of goods by sample, and the goods do not agree with it, the vendee must make known the defect within a reasonable delay,—he could not claim to rescind the sale and return the goods after a delay of six months. *Joseph vs. Morrow & al.*, S. C., 4 L. C. J., p. 288.

16. Held in the Superior Court:—That a purchaser who has received a quantity of flour sold by sample, is entitled, when sued for the price, to a reduction, equal to the diminished value of the flour received, it being inferior to the sample. That the purchaser is bound on the receipt of the flour to have it examined without delay and to tender it back ; and that a notarial protest and tender on the 21st of July, was too late, the sale and delivery having been made on the 19th of June, although verbal notice of the bad quality of the flour had been given to the brokers on the 27th of June. That the purchaser having sold part of the flour, was not entitled to have the sale set aside for the remainder.

Held in Queen's Bench :—That the offer to deliver back the portion of flour remaining in the hands of the purchaser, was a valid offer ; and that the confession of judgment

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offered in one of the pleas for the balance of the price was sufficient and should have been accepted. That the purchaser was entitled, as part of his damages, to deduct the cost of transportation to and from his customers in the country, to whom part of the flour had been forwarded without having been examined, and also the deduction from the price allowed to the customers on such sale. *Leduc and Shaw & al.*, 13 L. C. R., p. 438.

SALE OF IMMOVEABLES :—*Vide* ACTION RESOLUTOIRE.
" " :— " ASSESSMENTS.
" " :— " FRANC ET QUITTE.
" " :— " LEASE.
" " :— " POWER OF ATTORNEY.

SALE OF SHIP :—Sale of ship has not the effect of discharging seamen from their engagement. *The Scotia*, p. 160, S. V. A. R.

SALE SUPER NON DOMINO :—*Vide* ADJUDICATAIRE.

SALVAGE :—1. The mere *quantum* of service performed is not the criterion for a salvage remuneration. *The Royal Middy—Davison*, V. A. C., 12 L. C. R., p. 309.

2. A vessel struck on Red Island shoal in the river St. Lawrence, at the end of November, 1853, and being abandoned by the crew, was subsequently carried off by the ebb tide. She was followed by four young men, who, with great perseverance, courage and skill, and with great peril of their lives, forced their boat through the ice, got on board and brought her back to the bay of Tadousac, where she remained in safety during the winter, and until she proceeded on her voyage in the following spring. On a value of £3000 currency, the Court awarded £500 currency and costs. The Court ruled that in all cases of salvage protests ought to be brought in. *The Electric*, V. A. C., 5 S. C. R., p. 53.

3. The Palmyra sunk in the St. Lawrence, and was raised and saved by the machinery on board the *Dirigo* and the great skill and experience of her master and crew. £1,000 salvage was awarded. V. A. C., 10 L. C. R., p. 144.

4. Persons acting as pilots are not to be remunerated as salvors. *The Adventure*, p. 101, S. V. A. R.

Under extraordinary circumstances of peril or exertion, pilots may become entitled to an extra pilotage, as for a service in the nature of a salvage service. *Ib.*

Such extra pilotage decreed to a branch pilot for the River St. Lawrence for services by him rendered to a vessel which was stranded at Mille-Vaches, in the River St. Lawrence, on his voyage to Quebec. *Ib.*

5. In case of wreck in the River St. Lawrence, (*Rimouski*,) the Court has jurisdiction of salvage. *The Royal William*, p. 107, S. V. A. R.

In settling the question of salvage, the value of the property, and the nature of the salvage service, are both to be considered. *Ib.*

The circumstances of the case examined, and the service declared to be a salvage service, and not a mere *locatio*

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operis, though an agreement upon land was had between the parties in relation to such service. *Ib.*

Salvors have a right to retain the goods saved, until the amount of the salvage be adjusted and tendered. *Ib.*, p. 111.

6. Seamen, while acting in the line of their strict duty, cannot entitle themselves to salvage. But extraordinary events may occur, in which their connexion with the ship may be dissolved *de facto*, or by operation of law, or they may exceed their proper duty, in which case they may be permitted to claim as salvors. *The Robert and Anne*, p. 253, S. V. A. R.

7. Compensation decreed to seamen out of the proceeds of the materials saved from the wreck by their exertions. *The Sillery*, p. 182, S. V. A. R.

8. Salvage allowed by Judge Kerr to the chief and second mates and carpenter, for their meritorious services, out of the proceeds arising from the sale of the articles saved from the wreck. *The Flora*, p. 255, S. V. A. R., in note.

9. Whether when a merchant-ship is abandoned at sea, *sine spe revertendi aut recuperandi*, in consequence of damage received and the state of the elements, such abandonment taking place *bonâ fide*, and by order of the master, for the purpose of saving life, the contract entered into by the mariners is, by such circumstances, entirely put an end to; or whether it is merely interrupted and capable by the occurrence, of any and what circumstance, of being again called into force. *The Florence*, p. 254, S. V. A. R., in note.

10. In a case of very meritorious service rendered by two seamen and two young men, to a vessel in the River St. Lawrence, the Court awarded one sixth part of the property saved, and also their costs and expenses. *The Electric*, p. 330, S. V. A. R.

SAVINGS BANK :—That the President and Directors of a Savings Bank who illegally mix themselves up with a commercial banking business, although under color of acting for the bank, will be held responsible for their transactions. And so in the case of *Prevost and Allaire*, a charitable institution appointed delegates to establish a savings bank. These delegates elected a president and directors, who adopted certain regulations, and, among others, one prohibiting any profit to the officers of the institution. Deposits were received, to be repaid with interest, and promissory notes were discounted upon the credit of individuals; upon these discounts a percentage was taken by the directors, and a portion of the funds was appropriated to their own use for their services. The bank or business, so established, was ultimately closed as being insolvent, and a portion of the debts due as special deposits, were bought up by the directors at a composition in the pound; and it was held on assumpsit against the president and several of the directors, by one of the depositors who had been one of the abovementioned delegates, for the full amount of his deposits: That without reference to the question of fraud, *delit or quasi delit*, the president and directors had become traders

SAVINGS BANK :—
by mixing themselves up with a commercial banking business, and were jointly and severally liable to each depositor for the amount of his deposits, and that had the plaintiff approved of the proceedings of the directors, submitted annually at meetings of the depositors, his approval, obtained by means of false statements, could not operate to his prejudice ; and it further held that the charitable institution had no interest in the matter, and that no action *pro socio*, for or against it would lie. That the president and directors having become a co-partnership or an unincorporated company, the action was well brought against one or more of them, under the provisions of the 12 Vic., c. 45, [C. Sts. L. C., cap. 65,] Q. B., 11 L. C. R., p. 293.

SCELLÉ :—1. It is essential to the validity of a *scellé* that it be exercised by a Judge in person, and not by a mere ministerial officer of the Court, and that the property and papers, which are the object of the *scellé*, remain under the seal of the Court, with a guardian to protect them. *Richardson vs. Molson*, S. R., p. 376.

2. The Superior Court at weekly sittings has no jurisdiction under the 74th section of the Judicature Act, 12 Vic., c. 38, [Rep. 20 Vic., cap. 44, sec. 91,] to revise the order of a Circuit Judge ordering a *scellé*, under the 41 Geo. III., c. 7 sec. 18, [C. S. L. C., cap. 86, sec. 4,] the authority of the Court in such cases must be exercised in term. Where under the provisions of a will, the testatrix has bequeathed all her property to her husband, *en pleine propriété*, exempting him from the necessity of making an inventory, but on condition that he does not re-marry, in which case he is bound to account to the heirs, the order of a Judge of the Circuit Court requiring that an inventory shall be made before taking off the seals which have been affixed at the instance of the heirs, is a prudent judgment consistent with the interest of all parties, and not to be disturbed. *Cardinal and Belinge*, S. C., 3 L. C. R., p. 435.

SCHOOL ACTS :—Rights of dissentients non-resident. *The Trustees of the Dissentient School of St. Henri vs. Young*, 13 L. C. R., p. 473.

SCHOOL COMMISSIONERS :—1. Power granted by a statute to remove masters for misconduct or incapacity, "after a mature deliberation at a meeting called for that purpose," does not exempt them from the ordinary legal liability to justify their acts towards such masters, when called upon so to do. *Browne vs. The School Commissioners of Laprairie*, S. C., 1 L. C. J., p. 40 ; and so also it was held in *Gaudry vs. Marcotte*, S. C., 11 L. C. R., p. 486.

2. School Commissioners are bound to respect the resolutions of their predecessors. *The School Commissioners for the Parish of St. Michel vs. Bastien*, S. C., 4 L. C. J., p. 123.

3. The liability of a municipal corporation is measured by its powers, and consequently School Commissioners are not liable for the balance of an obligation given for the erection of a model school house, such balance being in excess of the amount authorized by law to be so expended. *The School*

SCHOOL COMMISSIONERS :—

Commissioners for the Municipality of Barnston, Q. B., 4 L. C. J., p. 363 ; also 11 L. C. R., p. 46.

" :—*Vide* SECRETARY-TREASURER.

SCHOOL MUNICIPALITY :—Under the 9th Vic., c. 27, [C. S. L. C., cap. 15, sec. 64,] the various school municipalities had a right to obtain a surrender, from the royal institution of the lands held in trust for school purposes within their respective municipalities, a school municipality having been divided under the 12 Vic., c. 50, [C. S. L. C., cap. 15, sec. 30,] without any mention as to one of such lands held in trust, the Court held that the surrender should be made to the municipality within the limits of which the lot of land in question was situate. *The School Commissioners of St. Pierre de Sorel vs. The School Commissioners of William Henry*, S. C., 11 L. C. R., p. 68.*

SCIRE FACIAS :—The writ of *scire facias* is not indispensible to obtain the revocation or cancelling of letters patent, and the Crown represented by the officers of the Ordnance, can waive the prerogative of the writ of *scire facias*, and claim by the usual and ordinary process, the nullity of the letters patent, making a grant or concession of wild lands, on which respondents have based their action. A defendant may, by exception, invoke the nullity of the title set up by the adverse party, without proceeding directly by action or incidental demand to rescind such title. *The Principal Officers of Her Majesty's Ordnance and Taylor et al.*, Q. B., 1 L. C. R., p. 481.

The writ of *scire facias* to cancel letters patent can only issue at the suit of the Crown. *Exp. Paradis*, S. C., 7 L. C. J., p. 130 ; also L. R., p. 65.

SEAMEN :—*Vide* MARINERS.

SEAMEN'S WAGES :—*Vide* WAGES.

SEASON OF NAVIGATION :—The word "summer" used in a contract to indicate the period within which timber should be delivered in Quebec, means the season of navigation which begins in the commencement of May, and terminates about the end of November, and cannot be understood as limiting the time strictly to the three months which form the season of summer as the year is divided in the calendar. *Thibaudeau and Lee*, Q. B., 7 L. C. R., p. 230. †

SECRETARY-TREASURER :—1. The Secretary-Treasurer of a municipal corporation cannot bring suit as attorney for the corporation in his own name. *Bourassa and Garièpy*, S. C., L. R., p. 55.

2. No one but the sovereign can sue by Attorney. *Ib. Vide* ATTORNEY-GENERAL, No. 2. And so a *sous-voyer* or inspector of roads cannot sue for the municipal council. *Muir and Decelle*, C. C., L. R., p. 75.

3. The Secretary-Treasurer cannot recover from the School Commissioners, out of the School funds, any salary or pay-

* This case was reversed in the Q. B., June, 1864.

† The holding of this report appears to be more generalized than the opinions expressed by the Judges in rendering judgment warrant. The value of the word "summer" as used in the deed in question, was held to mean the season of navigation ; and it may be said, with Judge Duval, that summer, in a contract, will always be held to mean summer in contradistinction to winter, a period pretty well defined, at least in this region.

SECRETARY-TREASURER :—
ment for extra services by him rendered to such Commissioners. *Pelletier vs. Les Commissaires d'Ecole pour la Municipalité de Ste. Philomène*, S. C., 4 L. C. R., p. 394.
" :—*Vide* SERVICE.

SECURITY :—*Vide* APPEAL.

SECURITY FOR COSTS :—1. Security for costs cannot be given by one person. *Donald vs. Beckett*, S. C., 4. L. C. J., p. 127. Also *Powers vs. Whitney*, S. C., 6 L. C. J., p. 40.

2. Where two defendants severally demand security for costs, separate bonds must be given ; but the same sureties in each bond will suffice. *Bell et al vs. Knowlton et al.*, S. C., 13 L. C. R., p. 232.

3. Security for costs cannot be claimed by the sheriff or other officer of the court before obeying the order of the Court. *Leverson et al. vs. Cunningham and Boston*, S. C., 1 L. C. J., p. 3.

4. The four days allowed to ask for security for costs does not mean for days in term. *Williams vs. Arthur & al.*, S. C., 6 L. R., p. 82. But in the case of *Comstock & al. vs. Lesieur*, S. C., 2 L. C. J., p. 306, it was held, that a defendant summoned to appear in vacation can demand security for costs on the first day of the nearest term, without giving notice within the first four days from the return of the writ. And so also, it is alleged, in a note in the Jurist, vol. 5, p. 26, it was decided by Mr. Justice Badgley, in a case which is not reported, of *Stirling vs. Dow & al.*, S. C. M., 17th Feb., 1859.

5. But in the case of *Tiers & al. vs. Trigg & al.*, the Court returning to the ruling of *Williams vs. Arthur & al.*, held that a motion for security of costs is too late when notice thereof is made after the fourth day from the date of appearance, but for the first day of the term following the return and appearance, 5 L. C. J., p. 25. But later still, *Smith*, J., affirmed the ruling in *Comstock vs. Lesieur*, in a case of *Perry vs. The St. Lawrence Grain Elevating and Floating Storage Company*, S. C., 5 L. C. J., p. 252.

6. In counting the four days for asking for security for costs the appearance of appellant for ratification of title dates from the presentation of petition and from filing of deeds in Court. Ex parte *Wood*, S. C., L. R. p. 107.

7. The Court will order that security for costs be given within a certain delay, else the action will be dismissed with costs. *Adams vs. Sutherland*, S. C., 1 L. C. J., p. 196. And security not being given, on motion the said case was so dismissed. *Adams vs. Sutherland*, 2 L. C. J., p. 109. Also *Castongué vs. Masson & al.*, S. C., 6 L. C. J., p. 121 ; and 12 L. C. R., p. 404.

8. Notice of security for costs having been given should be signified to defendant, and if that has not been done, a demand of plea and foreclosure, without such notice, are irregular. *Jersey vs. Rowell*, S. C., 13 L. C. R., p. 172. And if judgment be entered up by the prothonotary relief will be given on simple petition, as provided by Con. St. L. C., cap. 83, sect. 115, or by appeal to the Queen's Bench ; but if appeal be taken, defendant will only get costs of the Court below and disbursements in appeal. *Ib.*

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9. Plaintiffs leaving the province after judgment given must give security for costs to an opposant, if required, on contestation of his oppposition. *Mahoney & al. vs. Tomkins and Geddes & al.*, S. C., 9 L. C. R., p. 72.

10. A foreign plaintiff who contests the declaration of a *tiers-saisi* will be held to give security for costs. *Meyer & al. vs. Scott and Benning & al*, S. C., 4 L. C. J., p. 116.

11. And an intervening party whose domicile is beyond the limits of the province, is bound to give security for costs. *Scott & al. vs. Austin and Young & al.*, 5 L. C. J., p. 53.

12. An opposant, *before* filing a contestation of the claim of another opposant living out of the province, may demand security for costs but not *after*. *Bonacina vs. Bonacina* and divers opposants, S. C., 4 L. C. J., p. 148. But in the Superior Court at Quebec it was held that where the plaintiff, who resides out of the province, contests an opposition, the opposant is not entitled, under the 41 Geo. III. cap. 7, sec. 2, [C. Sts. L. C., c. 83, Sect. 68.] to security for costs, the plaintiff in such case being in the position of a defendant rather than of the party prosecuting. *Brigham vs. McDonnell & al. and Derlin*, S. C., 10 L. C. R., p. 452. And so also it was held in a case of *Morrill vs. McDonald & al. and Ross & al.*, 6 L. C. J., p. 40.

13. A foreign plaintiff will be permitted to give security for costs by deposit of a sum of money. *Mann & al. vs. Lambe*. S. C., 4 L. C. J., p. 300.

14. Although a plaintiff living out of the province sue *in formâ pauperis*, the defendant is intitled to security for costs. *Gagnon vs. Woolley*, S. C., 10 L. C. R., p. 234.

15. Where the security for costs furnished by a deposit in the P. C. appears to be insufficient, owing to the great length of the transcript, the council will grant an order for the deposit of such other sum as is necessary to guarantee the respondent. *Boswell and Kilborn & al.*, P. C., 7 L. C. J., p. 150 and 13 Moore's Rep., p. 476.

" :—*Vide* COSTS.

" :— " OPPOSANT.

" :— " PLEADING AND PRACTICE.

SEDUCTION:—1. An action cannot be brought against the father of a minor son for seduction committed by his son. And a minor son cannot be sued *en déclaration de paternité* without the appointment of a curator, or some one by law authorized to represent him being joined in the action. *Hislop vs. Emerick*, S. C. L. R., p. 106. And the father of such minor son, cannot be sued as his *tutor naturel*. *Hislop vs. Emerick & al.*, Q. B., 9 L. C. R., p. 203. Also L. R., p. 106.

2. On the general issue as plea to an action for seduction, general irregularities of conduct on the part of the plaintiff may be proved, but if particular acts are to be proved they must be pleaded. *Truax vs. Hunter*, S. C., L. R., p. 70.

SEIGNIORIAL ARREARS:—*Vide* INTEREST.

SEIGNIORIAL COMMISSIONERS:—*Vide* COMMISSIONER.

SEIGNIORIAL RIGHTS:—1. The right of *ban dité* in this country carries with it the right of preventing the erection of any grist mill within the limits of the seigniory wherein such right exists,

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and also that of causing the demolition of such mill, notwithstanding it be intended for grinding produce, not intended for home consumption, and not subject to the right of *banalité*. *Larue & al. vs. Dubord*, S. C., 1 L. C. R., p. 31.

2. And in the case of *Monk vs. Morris*, S. C., 3 L. C. R., p. 3, it was held, that the right of *banalité de moulin* exists throughout seigniorial Canada independently of any conventional title. That the right of preventing the erection of other mills within the limits of a seigniory, and of causing them to be demolished when erected, is a component and essential part of that right. That this right of *banalité* extends as well to mills driven by steam as to other descriptions of mills, and that grain ground for manufacturing and commercial purposes falls within the prohibition equally with that ground for the *censitaire*. The seignior, neglecting to protest against the building of mills within his seigniory, does not thereby loose his right of *banalité*. And the right of *banalité* is not extinguished by a sheriff's sale. And in the case of *Logan vs. Audy*, S. C., 4 L. C. R., p. 381, it was held that the lessee of a banal mill may himself bring an action against a *censitaire* to recover from him the toll, (*moutures*) upon grain ground by the *censitaire* at a mill without the seigniory. And it is sufficient to prove that the *censitaire* has had a crop of grain, and that he has carried grain to be ground elsewhere, without establishing that the grain so ground elsewhere is the grain he has gathered upon his land. And a *censitaire* residing in a seigniory is presumed to be subject to the right of *banalité* unless he establishes the contrary.

3. By the statute 20 Vic., c. 104, a seignior has no right to the exclusive use of the water of a non-navigable river, and has no right to seek the *demolition* of a mill-dam in such quality. *Pangman vs. Bricault dit Lamarche*, S. C., 11 L. C. R., p. 76.

4. A *censitaire* cannot demand the reduction of rents stipulated in a seigniorial deed of concession at the rate of four pence per arpent, nor the rescision, in part, of such deed of concession. *Langlois vs. Trudel*, S. C., 3 L. C. R., p. 475.

5. A seignior cannot claim *lods et ventes* upon a deed of sale, if the purchaser, being sued hypothecarily, has abandoned the property purchased by him. The seignior cannot, in such a case, claim *lods et ventes* either upon the one or the other of the two sales. *Bélanger vs. Munn*, S. C., 3 L. C. R. p. 150.

6. A woman separated as to property from her husband, who purchases at sheriff's sale an *immeuble* acquired during her community with her husband, owes no mutation fine to the seignior. *Patton vs. Fournier*, S. C., 3 L. C. R., p. 476.

7. A joint stock company duly incorporated by statute, is not a *main-morte* and the acquisions made by such company do not give rise to the right of indemnity in favour of the seignior. *The Quebec Seminary vs. The Quebec Exchange*, S. C., 3 L. C. R., p. 76.

8. There is nothing in the old law of France, nor in the law of Lower Canada, which prohibits seigniors from con-

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ceding lands in their seigniories subject to *rentes*, and by the same deed stipulating a *prix de vente* for the same land, and a *censitaire* or purchaser a party to such contract, cannot apply to the Court to set it aside on alleged *erreur de droit*. *Boston vs. L'Eriger dit Lapointe*, S. C., 4 L. C. R., p. 404.

9. The *arrêt* of the king of France of the 6th of July, 1711, can only be made to apply to cases where the seignior has refused to grant his unconceded lands. And the *arrêt* of the 17th of March, 1732, merely enjoins the clearing of forest lands, forbidding the sale of such lands; but these Arrêts afford no remedy to a *censitaire* who complains that the rate of *rentes* is too high. There is no positive law limiting the rate of *cens et rents;* and a deed of concession imposing one *sol* of *cens et rentes* and seven *sols* of *rente constituée* is not a deed of sale, and is not consequently void or voidable. *Langlois vs. Martel*, S. C., 2 L. C. R., p. 36.

" :—*Vide* RIVERS.

SEIZURE OF LAND :—*Vide* SHERIFF.

SEMI-NAUFRAGIUM :—*Vide* WAGES.

SEPARATION DE BIENS :—1. A judgment *en separation de biens* may be executed after a lapse of thirteen years, and even although such judgment had been suspended by a transaction entered into by the husband and wife, and which the former had failed to carry out. *Bender vs. Jacobs*, 1 Rev. de Lég., 321.

2. Execution of a judgment *en séparation de biens*, is sufficiently effected by a renunciation by the wife to the community duly insinuated. *Seneca! and Labelle*, S. C., 1 L. C. J., p. 273.

3. An action *en séparation de biens* between parties married and having their domicile in the district of Three Rivers, cannot be brought in the district of Montreal. *Kennedy vs. Bédard*, S. C., 9 L. C. R., p. 344, and 3 L. C. J., p. 284.

4. A judgment *en séparation de biens* can be rendered in a cause between parties married in Upper Canada, where there is no *communauté* and where their was no marriage settlement. *Sweetapple vs. Guilt*, S. C., 13 L. C. R., p. 167, and 7 L. C. J., p. 106.

5. *Séparation contractuelle* is not effected, by providing in a contract of marriage merely for exclusion of community; and a wife under such circumstances, cannot *ester en jugement*, unassisted by her husband. *Wilson vs. Pariscau and Simard*, S. C., 1 L. C. J., p. 164.

6. The ground on which a judgment *en séparation de biens* was rendered cannot be attacked by opposition *à fin d'annuller*. *Routh vs. Maguire and Maguire et al.*, S. C., 10 L. C. R., p. 206.

7. The creditor of the husband is not entitled to contest the demand for a separation on behalf of the wife, and can intervene in such an action only for the preservation of his rights. *Marchand and Lamiraude*, Q. B., 10 L. C. J., p. 375.

8. In an action against a married woman as *séparée de biens*, the production of notarial deeds in which the defendant takes the quality of *femme séparée de biens*, is not sufficient

SEPARATION DE BIENS :— evidence of such separation, if the separation be denied by the plea. *Wheeler vs. Burkitt*, S. C., 11 L. C. R., p. 118.

" :—*Vide* COMMUNAUTÉ.

" :— " EXECUTION.

" :— " FAITS ET ARTICLES.

" :— " PLEADING AND PRACTICE.

SEPARATION DE CORPS ET DE BIENS :—1. In an action *en séparation de corps et de biens*, where both parties are domiciliated in a township, the real estate acquired during the marriage by purchase, and held in free and common soccage, will, in the liquidation of the matrimonial rites, be considered as forming part of the community. *Magreen vs Aubert*, S. C., 2 L. C. J., p. 70.

2 On the contestation as to the matrimonial rights of the wife, in execution of judgment *en séparation de corps et de biens*, she must reimburse to her husband or to his creditors the amount of debts paid by him on a *propre* of the wife, and that compensation will take place as respects her matrimonial *reprises*. *Leduc vs. Fortier*, S. C., 7 L. C. J., p. 275.

3. Where a husband proves open and continuous adultery on an incidental demand by the husband *en séparation de corps*, to an action of the wife *en séparation de corps et de biens*, which is not sustained by proof, the incidental demand will be maintained and the children will be put under the control of the husband. *Beaucaire vs. Lepage*, S. C., 12 L. C. R., p. 81.

" :—*Vide* SAISIE-GAGERIE.

SEQUESTRE :—The *Sequestre* cannot be called into a cause against executors and representatives of an estate, to take up the instance. *Corporation of Portuguese Jews vs. David et al.*, S. C., L. R., p. 51.

SERMENT DECISOIRE :—The party who defers the *serment décisoire* to the other, may do so by a series of interrogatories; and if the interrogating party adds to such answers any matters not in litigation the Court will reject such matters. *Rasco vs. Desrivières*, 2 Rev. de Lég., p. 274.

SERVICE :—1. The service of a writ cannot be made at night. *McGilbon vs. St. Louis dit Lalampe*, 1 Rev. de Lég., p. 44.

2. Service at six in the morning is insufficient. *McFarlane vs. Jameson*, S. C., L. R., p. 89. And service of summons before 8 A. M., is null, the 18th Rule of Practice being enjoined *à peine de nullité*. *Kinney and Perkins*, Q. B., 13 L. C. R., p. 302. And 7 L. C. J., p. 207. But the service of process *ad respondendum*, made after sunset, if made before eight in the evening is valid. *Robinson vs. McCormick*, S. C., 1 L. C. R., p. 27.

3. Service of process on the Grand Trunk Railway Company at one of its stations is insufficient. *Legendre vs. The Grand Trunk Railway Company*, S. C., 6 L. C. R., p. 105. And in an action on an Insurance policy issued in Upper Canada, service in Montreal at the defendant's agency there, of process against the Insurance Company, incorporated and having its chief place of business in Upper Canada, is not sufficient. The agent on whom process was served, not

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having charge of an office belonging to the Company for the transaction of its business generally, and without limitation. *McPherson et al. vs. St. Lawrence Inland Marine Insurance Company*, S. C., 5 L. C. R., p. 403. But in the case of *Chapman vs. Clarke and the Unity Life Insurance Association*, S. C., 3 L. C. J., p. 159, it was held, that service upon a foreign insurance company, at an agency or office within the jurisdiction of the Court is a valid service upon such company, and such company on such service may be condemned to pay a policy, though such policy may have been effected at another agency beyond the jurisdiction of the Court.

4. In an action for slander against three persons described as being all of the City of Montreal, but carrying on business as mercantile agents at Montreal, service at their office in the last named place is not sufficient unless it be personal. *McDonald vs. Dunn et al.*, S. C., 12 L. C. R., p. 345.

5. Service on the agent of a *tiers-saisi* at his office in Quebec, is not sufficient, if it appear that the defendants had no domicile in Lower Canada, and no real or personal estate there, and that the cause of action arose in Upper Canada. *Frothingham et al. vs. the Brockville and Ottawa Railroad Company and Dickinson et al.*, S. C., 9 L. C. R., p. 345.

6. Service of a writ of summons on a defendant under a sealed envelope, by a bailiff who is ignorant of the contents is insufficient. *La Banque du Peuple vs. Gugy*, S. C., 6 L. C. R., p. 281. Reversed in Q. B., 9 L. C. R., p. 484.

7. Service of a writ of summons and declaration cannot legally be made by leaving copies thereof with a servant girl at a boarding house where defendant lived, inasmuch as by the law of this country, and namely by the Provincial Ordinance of 1785, 25 Geo. III, c. 2, sec. 2, [C. Sts. L. C., cap. 83, sect. 44,] the writ of summons and declaration ought to be served on the defendant personally or left at his domicile with some grown up person there. *The Champlain and St. Lawrence Railroad Company vs. Russell*, S. C., 6 L. C. R., p. 477. And service at an hotel where a party, who has no other domicile generally resides is not sufficient. *McDonald vs. Seymour*, S. C., L. R., p. 79, and 4 L. C. R., p. 355.

8. Service at the place of business of a co-partnership, of an action for lease of business premises is sufficient. *Berthelot vs. Galarneau et al.*, S. C., L. R., p. 109.

9. And personal service upon one of the members of a co-partnership, is binding upon the whole firm, in like manner as a service made at the office or place of business of the firm. *Dechêne vs. Faucher et al.*, S. C., 13 L. C. R., p. 415.

10. Service of a writ of summons at the domicile of the Secretary-Treasurer of School Commissioners is null. *Les Commissaires d'Ecole pour la municipalité de la paroisse de St. Pierre de Sorel vs. Les Commissaires d'Ecole de la municipalité de la ville ou bourg de William Henry*, S. C., 3 L. C. J., p. 189. But in the case of *The Corporation of the County of Terrebonne and Valin*, Q. B., 9 L. C. R., p. 436, it was

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held that service upon a municipal corporation may be made by leaving copy of the summons with the Secretary-Treasurer. But service of process on the "last President," on the "late Secretary" and on the "last Secretary" of a corporate company, in the absence of any known or discoverable office of such company is insufficient. *Booth vs. The Montreal and Bytown Railroad Company*, S. C., 3 L. C. J., p. 196.

11. The temporary absence of a wife *séparée de biens* does not render illegal the service of a writ of summons on her at the domicile of her husband; but the service must be made by delivering the writ to the defendant, or at her domicile, to some person for her, and the return must state to whom speaking in the terms of the Ordinance of 1667. *The Trust and Loan Company and Mackay*, S. C., 3 L. C. J., p. 154. Reversed in appeal where it was held, that service of one writ and copy at the domicile of the husband is sufficient to bring both before the Court. *The Trust and Loan Company and Mackay*, Q. B., 9 L. C. R., p. 465.

12. The service of the original of a writ of summons instead of the copy is a sufficient assignation. *Filion et al., vs. DeBeaujeu*, S. C., 5 L. C. J., p. 128.

13. The exhibition of the original pleading or paper, at the time of service of a copy, is not necessary. *Blais vs. Lampson*, S. C., 12 L. C. R., p. 23.

14. The 26th rule of Practice of the Circuit Court, with respect to figures used in a return of service, is not *à peine de nullité*. *Lamothe and Garceau*, Q. B., 13 L. C. R., p. 88.

15. In an action brought in the S. C. in Montreal, against two defendants, one residing in Quebec, the other in Montreal, and served with process at their respectives domiciles, the Court under the 12 Vic. c. 38, sec. 14, [C. S. L. C., cap. 78, sect. 16,] has jurisdiction, and the service at Quebec is sufficient. *The City Bank vs. Pemberton et al.*, S. C., 6 L. C. R., p. 413.

16. A bailliff of the Superior Court for Lower Canada, styling himself a bailliff of the Superior Court for the Circuit of Quebec, does not thereby vitiate his return. *McCallum vs. Pozer*, S. C., 1 L. C. R., p. 40.

17. The certificate of service of the writ of appeal, must show a personal service either upon the attorney of the respondent, or upon the respondent himself. *Dupuis and Dupuis*, Q. B., 6 L. C. R., p. 429.

18. Where the cause of action arose in Lower Canada, a writ *ad respondendum* sued out under the provisions of the 63rd sect. C. Sts. L. C., cap. 83, addressed "to all and every the bailliffs of the Superior Court for Lower Canada, appointed for the district of Quebec," is correctly addressed, and it may be served in Upper Canada by any literate person. *Morgan vs. Benjamin*, S. C., 13 L. C. R., p. 235.

19. The clause of the Consolidated Statutes of L. C., cap. 83, sect. 64, to the effect that service of rules, notices, &c., may be made at the office of the Prothonotary or Clerk of the Court, does not apply to the service of absentees, called

SERVICE :— in by the Gazette, where no appearance is entered for defendants. *Lacasse vs. Lacasse et al.*, L. C., 13 L. C. R., p. 467.

" :—*Vide* ABSENTEE.

" :— " ACTION EN REDDITION DE COMPTE.

" :— " APPEARANCE.

" :— " INSCRIPTION DE FAUX.

" :— " PRIVILEGE.

SERVITEURS :—*Vide* PRESCRIPTION.

SERVITUDE :—1. The banks of navigable rivers belong to the riparian proprietor, subject to a servitude in favor of the public for all purposes of public utility. *Fournier vs. Oliva* S. R., p. 427. And in *Oliva vs. Boissonnault*, S. R., p. 524, it was held that navigable rivers have always been regarded as public highways and dependencies of the public domain; and floatable rivers are regarded in the same light. In both the public have a legal servitude for floating down logs or rafts, and the proprietors of adjoining banks cannot use the beds of such rivers to the detriment of such servitude.

2. A right of pasturage created by a deed of donation is a *servitude réelle*; and such servitude, created before the Registry Ordinance came into force, need not be registered. And a bequest for a portion of the land affected with such servitude, without reference to the servitude, will include it. And the proprietor of the *héritage dominant* becoming proprietor of the *héritage servant* will not forfeit thereby his right of servitude on the remainder of the property affected, but such right will merely suffer diminution *pro tanto*. *Dorion et al., and Rivet*, Q. B., 1 L. C. J., p. 308, and 7 L. C. R., p. 257.

3. The *coupe de bois*, once exercised along the whole extent of the land reserved for that purpose, cannot be repeated, unless the title disclose a specific right to the exercise of a perpetual servitude of that description. *Cowan vs. Quintal*, S. C., 1 L. C. J., p. 14.

4. The *action négatoire* will not lie, notwithstanding that the realty in favor of which the service of a *coupe de bois* was created has been enlarged, if it be not made to appear that such service has, in consequence, become more onerous. *Blais and Simoneau et al.*, Q. B., 8 L. C. R., p. 356.

5. The right of using a private street even during thirty years will not establish a right to continue such right in the absence of a title to that effect. *Johnston et al. vs. Archambault*, S. C., 12 L. C. R., p. 138.

" :—*Vide* HYPOTHEQUE.

" :— " REGISTRATION.

" :— " RIPARIAN PROPRIETOR.

SESSIONS :—A justice out of Sessions cannot award restitution on an indictment of forcible entry or forcible detainer, found before by the Grand Jury at the General Quarter Sessions. The Court of General Quarter Sessions where the indictment is found may award a writ of restitution, but it is entirely in the discretion of the Court to grant or refuse such writ. *Boswell et al. vs. Lloyd*, S. C., 13 L. C. R., p. 6.

SETT-OFF :—*Vide* COMPENSATION.

SHAREHOLDERS :—Shareholders of railway companies, incorporated after the passing of the Railway Clauses Consolidation Act, are liable to the creditors to an amount equal to the amount unpaid on their stock, and in an action to recover the same it is not necessary to allege that the directors called in all such stock. *Cockburn vs. Starnes*, S. C., 2 L. C. J., p. 114. And the liabilities of such shareholders cannot be affected by any irregularities in the nomination or appointment of the original directors. *Ryland vs. Ostell*, S. C., 2 L. C. J., p. 274. Also *Cockburn vs. Tuttle*, S. C., 2 L. C. J., p. 285. And such shareholders are liable, notwithstanding that they have transferred their stock, if the plaintiff's debt accrued and was due whilst the shares stood in defendant's name. *Cockburn vs. Beaudry*, S. C., 2 L. C. J., p. 283.

" :—*Vide* DAMAGES.

" :— " RAILWAY COMPANY.

SHERBROOKE :—*Vide* HYPOTHÈQUE.

SHERIFF :—1. If an application be made to compel the Sheriff to return a writ of *fieri facias* before the day fixed for the return of the writ, the Court will not grant the application if there be no evidence to shew that the Sheriff has actually been guilty of some neglect or omission. *Perrat vs. L'Espérance*, S. R., p. 57.

2. The Sheriff having seized by attachment a large quantity of timber, and appointed a single guardian to take charge of the whole, in whose absence, during a sudden storm, a portion of the timber, not being moored or otherwise secured, went adrift and was lost, the Court held, that the Sheriff was guilty of ordinary neglect, and was responsible for the loss. Also, that the Sheriff might have employed as many persons as were necessary for the security of the timber, and have demanded of the plaintiff, at whose suit the timber was seized, in advance, the sums required for this purpose, and in case of refusal, he would have been exonerated from the charge and custody of the timber. *McClure vs. Shepherd*, S. R., p. 75.

3. But the Sheriff in default of representing goods seized and placed in the hands of a *gardien d'office*, cannot be compelled to pay more than the value of the goods. *Leverson et al. vs. Cunningham and Boston*, S. C., 1 L. C. J., p. 86. And in the case of *Price vs. Wilkinson et al.*, S. C., 1 L. C. J., p. 92, it was also held, that the Sheriff can compel the plaintiff to make all necessary advances for the proper care and safe keeping of moveables under seizure, and in default of payment of such advances, the Sheriff and guardian will be discharged from all liability with regard thereto.

4. The Sheriff is responsible for goods seized by him in the same way as the *gardien*, except where a solvent *gardien* has been appointed by the *saisi*, and the Sheriff proves that such *gardien* was solvent, or reputed to be so, to the extent of the property seized at the time of his appointment. *Irwin and Boston et al.*, Q. B., 2 L. C. J., p. 171, and 7 L. C. R., p. 433 ; also, *Leverson et al., vs. Cunningham and Boston*, Q. B., 2 L. C. J., p. 297. And though over 70 years of age he is liable *par corps*. *Ib.* And in the same

SHERIFF:—

case, it having been sent back to the S. C. to take evidence on the issue raised by the answer of the Sheriff, as to the value of the goods which he had failed to produce, the Court refused to apply the evidence taken as to the value of the goods, the payment of the value thereof not being in issue. S. C., 3 L. C. J., p. 97. On this judgment being rendered, the Sheriff notified the plaintiff's attorney, that he desisted from the judgment of the Superior Court, and tendered his attorney £50 and costs, which was refused by the attorney, he then declaring to the notary that he was not authorized to compromise the claim. The plaintiffs then appealed, and the judgment of the Superior Court was reversed; but the appellants were condemned to pay costs, inasmuch as the Sheriff had tendered to their attorney the value of the goods; they, the appellants, not residing in the Province, and such tender having been made after the judgment, but before the institution of the appeal. Q. B., 9 L. C. R., p. 238, and 3 L. C. J., p. 223.

5. The Sheriff is not entitled to the notice of action prescribed by the Provincial Statute 14 and 15 Vic., c. 54, [C. S. L. C., cap. 101,] in an action *en revendication* against him, for certain effects seized by him and ordered to be delivered up to the *saisi*. *Irwin and Boston et al.*, 2 L. C. J., p. 171.

6. Where the Sheriff has seized goods by a *saisie revendication*, which action is afterwards compromised by the parties, and the seizure quashed, the Sheriff does not lose his lien on the goods seized for his costs. *Quentin dit Dubois and Boston*, Q. B., 11 L. C. R., p. 367.

7. Under the 5th clause of the Act 12 Vic., c. 132, to make provision for the repair of Court Houses and Jails at certain places in Lower Canada, and the Order of Council of 26th April, 1850, the Sheriff has a right to levy a tax of one *per cent.* on all moneys passing through his hands, although a tax of one *per cent.* has been already paid on the said moneys, under the 4th clause of the same act, when paid in. *Molson et al. vs. McAuley and Boston et al.*, S. C., 1 L. C. R., p. 395. But in the case of *Stirling et al. vs. Darling*, S. C., 1 L. C. J., p. 161, it was held, that the Sheriff receiving money from a defendant in satisfaction of an execution, is bound to pay the same to plaintiff, and such money is not liable to the Sheriff's commission and to Court House tax. Also in *Ryan et al. vs. Woods et al.*, S. C., 1 L. C. J., p. 85, it was held that in respect of moneys paid into his hands, in satisfaction of an execution, the Sheriff is the mere *mandataire* of the plaintiff suing out such execution, and consequently that he ought at once to pay such moneys to the plaintiffs and not return to the Court that he holds the same, subject to the order of the Court, and this even when such moneys are so paid to him after seizure and on the day fixed for the sale of the property seized. And when the Sheriff makes a return, under such circumstances, that he has the moneys instead of paying them over, the Court will order such moneys to be paid to plaintiff on motion, notwithstanding that the defendant's creditors have claimed the same by oppositions, in which *déconfiture* is alleged on the part of the defendant.

SHERIFF :—

8. The Sheriff has a right to his poundage on all the proceeds of a judicial sale, whether the money actually passes through his hands or that a bond is given in the manner provided by law. *Blake et al. and Panet et al.*, S. C., 12 L. C. R., p. 189.

9. The Sheriff cannot refuse the demand of an opposant to return an execution *de terris*, on the ground that his fees and disbursements thereon have not been paid. *Wilson vs. Brown and Brown*, S. C., 1 L. C. J., p. 284.

10. The Sheriff cannot deduct from the proceeds of the sale of immoveables, the cost of the deed of sale and registration thereof; such charges are payable by the purchaser. *Boisseau vs. Pilot*, S. C., 1 L. C. R., p. 163.

11. The Sheriff who has paid an overcharge to a Registrar for a certificate granted by the latter under the 36th cap. C. Sts. L. C., sect. 26, cannot be obliged to refund such excess, and the Registrar cannot be compelled to file his bill before the Court for taxation. *Masson vs. Mullins and the Seminary of Montreal*, S. C., 6 L. C. J., p. 107.

12. A rule on Boston, sheriff, alone to pay over moneys received by Boston and Coffin as joint-sheriff, will be dismissed. *Lefebvre vs. Meyers*, S. C., 6 L. C. R., p. 472.

13. An attachment will lie against two persons appointed by commission from the Crown to the office of sheriff, for the non-payment of moneys levied by one of them, although the other may not have assumed the duties of the office, or acted in any manner under their commission. *Black and Newton*, S. R., p. 298.

14. A rule on the sheriff to produce goods seized, and in default of producing them, that he be held *contraignable par corps* until he do produce the said goods and chattels, or until he pay the plaintiffs the balance of £148 12s. 2d., with interest, due on their judgment, will be dismissed. The rule should be that in default of producing the goods, he be declared *contraignable par corps* until he pays their value. *Leverson et al. vs. Cunningham and Boston*, S. C., 7 L. C. R., p. 275. This case was reversed in Appeal, the Court of Queen's Bench holding, that the simple demand in the rule, that the sheriff in default of producing the goods, should be *contraint par corps* until he did produce them, was sufficient, and was in conformity with the Ordinance of 1667. 2 L. C. J., p. 297.

15. The Sheriff is not liable for the costs of bringing in a prisoner to jail under warrant of a county justice, who has committed such prisoner on a criminal charge. *Champagne vs. Boston*, C. C., 2 L. C. J., 79.

16. The Printer of the Quebec Gazette has no action against the plaintiffs in an action for the price of the advertisements of legal sales inserted in the Gazette, because there is no privity of contract between the said parties and plaintiffs,—the sole remedy of the printer is against the Sheriff. *Stevenson et al. vs. Boston et al.*, S. C., 2 L. C. R., p. 17.

17. The sale of real estate by the Sheriff in a district other than that in which it is situate, is absolutely null; and all subsequent acts of mutation are affected by such nullity.

Sheriff:—

Phillips and Sanborn, Q. B., 6 L. C. J., p. 252, and 12 L. C. R., p. 408. And a Sheriff's title obtained by fraud will be held to be null and void in a suit in which the parties to the fraud are not interested. *Ib.*

18. The Sheriff's title granted to an *adjudicataire* subsequently to the sale, has a retroactive effect, and confers upon the *adjudicataire* the right of property and all the advantages resulting from it, from the day of the adjudication. *Laterrière and Houde*, Q. B., 11 L. C. R., p. 449.

" :—*Vide* Adjudicataire.
" :— " Attachment.
" :— " Attorney.
" :— " Contrainte par corps.
" :— " Costs.

Ship:—1. A vessel loaded and ready for sea can be arrested for a civil debt unconnected with the ship. *Parent vs. Grenier*, S. R., p. 453.

2. The party having open possession and control of a vessel, and using it for his own benefit and drawing the profits, and not the registered owner, is liable for supplies furnished to it. *Morgan vs. Forsyth et al.*, S. C., 3 L. C. J., p. 98, and 9 L. C. R., p. 225.

3. A builder's privilege upon a ship of his own construction is lost if he delivers her to the owner, and suffers her knowingly to be sold at public auction to a third person without opposition. *Baldwin vs. Gibbon*, S. R., p. 72.

4. In an action to account, on an agreement to advance moneys for the building of a ship to be reimbursed out of the proceeds of the sale of the said ship, (which such party is authorized to send to his friends in Liverpool or London, and for that purpose to appoint and substitute attorneys or agents,) together with all expenses and charges, attending such sale, and also a commission of one per cent, it was held: that such account need not be kept in the form of a *compte de tutelle*: and the party making the advances, over and above his commission of five per cent., is entitled to charge the commission of his attorneys or agents in England, who effected the sale of the ship at four per cent., which is proved to be the usual charge, and which is payable on the whole price of the sale made at credit, although part was paid within a few days after the transaction; and also a bank commission of one fourth *per cent.* charged by the sub-agent, and which is usual in England on similar transactions. That the said party is not liable by reason of the bankruptcy of his substitutes for moneys due by them; and the principal is to bear such loss, inasmuch as under the circumstances, the substitutes were his own attorneys and agents, there being no evidence that the agent was not justifiable in appointing the sub-agents. *Symes and Lampson*, Q. B., 5 L. C. R., p. 17.

" :—*Vide* Delivery.

Shipping Act:—*Vide* Registry of Vessels.

Signification:—The want of signification of a *sentence arbitrale* entails its nullity. *Blanchet & ux. vs. Charron*, Q. B., (1842,) 4 L. C. J., p. 8.

" :—*Vide* Assignment.
" :— " Transport.

SIMILITER:—*Vide* PLEADING AND PRACTICE.

SIMULATION:—A deed of sale by a debtor to his brother-in-law, and another by his brother-in-law to his wife, will be set aside at the suit of a creditor as fraudulent where there is no valid consideration for such sale. *Rimmer vs. Bouchard & al.*, S. C., 7 L. C. J., p. 219.

It is an indication of fraud in the alienation of property by a debtor, that the employment of the money does not appear. *Ib.*

And when the books of a trader, who has taken part in the alienation, shew no entries of any transaction. *Ib.*

The distress of the debtor also gives rise to a presumption of fraud. *Ib.*

The savings of a wife previous to marriage fall into the community and are liable for the debts thereof. *Ib.*

SLANDER:—1. The words used by a person, sued for false imprisonment, in giving the party in charge cannot also become the subject of an action for slander. *McCann vs. Benjamin*, S. C., L. R., p. 13.

2. In an action for slander the expressions complained of must be proved. *Lavoie vs. Gagnon*, Q. B., 10 L. C. J., p. 185. But the *ipsissima verba* need not necessarily be proved, if the substance of the charge be made out. *Beaudry and Papin*, Q. B., 1 L. C. J., p. 114.

3. In an action on the case for slander, one witness proved that the defendant, speaking of the plaintiff, had used the word "whore," and said that "she had been kept by a gentleman," whose name the witness gave, and a second witness proved, that the defendant, on a different occasion, speaking of the plaintiff, had said—"that she has been frequently seen in the company of a gentleman," mentioning the same name as that sworn to by the other witness, and it was held, that there was not sufficient proof to warrant a verdict for the plaintiff, and that the testimony of the second witness was not corroborative of the evidence of the first. That a communication by a merchant to his clerk, in his private office, affecting the character of a third party, made in the course of conversation occasioned by the absence from his duties of another clerk of the merchant, is a privileged communication. *Ferguson vs. Gilmour*, S. C., 5 L. C. R., p. 145.

4. An action of damages will lie against a person who has used language or made insinuations which have the effect of injuring the character of the plaintiff; and the plaintiff may obtain damages without proving that the imputations made against him were false. *Belanger and Papineau*, Q. B., 6 L. C. R., p. 415.

5. If no intent be laid in the declaration the meaning of words cannot be proved in an action for slander. *McCarthy vs. Laurier*, S. C., L. R., p. 36.

6. The statement of the owner of a vessel to the effect that the pilot had been paid to run a vessel ashore and destroy her, is highly slanderous and injurious. *Morissette vs. Jodoin*, S. C., 12 L. C. R., p. 333.

7. Where an attorney in the conduct of a suit, remarks upon the character of a witness in accordance with the

SLANDER :—
instructions of his client, his defence will be favorably looked upon. *Lavoie and Gagnon*, Q. B., 10 L. C. R., p. 185.

8. The allegation of fraud in a plea is not libellous, and such allegations will not support an action for libel unless it is also also alleged that the plea complained of was merely used to cover the libellous matter, which was irrelevant to the issue. *Fitzsimmons vs. Byrne & ux.*, S. C., 12 L. C. R., p. 390.

" :— *Vide* CRIMINAL INFORMATION.
" :— " JURORS.
" :— " ONUS PROBANDI.
" :— " PLEADING AND PRACTICE.
" :— " PRIVILEGED COMMUNICATION.

SLANDER AND ASSAULT:—*Vide* PLEADING AND PRACTICE.
SOLICITOR-GENERAL :—*Vide* ATTORNEY GENERAL.
" " :— " LETTERS PATENT.
SOLIDARITÉ :—*Vide* DEBTORS.
" :— " ERASURES.
SOUS ORDRE :—*Vide* OPPOSITION.
SOUS SEING PRIVÉ :—*Vide* AGREEMENT.

SOUTH SEA :—The 6 Geo. 1, c. 18, commonly called " The South Sea Bubble Act," does not extend to the American Colonies. *White vs. The Dædalus*, S. R., p. 130.

SPECIAL REPLICATION :—*Vide* PLEADING AND PRACTICE.
SPECIAL VERDICT :—*Vide* VERDICT.
SQUATER :—*Vide* IMPROVEMENTS.

STARBOARD :—Probable derivation of this nautical term, p. 235, note.

STATE PAPER :—A state paper is a privileged communication which the Provincial Secretary may refuse to produce. *Gugy and Maguire*, Q. B., 13 L. C. R., p. 33.

STATUTE :—1. An Act declared by the Legislature in general terms to be temporary has no more than a temporary effect. Yet a temporary Act may repeal a permanent Statute, if the intention of the Legislature to effect such a repeal be manifest. *Chasseur vs. Hamel*, S. R., p. 310.

2. A typographical or clerical error in the English text of a Statute by the insertion of the word " these" instead of the word " third" cannot be corrected by a reference to the French text, where no such error occurs; and the Court will not presume what meaning the Legislature intended, but will take the text as it finds it. *Archambault vs. Roy dit Picotte and Poirier*, S. C., 2 L. C. R., p. 25. Reversed in Appeal.

3. The repeal of a repealing statute has generally the effect of reviving the original statute. *The London*, p. 151, S. V. A. R.

4. A statute does not lose its force by desuetude or non-user. *The Mary Campbell*, p. 223, S. V. A. R.

STATUTE LABOR :—1. When a proprietor who has been notified to do the work required of him by a *procès-verbal* is only delayed by particular circumstances, the *sous-voyer* is not justifiable in doing the work for him. *DeBeaujeu and Groulx*, Q. B., 6 L. C. J., p. 166.

2. And an inspector cannot do such work himself. *Ib.*

STATUTE OF FRAUDS :—*Vide* EVIDENCE.
" " :— " FAITS ET ARTICLES.

STATUTE OF LIMITATIONS :—*Vide Campbell & al. vs. Hutchinson*, S. C., L. R., p. 81.

STATUTES :—37 Geo. III, c. 71—52 Geo. III, c. 39—6 Geo. IV, c. 125—2 Will IV, c. 51.—To regulate the practice and the fees in the Vice-Admiralty Courts abroad, and to obviate doubts as to their jurisdiction.

3 & 4 Will. IV, c. 41.—Appeals from the Vice-Admiralty Courts abroad, to be made to His Majesty in Council, and not to the High Court of Admiralty of England.

3 & 4 Vic. c. 65.—To improve the practice and extend the jurisdiction of the High Court of Admiralty of England.

6 & 7 Vic. c. 38.—Further regulations for facilitating the hearing of appeals, and other matters, of the Judicial Committee of the Privy Council.

7 & 8 Vic. c. 69.—Extending jurisdiction and powers of Her Majesty's Privy Council.

8 & 9 Vic. c. 87.—None of Her Majesty's subjects to hoist the Union Jack or pendants, &c., usually worn in Her Majesty's ships, and prohibited to be worn by proclamation of 1st of January, 1801, under a penalty not exceeding £100. Jurisdiction of the High Court of Admiralty of England, and of the Vice-Admiralty Courts in Her Majesty's Colonies in such cases.

16 & 17 Vic. c. 107.—Consolidating laws relating to the customs of the United Kingdom, and certain laws relating to the trade and navigation of the British possessions.

Sects. 183 to 190.—Penalties and forfeitures incurred in the British possessions in America, to be recovered in any Court of Record or of Vice-Admiralty, having jurisdiction where the same may have been incurred.

17 & 18 Vic. c. 78.—The Admiralty Court Act, 1854.

17 & 18 Vic. c. 107.—The Merchant Shipping Act, 1854.

17 & 18 Vic. c. 120.—The Merchant Shipping Repeal Act, 1854.

18 & 19 Vic. c. 91.—The Merchant Shipping Act Amendment Act, 1855. Note from S. V. A. R.

STEAMBOAT OWNERS :—*Vide* CARRIERS.

STEAMER :—1. If it be practicable for a steamer, which is following close upon the track of another, to pursue a course which is safe, and she adopts one which is perilous, then, if mischief ensue, she is answerable for all consequences. *The John Munn*, p. 265, S. V. A. R.

2. In a cause of collision between two steamers, the Court, assisted by a captain in the Royal Navy, pronounced for damages and costs, holding that the one which crossed the course of the other was to blame. *The Bytown*, p. 278, S. V. A. R.

3. Making a short and unusual turn to cross the course of another steamer coming into port, contrary to the usual practice and custom of the river, and the rules of good seamanship, condemned in damages. *The Crescent*, p. 289, S. V. A. R.

STEAMER :—

Such dangerous manœuvres in a crowded port like that of Quebec, to be discountenanced. *Ib.*

Though proceeding only from a spirit of eager competition, and from miscalculation rather than from any attempt to injure the competing vessel. *Ib.*

4. Steamers are to be considered in the light of vessels navigating with a fair wind. *The Niagara—The Elizabeth*, p. 314, S. V. A. R.

5. Every steamship when navigating any narrow channel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such steam-ship.—The Merchant Act, 1854. *The Inga*, p. 335, S. V. A. R.

6. When two or more steamboats of unequal speed shall be pursuing the same course within the limits of the port of Quebec, the slowest boat if a-head, shall draw on the left and allow the one at the stern to pass on the starboard side. *Vide* By-law Trinity House Quebec, 12th October, 1855, S. V. A. R.

7. 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 than 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. It was held that the vessels were meeting each other within the meaning of the Act regulating the navigation of the waters of Canada, (22 Vic. c. 19,) and the steamer going up the river was solely to blame for the collision in not having ported her helm. *The James McKenzie*, V. A. C., 12 L. C. R., p. 393.

STEAM NAVIGATION ACT :—English Steam Navigation Act, (14 & 15 Vic. c. 79,) cited. *The Inga*, p. 339, S. V. A. R.

STEAM-TUGS :—1. Sailing vessel running foul of another coming up the St. Lawrence in tow of a steam-tug, condemned in damages. *The Niagara*, p. 308, S. V. A. R.

A vessel in tow, with a head wind and no sails, and fast to a steamer, is powerless to a very great extent; and can only sheer to a certain distance on either side of the course in which she is towed. *Ib.*, p. 314.

If the misconduct of those on board the tug be the sole cause of the collision, both the other vessels are exempt from responsibility, and the recourse of the injured vessel is against the tug. *Ib.*, p. 319.

The tow is not responsible for an accident arising solely from the mistake or misconduct of the tug. *Ib.*

2. Sailing vessel condemned in damages and costs for putting her helm to starboard, and passing to the left a steam tow-boat, thereby causing collision with the vessel in tow; the steamer and her tow coming down the channel nearly or exactly upon a line with the course of the sailing vessel. *The Inga*, p. 335, S. V. A. R.

STEAM-TUGS :—

3. Liability of a steam-tug for collision between vessels, one of which was towed by the steamer. *The John Counter*, p. 344, S. V. A. R.

Where the accident arises from the fault of the tow, without any error or mismanagement on the part of the tug, the former alone is answerable. *Ib.*, p. 348.

If both be in fault, both vessels are liable to the injured vessel, whatever may be their responsibility *inter se*. *Ib.*

STEWARD :—Steward displaced and punished without cause, is not bound to serve as a cook, and may recover his wages. *The Sarah*, p. 87, S. V. A. R.

ST. MICHEL :—*Vide* DIXMES.

STREET :—*Vide* MUNICIPAL COUNCILS.

STUDENT :—Students in a public school are exempt from the capitation tax, and the corporation has power to extend exemptions to other classes of the citizens, but not to deprive students of it. That the Laval University is a public school, and as such entitles its students to all the immunities and privileges granted to students in public schools. And a law-student at the University and also under indentures to an Advocate is a student at a public school. Ex parte *Bourdages*, S. C., 11 L. C. R., p. 457.

SUBPŒNA :—The insertion of more than four names in a subpœna does not prejudice the party in any way. *Couillard vs. Lemieux*, S. C., 9 L. C. R., p. 393.

SUBROGATION :—A deed, by which it is declared that the payment made by a debtor, is so made with the moneys of a third party, borrowed upon the condition of subrogating such party in the rights of the creditor, and that such declaration is made for the purpose of effecting such subrogation (such third party not being present at the execution of the deed,) does not effect the subrogation in favor of such party, by reason of want of acceptation on his part, nor does the stipulation to that effect, with the debtor, effect such subrogation, by reason of the absence of an authentic instrument, as evidence of the loan and of its object at a period anterior to the payment; also, that the allegation, in an opposition, of a parol contract, anterior to the payment, that the moneys were loaned to the debtor, upon condition that the lender should be subrogated in the rights of the creditor, cannot be taken as admitted, although such opposition is not contested, upon the principle, that a contract of such a character could only be proved by an authentic instrument, which would render certain the period at which the loan was made; and lastly, the acceptation, subsequently made by the lender, of the assignment of the rights of the original creditor is inoperative to effect the subrogation, because the original debt was completely extinguished at the time of the payment. *Filmer et al., and Bell*, Q. B., 2 L. C. R., p. 130.

" :—*Vide* INSURANCE.

SUBSTITUTION :—1. On a bequest by a testator of real estate to his wife, during her natural life, and after her decease to the testator's son, George, during his natural life, and after his decease, or if he and the wife of the testator should both

SUBSTITUTION :—

have died before the testator, then to the eldest son of the body of the said George, lawfully begotten, and the heirs of the body of such eldest son; and in default of such issue to the second, third, fourth and all and every other son and sons of the said George, one after another by priority of birth, and to the children of such son,—the eldest of such sons and his heirs always preferred to a younger son, and in default of such male issue, a similar bequest to the daughters; it was held: That the eldest son of George having survived him and the testator's wife, has taken the said bequest in full property without being charged with any *fidéicommis*, or trust, in favor either of his children, or of his brothers and sisters, who could have claimed the said bequest only in default of the said eldest son or his heirs. *Platt and Charpentier*, Q. B., 8 L. C. R., p. 481.

2. In virtue of the clauses of a will bearing substitution and which are in substance as follows,—"*pour par le dit légataire en jouir sa vie durant seulement, la propriété sera et appartiendra à l'enfant mâle aîné issu en légitime mariage de B. H., et au cas que B. H. décéderait sans enfant mâle, né ou à naître en légitime mariage, le testateur veut et ordonne que la propriété soit transmise à l'enfant mâle né en légitime mariage de E. H., etc.*," it is sufficient that the one of the children who is to take the succession, be a child living at his decease, and that then the substitution should be open for the profit of that child, whether he had an elder brother deceased before him or not. *McCarthy et al., and Hart*, Q. B., 3 L. C. J., p. 20,

3. A. bequeathed property to B., with substitution at B's death in favor of his eldest son, and his eldest son died without issue, before B. himself. Held that B.'s surviving son, though second in point of birth, was entitled to claim under the substitution as the eldest son. And a sale of the property in question by B., and his deceased eldest son, was null and void *quo ad* the claim of the surviving son of B. under the substitution, it not being open until the death of B. *McCarthy and Hart*, Q. B., 9 L. C. R., p. 23.

4. No opposition can be made to the sale of an immoveable substituted, until the substitution be open. *The Trust and Loan Company of Upper Canada vs. Vadeboncœur and Vadeboncœur et al.*, S. C., 4 L. C. J., p. 358.

SUBSTITUTION OF ATTORNEY :—*Vide* ATTORNEY.

SUB-TENANT :—A sub-tenant is not entitled to the benefit of the privilege referred to in the 162 article of the custom, unless payments are made to his immediate lessor in good faith, before the execution of a writ of *saisie-gagerie* at the suit of the original lessor. And a sub-tenant is not entitled to such privilege if he be a *cessionnaire* of the whole lease. *Wilson vs. Pariseau*, S. C., 6 L. C. R., p. 196. But in *Lampson vs. Nesbitt and Dinning et al.*, it was held, that according to the article 162 of the custom, the effects of sub-tenants, garnishing the premises, are liable to the proprietor for the amount of their rent, even although they should have paid the same in good faith to their immediate landlord. S. C., 13 L. C. R., p. 365.

SUB-TENANT :—

When there is a clause in a lease to the effect that the tenant shall not sub-let without the proprietor's consent, such clause must be strictly carried out, and the sub-tenant will be held to be aware of such clause, and he cannot in consequence claim that his effects, garnishing the premises leased, shall not be liable for rent. *Ib.*

When a tenant sub-lets for less than he himself is bound to pay the tenant's effects are liable for the principal rent. *Ib.*

SUCCESSION :—The renunciation by a male child to a future succession does not extend to particular bequests in a will. *Frechette vs. Frechette*, S. C., 6 L. C. J., p. 329.

" :—*Vide* ACTION EN PARTAGE.

" :— " WILL AND SUCCESSION.

SUFFICIENCY OF QUESTIONS :—*Vide* JURY TRIAL.

SUMMER :—*Vide* SEASON OF NAVIGATION.

SUNDAY :—*Vide* PROMISSORY NOTE.

SUPERIOR COURT :—A Judge of the Superior Court has jurisdiction, and may act simultaneously for all the districts of Lower Canada. *Talbot vs. Luneau*, S. C., 7 L. C. J., p. 66.

SURETY :—1. The security given by a party for a debt not yet in existence, cannot be of any avail to a party subsequently making a loan, unless it be made to appear that the loan was made upon the faith of such security, and that there was privity of contract between the parties. *Derousselle vs. Baudet*, S. C., 1 L. C. R., p. 41.

2. A surety is not liable for the costs of a first judgment against the principal debtor, if he have not been notified of the action. *Nye vs. Isaacson*, C. C., 6 L. C. J., p. 117.

3. The mere fact of concurrence of sureties, and the loss of one of them, does not discharge the others, and the clause of subrogation, in a deed of obligation, is only enunciative of the common law right. *Redpath et al. vs. McDougall et al.*, S. C., 1 L. C. R., p. 354.

4. Where the dealing between a principal and his debtor is of such a nature, as to operate simply as a prolongation of time for the payment of the debt, if the surety is not precluded by such dealing from suing the debtor for his indemnity, he will not be discharged ; but if such dealing between the principal and his debtor, amounts to a present, though but *pro tempore*, payment, as the surety cannot then sue the principal debtor, he is discharged from his guaranteeship. *Bellingham et al., and Freer*, P. C., 1 Moore's Rep., p. 333.

Where, therefore, a party became surety upon an agreement for securing certain advances, by future consignments of West India produce, and after such advances, but before any consignments, the party having contracted to make the same, accepted bills to the amount of the advances, it was held that inasmuch as such acceptances operated as a *pro tempore* payment of the sums advanced under the agreement, the surety was discharged. *Ib.*

5. A bond conditional upon the due fulfilment of the duties of an officer of a Bank, is made void by the reduction of the salary stipulated in favor of such officer, in and by the deed containing such bond, and such reduction without the con-

SURETY :—
sent of the sureties, has the effect of a novation. *The City Bank vs. Brown et al.*, S. C., 2 L. C. R., p. 246.

6. A surety who, under a certain clause in a deed of composition, has paid moneys by anticipation to one of the creditors on account of instalments not due, cannot claim to be collocated on the proceeds of the defendant's goods, in preference to other creditors, parties to the deed of composition. *Whitney et al. vs. Craig*, S. C., 7 L. C. R., p. 272.

7. The sureties on an appeal are not bound for the condemnation money, when the appellant files a declaration to the effect that the judgment appealed from, can be executed, although the appeal bond has been given in the usual way. *Chaurette vs. Rapin et al., and Rapin et al., and Loranger*, S. C., 4 L. C. J., p. 293.

8. The sureties on a bond in an appeal from a judgment ordering *contrainte par corps* against appellant, are not liable to the successful respondent for more than the costs of the appeal until the respondent has enforced the order for *contrainte* against the defendant. *Whitney vs. Brooks et al.*, S. C., 5 L. C. J., p. 161.

9. On motion a plaintiff will be allowed to substitute and file in a cause a notarial act of security with a new surety in place of the one proposed with the action, the first surety having desisted from his suretyship. *Monjeau vs. Dubuc*, S. C., 12 L. C. R., p. 94.

" :—*Vide* FIDEJUSSEUR.
" :— " HALF PAY.
" :— " MARRIED WOMEN.

SURROGATES :—Validity given to the judicial acts of surrogates who execute the office of Judge in the Courts of Vice-Admiralty abroad, during vacancies in the offices of Judges of such Courts, whether occasioned by the death, or resignation, or other removals of the said Judges, (56 Geo. III, c. 82, passed 25th June, 1816.) *Vide* S. V. A. R.

SURVEYOR :—A Surveyor's report, referring to a plan not of record in the cause, is bad, and will be set aside on motion. *Adams vs. Gravel*, S. C., 2 L. C. J., p. 203.

SWORD :—The sword of a military man is not liable to seizure, as being part of his necessary military equipment. *Wade vs. Hussey and Hussey*, S. C., 8 L. C. R., p. 511.

TABLE OF FEES :—1. Since the passing of the Act of the Imperial Parliament, 2 Will. IV, c. 51, the establishment of a table of fees for the Vice-Admiralty Court, is exclusively in the Privy Council. *The John and Mary*, p. 64, S. V. A. R.

2. From 1764 to 1780, there are no records in the registry, or documents showing what was done in that interval of time, in relation to fees. *The London*, p. 148, S. V. A. R.

The Governor and Legislative Council of the old province of Quebec, in 1780, passed a temporary ordinance (20 Geo. III, c. 3,) "for the regulation and establishment of fees," including the fees to be taken in the Vice-Admiralty Court, which ordinance was continued by several successive temporary ordinances, the last of which expired on the 30th of April, 1790. *Ib.*

TABLE OF FEES :—

The records of the Court contain no information of the fees taken by the officers in the interval between the expiration of this continued ordinance and the table of fees established under the authority of the Judge in 1809. *Ib.*; and which was generally acted upon by him down to the passing of the 2 Will. IV., c. 51, and the promulgation of the table of fees of the 27th June, 1832. *Ib.*

From this period down to the Order in Council of the 20th of November, 1835, this table of fees was acted upon. *Ib.*

Upon the last mentioned order for rescinding it being received, the deputy of the then Judge of the Court, who discharged the duties of the office, *ad interim*, during the absence of the Judge, from the 30th of August, 1833, to the 21st of September, 1836, allowed certain fees to the officers of the Court as a *quantum meruit*, without reference to any particular tariff or table of fees. *Ib.*

Very soon after entering on the discharge of the duties of Judge of the Court, to which the present incumbent was appointed on the 21st of September, 1836, he *held*, that since the passing of 2 Will. IV., c. 51, (23rd June, 1839,) it was not competent to the Court to award a *quantum meruit* to its officers, the table of fees having been revoked by the Order of Council of the 20th of November, 1835, without any other being made. *Ib.*, p. 149.

The power given by the 2 Will. IV., c. 51, to His Majesty in Council, from time to time, " to alter " tables of fees established under the authority of that Act, and to make new ones, contains in it the power of rescinding an established table without substituting another in the place of it. *Ib.*

Whatever might have been the effect of the Order in Council of the 20th of November, 1835, in reviving a table of fees which had been before legally established, it could not have the effect of giving validity to a table of fees like that of 1809, which at no time had legal existence. *Ib.*

3. New table of fees for the officers and practitioners of the Court, established by an Order of Her Majesty in Council, dated at Buckingham Palace, the 2d of March, 1848, *Ib.* p. 155.

Opinion of the Attorney and Solicitor General of England, afterwards Lord Campbell and Lord Cranworth, as to the authority of the Judge of the Vice-Admiralty Court at Quebec, to establish a table of fees. Note to the case of the *John and Mary*, *Ib.* p. 69.

TACITE RECONDUCTION :—Where a lease of *moveables* is continued by *tacite reconduction*, the lessor can terminate the lease whenever he pleases, and can at any time revendicate the moveable so leased. *Laurent et al. vs. Labelle*, S. C., 5 L. C. J., p. 333.

TARIFF :—*Vide* FEES.

TAXES :—1. Municipal and other taxes are the charges of the enjoyment and possession of an immoveable property, and the holder whom it is sought to expel, cannot claim to be reimbursed his payments thereof. *Filion vs. DeBeaujeu*, S. C., 5 L. C. J., p. 128.

TAXES :—

2. The Corporation of the City of Quebec have a right to raise the capitation tax to 5s. a head. *Exp. Bourdages*, S. C., 11 L. C. R., p. 457.

" :—*Vide* SHERIFF.

" :— " STUDENT.

TAX FOR COURT HOUSE :—*Vide* SHERIFF.

TAX FOR REPORTS :—*Vide* ADVOCATES.

TAX FOR WATER :—*Vide* WATER.

TAVERN-KEEPERS :—Under the Act respecting Tavern-keepers and the sale of intoxicating liquors, C. S. L. C., cap, 6, "keeping a house of public entertainment" is no offence unless qualified. *Ex parte Mogé*, S. C., 7 L. C. R., p. 107.

TAVERN LICENSES :—The Mayor and Councillors of the City of Quebec, under the 14 and 15 Vic., c. 100, secs. 5 and 6, have a discretionary power as to the confirming or refusing to confirm certificates for tavern licenses, and in the exercise of this discretion, they are not to be controlled by the Superior Court or the Judges of the the Court in vacation. Ex parte *Lawlor*, S. C., 2 L. C. R., p. 274.

TEMOINS INSTRUMENTAIRES :—*Vide* EVIDENCE.

TEMOINS NECESSAIRES :—*Vide* EVIDENCE.

TENDER :—*Vide* COIN.

" :— " CURRENCY.

" :— " OFFRES RÉELLES.

TENDERS OR LIGHTERS :—*Vide* BILL OF LADING.

TENURE'S ACT :—*Vide* LAW OF ENGLAND.

TESTAMENTARY EXECUTORS :—1. The administration of a testamentary executor is a mandate of a private nature, which can only be delegated by the testator, and is not a trust of a public nature, which can be imposed by a judge. *Gugy vs. Gilmor*, 1 Rev. de Lég., p. 169.

2. Where an executor, whose powers have been extended by the testator, beyond a year and a day, has become insolvent, and is making away with the estate, the Court will interfere to deprive him of the control of the property, and oust him from his office; but the court has no power to name a sequestrator. *Mackintosh et al. vs. Dease*, S. C., 2 L. C. R., p. 71.

TESTAMENT :—*Vide* WILL.

TIERCE OPPOSITION :—*Vide* OPPOSITION.

TIERS-DETENTEUR :—The *tiers détenteur* is never presumed to bind himself personally. *La Banque du Peuple vs. Gingras*, S. C., 2 L. C. R., p. 243.

TIERS-SAISI :—1. The contestation of the declaration of a *tiers-saisi* does not require an affidavit. *McKenzie et al. vs. Forsyth et al.*, 2 Rev. de Lég., p. 436.

2. A *tiers-saisi* may be admitted to make his declaration as such, after judgment rendered against him by default. *Roy vs. Scott*, 3 L. C. R., p. 80; and even after execution has issued against him, to levy the amount of such judgment. *Andrews and Robertson*, S. C., 1 L. C. R., p. 140.

3. Where the declaration of a *tiers-saisi* does not fully disclose the facts of the case, the T. S. must pay the costs of the contestation. *Macfarlane vs. Delisle and Mackenzie et al.*, S. C., 3 L. C. J., p. 163.

TIERS-SAISI :—

4. A *tiers-saisi* made a declaration to the effect that certain moneys, collected under an assignment from one of the defendants, were placed in his hands for distribution among the creditors rateably, who should grant the defendant a discharge, and that the plaintiffs, respondents, refused to accept their proportion on these terms; and upon this declaration he was condemned to pay over to the plaintiffs the balance mentioned in the declaration, without notice of inscription or contestation of his declaration. And it was held in the Q. B. that such judgment was properly rendered, there being no evidence of the insolvency of the assignor, or of the existence of the creditors, and no application by the *tiers-saisi* to have the moneys paid into Court. *McFarlane and Roy & al.*, Q. B., 7 L. C. R., p. 77.

5. The judgment against a *tiers-saisi* carries with it a right of execution, and confers rights on the seizing creditor which cannot be interferred with, by the other creditors of the defendant. *Masson vs. Choall and The Merchant Assurance Company and Biron*, S. C., 6 L. C. R., p. 169. And also *Chapman vs. Clarke and The Unity Life Insurance Association*, S. C., 3 L. C. J., p. 159.

6. The cashier, or other officer of a bank, receiving money as the attorney of another party, acts individually, and does not constitute the bank such attorney. So that a *saisie-arrêt* in the hands of the bank will not attach moneys so paid. *Lynch vs. McLennan & al. and The Bank of Upper Canada*, S. C., 3 L. C. J., pp. 84 and 114, and 9 L. C. R., p. 257. But a bank, *tiers-saisi*, will be ordered to deposit in the hands of the prothonotary bonds or debentures of certain municipalities placed by defendants in such bank. *Perry vs. Milne and The Ontario Bank, T. S., and Milne, Comtg.*, 6 L. C. J., p. 301.

7. And a *tiers-saisi* with whom defendant had deposited notes will be ordered to deliver them into the hands of the protonotary. *McKay vs. Demers and Fauteux*, S. C., 11 L. C. R., p. 284.

8. The *saisie-arrêt* is a mode of citing parties to appear, and a *tiers-saisi* whose declaration is contested becomes a defendant in the cause, bound to answer the contestation of his declaration, and liable to be condemned, alone or jointly, as the debt is due by him solely or jointly and severally with others. And the allegation of acts of *dol* and fraud common to the three *tiers-saisis* and to the defendant, committed by concert and collusion between them, and carried out to the prejudice of the plaintiff, is sufficient, if proved, to warrant a joint and several judgment against them. *McFarlane and Whiteford*, Q. B., 7 L. C. R., p. 318.

9. A declaration of a *tiers-saisi* cannot be contested after eight days from the making thereof. *Warner vs. Blanchard and the Mayor, &c. of the City of Montreal*, S. C., 2 L. C. J., p. 73. But in a case of *Bruneau and Charlebois*, Q. B., 3 L. C. J., p. 56, it was held, that by the rule of practice the contestation of the declaration of a *tiers-saisi* cannot be contested after the delay of eight days from its being made, unless with special permission of the Court first obtained. But in order to obtain such permission sufficient cause must be

TIERS-SAISI :—

shewn why contestation was not filed in the delay. *Lynch vs. McLennan & al. and The Bank of Upper Canada*, S. C., 3. L. C. J., p. 114.

10. But in the Circuit Court there is no limitation of eight days within which it is necessary to contest the declaration of a *tiers-saisi*. *Lovell vs. Fontaine and Arnton*, C. C., 5 L. C. J., p. 284.

11. The declaration of several *tiers-saisis* of a like character may be attacked by one contestation, where they are alleged to be *solidairement* liable, a *tiers-saisi* being more a party than a witness in the cause. *Macfarlane and Whiteford*, Q. B., 1 L. C. J., p. 49.

12. A *tiers-saisi* referring in his evidence to certain documentary evidence, will be held to produce the same at his own cost, on motion to that effect. *Forsyth vs. The Canada Baptist Missionary Society and Leeming & al.*, S. C., 2 L. C. J., p. 167.

13. Verbal acceptance by the secretary in one case and the accountant in another, of a draft on a chartered railway company, is sufficient to prevent the attachment by *saisie-arrêt* of the money covered by such draft. *Ryan & al. vs. Robinson and The Montreal and Champlain Railroad Company*, S. C., 2 L. C. J., p. 203.

14. Salary not due at time of service of a writ of *saisie-arrêt* cannot be seized. *Malo vs. Adhémar and La Banque du Peuple*, S. C., 1 L. C. J., p. 270, also *Sternberg et al. vs. Dresser & al., and Evans, T. S.*, 4 L. C. J., p. 120.

15. Generally the debtor has an interest to contest the *saisie-arrêt*. *La Banque du Peuple vs. Donegani*, S. C., 1 L. C. R., p. 107. *Vide* Index, SAISIE-ARRET, No. 26. But a defendant has no interest in contesting the declaration of a *tiers-saisi*, on the ground that the goods of such *tiers-saisi* are under seizure for the amount admitted by him in his declaration to be due to the defendant, and that such a contestation will be dismissed on demurrer filed by the *tiers-saisi* himself. *Constable & al. vs. Gilbert & al. and Simpson & al.*, S. C., 4 L. C. J., p. 299.

TIMBER :—Advances on goods under a written agreement are made by A., a merchant in Upper Canada, to enable B., a contractor for lumber, to cut and convey to the Quebec market a quantity of timber upon the following conditions : that so soon as desired it should be considered as belonging to and be delivered to A., that A. should have the selling of the timber and account to B for any balance that might remain after a deduction of his disbursements and advances, including 10 per cent upon the latter with a commission of 2½ *per cent.* upon the sale, and it was held, that after a delivery to A., before the timber reaches Quebec without fraud or collusion with B., the timber could not be attached at the suit of B.'s creditors for the payment of his debts ; but the balance, if any, after a sale by A., can alone be arrested in his hands under the process of the Court. *Vankoughnet vs. Maitland*, S. R., p. 357.

" :—*Vide* DELIVERY.

" :— " LICENSE.

" :— " SHERIFF.

TITHE :—*Vide* DIXMES.

TITRE NOUVEL :—1. To a seigniorial *titre nouvel*, it is not necessary that the seignior should be a party. *Cuthbert vs. Tellier*, 3 Rev. de Lég., p. 244.

2. A purchaser of a *rente constituée* cannot bring his action *pour faire passer titre nouvel* before putting the defendant *en demeure*, and in the event of his not doing so, he will be condemned to pay costs. *Guénard vs. Guay*, S. C., 4 L. C. R., p. 27.

3. A reservation contained in a *titre nouvel* or *reconnaissance nouvelle*, between seignior and *censitaire*, is null and void, if the same be not inserted in the first title of concession. *Trigge & al. vs. Geoffroy*, S C., 6 L. C. R., p. 5.

TOLL-BRIDGE :—Mail carriers conveying passengers and effects across a toll-bridge, erected under the 6 Geo. IV. c. 29. are not exempted by that statute from the payment of tolls. *Fuller and Jones*, S. C., 4 L. C. R., p. 427. Also L. R., p. 52.

TOLL-BRIDGE :—*Vide* BY-ROAD.

" :— " FERRY.

TRADITION :—1. Absolute tradition is not necessary to insure to the purchaser, the property he had acquired as against another purchaser. *Bowen vs. Ayer*, 2 Rev. de Lég., p. 102. And the feigned or symbolical tradition may supply the actual tradition to enable a purchaser to maintain an *action pétitoire*, more particularly as respects wild lands. A mere natural possession, such as that of a squatter, without title or color of title, raises no presumption of a right of property, and therefore it is not necessary that a purchaser claiming under a valide title, should rebut such possession by shewing a title in his vendor. *Stuart and Ives*, Q. B., 1 L. C. R., p. 193. But in *Mallory and Hart*, Q. B., 2 L. C. R., p. 345, it was held, that in the case of sales of waste lands, tradition is necessary to convey the right of property; and when the purchaser by private sale of such lands, does not take possession of the same, such lands may be legally seized and sold as belonging to the vendor; and the new purchaser becomes seized of such lands to the exclusion of the purchaser, who has neglected to take possession. And in *Stuart vs. Bowman*, S. C., 2 L. C. R., p. 369, it was held, that there must be an actual delivery in order to acquire a valid title to real estate. And the purchaser of an immoveable property who has neither had seizin nor possession, cannot maintain the petitory action. *Brochu vs. Fitzback & al.*, S. C., 2 L. C. R., p. 7. But a more recent case was decided in the opposite sense. *Verdon vs. Groulx*, S. C., 1 L. C. J., p. 184. And in *Bilodeau vs. Lefrançois*, it was held in the Queen's Bench, that to enable a purchaser to institute a petitory action, it was not necessary to have had actual tradition of the immoveable, provided the vendor was in possession at the time of the sale. 12 L. C. R., p. 25.

2. The adjudication by *decret* operates real tradition, and the purchaser is in good seizin and can transfer the possession. And such purchaser of an undivided share may seek a licitation, and over-ruling the case of *Brochu vs. Fitzback*, even the purchaser who has not been in possession, may

TRADITION :—

revendicate the immoveable property to which he has a title. *Loranger vs. Boudreau & al.*, Q. B., 9 L. C. R., p. 385. *Vide* also *Harwood vs. Shaw*, S. C., 4 L. C. J., p. 1. Also a case of *Hart vs. McNeil*, S. C., 4 L. C. J., p. 8, for the effect of the sale by *décret*.

3. No delivery is necessary to pass the property of goods sold at a judicial sale. *Tacite reconduction* in relation to moveables only arises when the lessor is a dealer and makes a business of letting moveables. Parties remaining in possession of moveables after the expiry of a lease, will be deemed to hold them as owners. *Bell vs. Rigney et al. and Milne*, S. C., 3 L. C. J., p. 122.

4. The sale of moveable effects, by a notarial deed, which declares that tradition of the whole took place by the delivery of a chair and a table, does not vest the property in the vendee ; and a creditor of the vendor, posterior to the sale, may cause the seizure and sale of the same effects, upon the vendee. *Bonacina and Seed*, Q. B., 3 L. C. R., p. 446.

5. The assignment of a lease by a bankrupt to a creditor, to whom he sells all his moveables, is a sufficient delivery of such goods, as against creditors or other third parties, and precludes the necessity of *déplacement* or other species of *tradition réelle*. *Cumming & al. vs. Mann and Smith & al.*, S. C., 2 L. C. J., p. 195. Reversed in Appeal, 10 L. C. R., p. 122. See also *Withall vs. Young & al. and Michon & al.*, Q. B., 10 L. C. R., p. 149.

" :—*Vide* ACTION PETITOIRE.
" :— " ASSIGNMENT.
" :— " DONATION.
" :— " POSSESSION.
" :— " WAREHOUSEMAN.

TRANSACTION :—A *transaction* will not be set aside for *erreur de droit*, where there is no fraud or deceit. In a transaction each party gives up his rights in order to avoid doubtful litigation. *Trigge & al. vs. Lavallée*, S. C., L. R., p. 87. And in the P. C. it was held: 1st. That in the case of a contract known to the French law as a *transaction*, and called in English a compromise, to determine amicably all disputes which may have arisen between the parties, the consideration which each party receives is the settlement of the dispute, not the sacrifice of a right, but the abandonment of a claim. *Trigge & al. vs. Lavallée*, P. C., 13 L. C. R., p. 132.

And it is no objection to the validity of such a compromise, that the right was really in one of the parties only. *Ib.*

And in the case submitted, neither fraud, *dol*, nor want of good faith by misrepresentation or otherwise, could be imputed to Chandler, one of the parties to the compromise, nor had intimidation been used to the other party. *Ib.*

The question of error in the *motif déterminant* of the compromise is to be decided exclusively by the French law as applicable to transactions. *Ib.*

And the rule in such matter is that if the error relied on be as to a matter of fact, and that the fact be one not included in the compromise, and of such a character that it must be considered the determining motive of either parties in

TRANSACTION :—
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. *Ib.*

That when the compromise is general as to 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. *Ib.*

And the rules of the civil law upon this subject, have been adopted not only in France but also in England and Scotland. *Ib.* Also 7 L. C. J., p. 85.

TRANSFER :—The transfer of shares in railway companies cannot be proved by verbal testimony. *Cockburn vs. Beaudry*, S. C., 2 L. C. J., p. 283.

" :—*Vide* TRANSPORT.

TRANSMISSION OF RECORD :—*Vide* SECURITY.

TRANSPORT :—1. An assignee can bring his action, without notifying the deed of assignment to the debtor, and the service of process in such case is equal to signification. *Martin vs. Côte*, S. C., 1 L. C. R., p. 239. And so also it was held where the suit was begun with a *capias*. *Quinn vs. Atcheson* S. C., 4 L. C. R., p. 378. And an opposition *afin de conserver*, may be filed by an assignee who has not signified his *transport*. *Lamothe & al. vs. Fontaine*, Q. B., 7 L. C. R., p. 49, and 1 L. C. J., p. 101.* But the Court of Q. B. made the distinction between a conservatory process such as an opposition and an action. And in the case of *Paré and Deroussel'e*, the S. C. in Quebec condemned a *cessionnaire* who had brought his action without signification of the transport to pay costs, the defendant having tendered the money into Court, S. C., 6 L. C. R., p. 411.

2. Where defendant had been verbally notified of an assignment of moneys due by him to plaintiff, and had paid to the assignees moneys under such transfer, an action for the balance brought by the original creditor was dismissed, although plaintiff offered to give security that he would not be troubled under the transfer and gave credit for the sums already paid to the assignees. *Orr vs. Hébert*, S. C., 12 L. C. R., p. 401, and 7 L. C. J., p. 282.

3. The judgment *validant* a *saisie-arrêt*; and ordering the T. S. to pay the plaintiff, when served upon the T. S., operates as a transport *forcé*, and vests the debt due by the T. S. in the plaintiff to the exclusion of the creditors of the defendant, even although the latter be insolvent. *Chapman vs. Clarke and The Unity Life Insurance Association*, S. C., 3 L. C. J., p. 159.

TRESPASS :—1. An action of trespass cannot be maintained against an officer who executes a writ issued upon a judgment rendered in an Inferior Court in matter over which such Court had no jurisdiction. *Goulie vs. Langlois*, S. R., p. 142.

2. An action of trespass for misfeasance can be maintained against a collector of the customs for exacting a larger sum than the law authorized for duties, unless some reasonable

* The reports vary as to the title of this case but there is but the one action.

TRESPASS:—

ground of excuse for his conduct is shewn or such facts be laid before the Court as will excuse every imputation of malice or wilful intent. ***Perceval vs. Patersons***, S. R., p. 270.

3. When special damage is the gist of the action, and it is not alleged, or if alleged not proved, the action will be dismissed. But when the law gives a right of action for an injury it presumes that damages are the consequence and a conclusion for general damages will be sufficient. *Ib.*

4. In an action of trespass for assault and imprisonment against the provincial judge of the district of St. Francis, for issuing process of attachment for contempt against the editor and printer of a public paper, for publishing therein certain papers, it was held that: as the acts complained of were performed in the exercise of his judicial functions, the Court could not take cognizance of them. *Dickerson vs. Fletcher*, S. R., p. 276. And so in ***Gugy vs. Kerr***, it was held, that an action will not lie against a judge for any act done by him within the extent of his jurisdiction. S. R., p. 292.

5. A tenant has a right of action of damages for a *voie de fait* against the proprietor of a neighbouring property, who has allowed rubbish to accumulate against the division wall for years, thereby causing the wall to fall over on the property of the former. *Gallagher vs. Allsopp*, Q. B., 8 L. C. R., p. 156.

7. That in the case of a trespass by several individuals, it is not necessary to prove specially the part taken by the parties impleaded to obtain a judgment against them in damages, and that their participation may be inferred in the matter from the circumstances of the case. *Niauentsiasa and Akwirente & al.*, Q. B., 10 L. C. R., p. 377.

TRINITY HOUSE:—1. Where there has been a previous judgment of the Trinity House upon the same cause of damage, the Court has no jurisdiction in cases of pilotage. *The Phabe*, p. 59, S. V. A. R.

2. By the by-laws and regulations of the Trinity House of the 28th June, 1805, all ships or vessels, in dark nights, at anchor in the stream opposite the town of Quebec, were required to show a light on the bow-sprit end on the flood tide, and at the mizzen peak or ensign staff on the ebb tide. *The Mary Campbell*, p. 222, S. V. A. R.

3. By-laws of Trinity House not abrogated or repealed by desuetude or *non-user*. *Ib.*, p. 223.

4. What is a dark night in the purview of the Trinity House regulations. *The Dahlia*, p. 242, S. V. A. R.

The regulations of the Trinity House require a strict construction in favour of their application. *Ib.*

5. By-law of 28th June, 1805, repealed by by-law of 12th April, 1850, and all ships or Vessels at anchor in any part of the river St. Lawrence, between Green Island and the western limits of the port of Quebec, during the night, are required to have a distinct light in the fore-rigging twenty feet above the deck. *The Mary Campbell*, p. 225, in note, S. V. A. R.

TRINITY HOUSE :—

6. Duty and authority of harbour master, and consequences of contravening his directions respecting the berths of vessels. *The New York Packet*, p. 325, S. V. A. R.

7. Trinity House by-law or regulation of the 12th April, 1850, as to a steamer meeting a sailing vessel going free, and there is danger of collision. *The Inga*, p. 339, S. V. A. R.

8. In appeals from the decisions of the Trinity House, the appellant is not bound to give notice of the security he intends to offer under the 12 Vic., c. 114. *Laprise vs. Armstrong*, S. C., 10 L. C. R., p. 434.

" :—*Vide* BEACHES.

TROUBLE :—A purchaser of real estate who has accepted a transfer of the price, cannot refuse to pay such price on the ground that he has been sued to give up such land, or until he is judicially dispossessed. *Lacombe vs. Fletcher*, Q. B., 11 L. C. R., p. 38.

" :—*Vide* RATIFICATION OF TITLE.

" :— " FRANC ET QUITTE.

" :— " DÉLAISSEMENT.

TRUE BILL :—A true bill for arson of premises insured being found, is not a cause for the suspension of the action of the accused on his policy of insurance on the premises in question. *Maguire vs. The Liverpool and London Fire and Life Insurance Company*, S. C., 7 L. C. R., p. 343.

TRUSTEES :—*Vide* CORPORATION.

" :— " WILL.

TUTELLE :—*Vide* ACTION EN DESTITUTION DE TUTELLE.

TUTOR :—1. D. was appointed tutor to the minor children of the son deceased, the mother also being dead ; subsequently the maternal grandfather was appointed tutor by a judge in another district. Held that the appointment of the second tutor was invalid ; the first appointment being still in force, and that the Court sitting in Montreal cannot revise the appointment of a tutor in the district of Three Rivers. That the appointment of a tutor dates from the *avis de parents* and not from the homologation by the judge. Ex parte *Dunn and Beaudet*, S. C., L. R., p. 14. Reversed in appeal, where it was held, that the tutorship *dative* is conferred by the judge, and not by the advice of the relations, which is only a mode of enquiry to aid the judge in the exercise of this attribute. A *tutelle* is not *de facto* null, by reason of the grandfather not having been called to attend the meeting of relations, and the said *tutelle* ought not to be set aside on that account, if the interests of the minors be not affected by such omission. That the *tutelle* must be conferred by the judge of the last domicile of the father, which continues to be that of the children ; and in the present instance the father had continued his domicile in the district of Montreal, although he had lately resided in another, and had died abroad. In the event of two *tutelles* being conferred in two distinct jurisdictions, the Court called to adjudicate upon the one conferred in its jurisdiction may and is bound to pronounce upon the validity of the other, if it be called in question. *Beaudet and Dunn*,* Q. B., 5 L. C. R., p. 344.

* By error called in the report *Beaudet and Dorion*.

TUTOR:—

A *tutelle* will not be set aside, on petition of the mother, if it appear that she, from her habits and character is unfit to be tutor, and if it appear that the tutor appointed is a fit person although a stranger. *Mitchell & Brown & al.* S. C., 3 L. C. J., p. 111.

3. So long as a first tutorship exists, a second cannot take place, and acts made by a second are null. And an inventory made without calling in the first tutor is null. And if a *subrogé* tutor who has appeared at an inventory, is still a minor, the inventory will be null.

If the bailiff who has estimated the chattels mentioned in the inventory was not sworn, the inventory will be null.

And the person who makes inaccuracies, false variations and omissions in an inventory, is guilty of fraud, and the inventory is null. And all transactions between a tutor and the minors, who have subsequently become of age, founded upon such incorrect and fraudulent inventory are null *de plano*; as are all such transactions where no faithful inventory has been made, and where no vouchers have been rendered. And the *action recisoire* in such a case is not prescribed by ten years. When there is an absence of registration, the civil *status* of a person can be proved by the sayings of his parents and witnesses. *Motz vs. Moreau*, S. C., 5 L. C. R., p. 433. But this judgment being appealed from, it was held, in the Q. B., that in the case submitted there was no authentic instrument ascertaining the period of the respondent's birth; that on the 21st of August, 1830, the respondent declared himself of full age, and it was incumbent on him to establish the fact of his alleged minority by precise and undoubted proof, which he had failed to do; and he had likewise failed in relation to the same fact, with respect to William Andrew Motz, and Catherine Motz, of whom he was the tutor, and that never having been the tutor of respondent, he was not, under the circumstances, held to render an account to three children of the late Motz; and that therefore the want of a *reddition de compte* was not a means which the respondent could legally invoke to set aside the transactions which the respondent and his brother had entered into with one Carrier, and that the said respondent, and his said brother, being reputed of full age when the transactions had taken place, the same could be legally made as well for themselves as for their sister deceased, a minor. That the action *en nullité* brought by the respondent was prescribed by the period of ten years since the passing of the deeds complained of. That it had not been proved that the inventory of the 31st August 1830, was fraudulent, and that the errors and omissions alleged against it could only give rise to a demand for its alteration and rectification, and that therefore the respondent had no right to bring suit praying it should be declared null and void and concluding *en petition d'hérédité*, for an inventory and the rendering of an account. *Moreau and Motz*, Q. B., 7 L. C. R., p. 147. Confirmed in S. C., 10 L. C. R., p. 84, and 13 Moore's Rep., p. 376.

TUTOR:—

4. The father of a minor son sued for seduction cannot be sued with such minor as his *tuteur naturel*. *Hislop vs. Emerick & al.*, Q. B., 9 L. C. R., p. 203. Also, L. R., p. 106.

5. The power of a tutor over the property of a minor does not extend beyond that of simple administration; and so a tutor has no right, without sufficient authority first obtained, to sell "*les immeubles réels ou fictifs* or *choses précieuses*," and the sale and transfer thereof by a tutor *en déconfiture*, without any formality or authorization, whereby the proceeds were wholly lost, is an absolute nullity so far as the minor is concerned;

Shares in the Bank of Montreal are such *immeubles fictifs* or *choses précieuses*;

In an action by the minors against the Bank, he is entitled to recover all the dividends accrued although paid to the transferees; and in such action the tutor as vendor of the stock need not be joined. *The Bank of Montreal vs. Simpson & al.*, Q. B., 10 L. C. R., p. 225, also 5 L. C. J., p. 169. This judgment was confirmed on appeal to the P. C., 6 L. C. J., p. 1, and 11 L. C. R., p. 377.

6. An opposition to the sale of real estate by a tutor *ad hoc*, authorized to act for minors, is maintainable without registration of such *acte de tutelle*, and the 24th section of the Registry Ordinance (4 Vic., c. 30,) does not apply to such oppositions. *Chouinard vs. Demers*, S. C., 5 L. C. R., p. 401. And also in the case of *Morland vs. Dorion and Sauvé & ux.*, S. C., 5 L. C. J., p. 154.

" :—*Vide* ACTION EN REDDITION DE COMPTE.

" :— " LEGACY.

" :— " MINORS.

TUTOR TO A SUBSTITUTION:—A tutor to a substitution under a will, cannot bring an action *en dechéance d'usufruit*. *Gauthier vs. Boudreau & al.*, S. C., 3 L. C. J., p. 54.

UNION-JACK:—None of Her Majesty's subjects to hoist in their vessels the Union-Jack, or any pendants, &c., usually worn in Her Majesty's ships, and prohibited to be worn by proclamation of 1st January, 1801, under a penalty not exceeding £100, (8 and 9 Vict., c. 87,) S. V. A. R.

Jurisdiction of the High Court of Admiralty, and of the Vice-Admiralty Courts in such cases. *Ib.*

UNITING CASES:—*Vide* MOTION.

USUFRUCT:—1. There is no action to oblige a *usufruitier* to keep property in repair or to pay damages. *McGinnis vs. Choquet*, S. C., L. R., p. 89; 5 L. C. J., p. 99.

2. The building of a house upon real estate subject to a usufruct does not change the nature of the property so as to put an end to the usufruct. *Little and Diganard*, Q. B., 12 L. C. R., p. 178.

3. The transfer of a right of usufruct of real estate for seven years, vests in the assignee only the right of exercising the usufruct, and will not support an opposition to the sale of the usufruct upon an execution against the assignor. *Simpson & al. vs. Delisle and Dorion*, S. C., 9 L. C. R., p. 59.

" :—*Vide* ACCROISSEMENT.

" :— " TUTOR TO A SUBSTITUTION.

USUFRUCTUARY:—The usufructuary can only recover from the proprietor the costs of the *grosses réparations* and those necessary for the enjoyment of the property subject to the usufruct. And he can only claim the useful improvements in so far as the immoveable derives value from the same. But the *grosse réparations* are due whether they exist at the opening of the substitution or not, provided they have not ceased to exist by the fault or negligence of the usufructuary. The proprietor is not liable for ornamental repairs. *Lafontaine vs. Suzor*, S. C., 11 L. C. R., p. 388.

USURY:—1. A constituted or life-rent cannot be considered as usurious whatever may be the rate charged. *Mogé vs. Latraverse*, S. C., 7 L. C. J., p. 128. Nor will a commission on mercantile transactions in addition to interest on money lent, be looked upon as usurious, unless it be exorbitant and only a cloak for usury. *Pollock and Bradbury*, P. C., 8 Moore's Rep., p. 247; also 3 L. C. R., p. 171.

2. Maritime interest at the rate of 25 *per centum* on a bottomry bond at Quebec, is not exhorbitant, [C. St. C. cap. 58.] *White vs. The Dædalus*, S. R. p. 130.

3. The Act 16 Vic. c. 80, has cut off all remedies against usury established by 17 Geo. III., c. 3. *Macfarlane vs. Rolden & al.*, S. C., L. R., p. 3. But see C. Sts. C., cap. 58.

4. In the case of *Malo vs. Nye*, S. C., 1 L. C. J., p. 155, it was held, that money actually paid in excess of six per cent. interest, cannot under the Provincial Statute, 16 Vic. c. 80, either be recovered back or be deducted from the capital sum borrowed. But this judgment having been appealed from, it was held in the Q. B., that money actually paid in excess of six per cent. interest, in the discounting of various notes renewed from time to time, and of which those sued on form a part, can be recovered back by having the said excess of six per cent. interest, in the discounting of various notes renewed from time to time, and of which those sued on form a part, can be recovered back by having the said excess deducted from the notes so sued on. *Nye vs. Malo*, Q. B., 2 L. C. J., p. 43. But again in the case of *Malo vs. Wurtele*, S. C., 9 L. C. R., p. 327, *Smith*, J., said that even if the ruling of the Court of Queen's Bench in the previous case were to be maintained, the defendant must establish the precise excess retained over the legal interest on the note in suit, and it must be shewn that it is the defendant's and not other parties to the note, who paid the discount. But in *Morson vs. David*, S. C., 4 L. C. J., p. 302, it was held that a notarial obligation for a loan executed during the period that the 16 Vic. c. 80, was in force, is subject to reduction in capital and interest, as regards any excess over and above the amount actually loaned.

5. And in the case of *Beaudry and Proulx*, Q. B., 10 L. C. R., p. 236, on an obligation, the defendant pleaded that he had given the plaintiff two promissory notes for £60 each in deduction of the amount due, and had paid them, and also another note for £60, which was still in the plaintiff's hands. The plaintiff answered that the amount of the first notes had been received and that the two last notes were given on an agreement that the defendant should pay 12 per

USURY :—

cent. interest on the obligation. The defendant examined on *faits et articles* admitted his undertaking to pay 12 per cent. interest, stating that he had been forced to make it by reason of his incapacity to pay the capital at the time it became due, it was held, that the amount of the second note must be deducted from the amount of the principal and interest at 6 per cent., and the third note did not operate as a novation and must be given back to defendant.

" :— *Vide* COMMISSION.
" :— " EVIDENCE.
" :— " INTEREST.
" :— " PLEADING AND PRACTICE.
" :— " PROMISSORY NOTE.

VACANT ESTATE :— *Vide* CURATOR.

VARIANCE :— *Vide* AMENDMENT.

VENDEE :— 1. The vendee of a moveable cannot claim damages arising from the defects in the article purchased, without tendering back such article to the vendor. *Clément vs. Page & al.*, S. C., 1 L. C. J., p. 87. And when there is a sale of goods by sample and they do not agree therewith, the vendee must make known the defect within a reasonable delay,—he could not claim to rescind the sale and return the goods after a delay of six months. *Joseph vs. Morrow & al.*, S. C., 4 L. C. J., p. 288.

2. In the case of *Ryan vs. Idler*, S. C., 1 L. C. J., p. 9, it was held, that the vendee of real estate who has obtained judgment against his vendor in an action *quanto minoris* cannot bring an action to have such judgment declared binding on the *cessionnaire* of the vendor. But in the Q. B., it was held, reversing the judgment of the S. C., that such action might be maintained. *Ryan and Idler*, Q. B., 1 L. C. J., p. 257.

3. A vendee of real estate can oppose the exception of *quanto minoris* to the *cessionnaire*, even when he has accepted signification of transfer and promised to pay the purchase money. *Masson & al. vs. Corbeille*, S. C., 2 L. C. J., p. 140.

" :— *Vide* ACTION QUANTO MINORIS.

VENDITIONI EXPONAS :— *Vide* OPPOSITION AFIN D'ANNULLER.

VENDORS :— *Vide* GARANITE.

VENDOR AND VENDEE :— *Vide* RATIFICATION OF TITLE.
" " :— " SAISIE-ARRÊT.

VENTILATION :— *Vide* HYPOTHEQUE.
" :— " RATIFICATION.

VERBAL LEASE :— *Vide* LEASE.

VERDICT :— 1. A verdict will be null, if the issue has not been joined. *Wurtele vs. Arcand*, 3 Rev. de Lég., p. 242.

2. A special verdict ought to be the finding of facts, by the jury, from which the Court is to pronounce its judgment on the law, and the verdict ought not to leave facts to the Court to draw an inference, such as whether negligence has been established or not,—negligence being a question of fact and not of law. *Tobin et al. and Murison*, P. C., 5 Moore's Rep., p. 110.

VERDICT :—

3. Where defendant pleads to an action of damages special acts of immorality on the part of plaintiff, as justification of their refusal to carry out with him a certain agreement to admit him as a partner into their firm, in defining the facts to the jury, questions should be put in respect to such immoral acts as material to the defence, also as to the alleged immoral and irregular character of the plaintiff. *Lynn et al. and Higginson*, Q. B., 10 L. C. R., p. 392.

4. The verdict of a special jury is bad, and will be set aside, if in an action of slander the question to be determined by the jury was—"Were the words spoken by the defendant"? And if the verdict was—"These words or words to the same effect were made use of by the defendant condemning the plaintiff"; because such verdict is vague and uncertain. *Ferguson vs. Gilmour*, S. C., 4 L. C. R., p. 57. But a verdict rendered by a jury in a civil case, in terms which in grammatical sense are ambiguous, may be interpreted by the Court so as to give it effect, and the Court may look into the record to ascertain what interpretation to put on such terms. *The Quebec Bank vs. Maxham*, S. C., 11 L. C. R., p. 97. In appeal it was held that the verdict of a jury against law and evidence, is properly set aside by a judgment *non obstante veredicto*. *Ferguson and Gilmour*, Q. B., 1 L. C. J., p. 131.

5. A verdict of a jury cannot be set aside in appeal, when no motion has been made in the Court below either for a new trial, in arrest of judgment or for judgment *non obstante veredicto*. *Shaw et al. and Meikleham*, Q. B., 3 L. C. J., p. 5.

6. A verdict will be set aside on examination of the written evidence filed, if it appear that the jury has presumed a release of one of the parties on such written evidence and that there be, in the opinion of the Court, nothing to justify such verdict. *Clark et al. vs. Murphy et al.*, S. C., 11 L. C. R., p. 105.

7. A verdict for less than forty shillings sterling, will only carry costs to a similar amount, and the basis of calculation must be at the rate of 24s. and 4d. currency per pound sterling. *Leduc and Busseau*, Q. B., 1 L. C. J., p. 191.

VERIFICATION OF WRITING :—Writings admitted to be genuine will be examined by the Court in order to verify the genuiness of a signature on a plea of forgery. *McCarthy and Judah*, P. C., 12 Moore's Rep., p. 47. Also 8 L. C. R., p. 369. *Vide* APPENDIX.

VESSEL :—Under the 6 Wm. IV, cap. 28, the owner of a vessel at the time of the complaint, although not its owner at the time the service was rendered, is responsible for the payment of such service. Exp. *Warner, Pet. for Writ of Cert.*, S. C., 5 L. C. J., p. 120.

VICE-ADMIRAL :—By letters, dated the 19th of March, 1764, General James Murray, then Captain General and Governor in Chief in and over the province of Quebec, was appointed Vice-Admiral, Commissary and Deputy in the office of Vice-Admiralty in the said province of Quebec and territories therein depending, and in the maritime parts of the same

VICE-ADMIRAL:—

and thereto adjoining, with power to take cognizance of and proceed in any matter, cause or thing, according to the rights, statutes, laws, ordinances, and customs observed in the High Court of Admiralty in England. p. 370, S. V. A. R.

By this Commission His Majesty introduced into this province all the laws of the English Court of Admiralty in lieu of the French laws and customs by which maritime causes were decided in the time of the French government. (See Report prepared by Francis Maseres, Esquire, His Majesty's Attorney General of the province of Quebec, by order of Guy Carleton, Esquire, the Governor of the Province, delivered in to the said Governor on the 27th of February, 1769. Mr. Maseres was afterwards Cursitor Baron of the Court of Exchequer in England.)

List of the several Commissions in continuation of the above down to the present time. The powers in all identical. p. 390, *Ib.*

VICE-ADMIRALTY COURT:—1. The first establishment of the Vice-Admiralty Court in Canada took place immediately after the cession of the country to the Crown of Great Britain, and, as early as 1764, a commission, bearing date the 24th of August of that year, was issued by General Murray, appointing James Potts judge of the Court, which commission was superseded by another issued under the Great Seal of the High Court of Admiralty of England of the 28th of April, 1768; and the office has been continued by a succession of commissions down to this time. *The London*, p. 147, S. V. A. R.

2. By 2 Will. IV., c. 51, s. 6, doubts are removed as to the jurisdiction of the Vice-Admiralty Courts in the possessions abroad, with respect to seamen's wages, pilotage, bottomry, damage to a ship by collision, contempt or breach of regulations, and instructions relating to His Majesty's service at sea, salvage, and droits of Admiralty. p. 4, *Ib.*

In all cases where a ship or vessel, or the master thereof, shall come within the local limits of any Vice-Admiralty Court, it shall be lawful for any person to commence proceedings in any of the suits hereinbefore mentioned in such Vice Admiralty Court. *Ib.*

Notwithstanding the cause of action may have arisen out of the local limits of such Court, and to carry on the same in the same manner as if the cause of action had been within the said limits. *Ib.*

The Court of Vice-Admiralty in the colonies has a concurrent jurisdiction with the Courts of Record there in the case of forfeitures and penalties incurred by the breach of any Act of the Imperial Parliament relating to the trade and revenues of the British possessions abroad. *Vide* The Customs Consolidation Act, 1853, 17 & 18 Vic. c. 107, s. 183.

So in the case of any penalties and forfeitures incurred by the breach of the Act of the Legislature of Canada, consolidating the duties of customs, or the breach of any other Act relating to the customs or to trade or navigation, concurrent jurisdiction is given to the Court of Vice-Admiralty with the Courts of Record (Provincial Stat. 10 and 14 Vic. s. 51.)

VICE-ADMIRALTY COURT:—

So it has jurisdiction in the case of any penalties incurred by the breach of the proclamation of the 1st of January, 1801, prohibiting the use of colours worn by Her Majesty's ships (8 & 9 Vic. c. 89.)

The Court cannot in case of pilotage, enforce a judgment of the Trinity House upon the same cause of demand. *The Phœbe*, p. 59, S. V. A. R.

3. The jurisdiction of the Court is not ousted by the provisional statute 45 Geo. III., c. 12, in relation to claims of pilots for extra pilotage in the nature of salvage for extraordinary services rendered by them. *The Adventure*, p. 101, S. V. A. R.

4. In a case of wreck in the river St. Lawrence, (Rimouski) the Court has jurisdiction of salvage. *The Royal William*, p. 107, S. V. A. R.

5. The jurisdiction of the Court as to torts depends upon the locality, and is limited to torts committed on the high seas. *The Friends*, p. 112, S. V. A. R.

Torts committed in the harbour of Quebec are not within the jurisdiction of the Court. *Ib.*

6. It has jurisdiction of personal torts and wrongs committed on a passenger on the high seas by the master of the ship. *The Toronto*, p. 181, in note, S. V. A. R.

7. In no form can the Court be made ancillary to give effect to proceedings had before a Justice of the Peace under the Merchant Seamen's Act. *The Scotia*, p. 165, S. V. A. R.

8. Has no jurisdiction with respect to claims of material men for materials furnished to ships owned in Canada. *The Mary Jane*, p. 267, S. V. A. R.

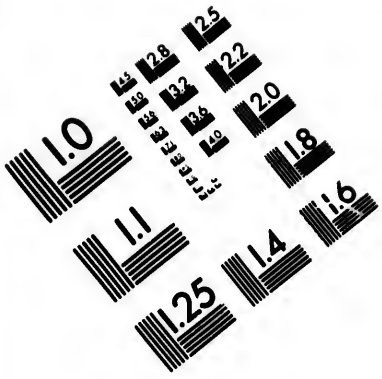
9. The Court has undoubted jurisdiction over causes of possession, and will restore to the owner of a British ship the possession of which he has been unjustly deprived. *The Mary and Dorothy*, p. 187, S. V. A. R.

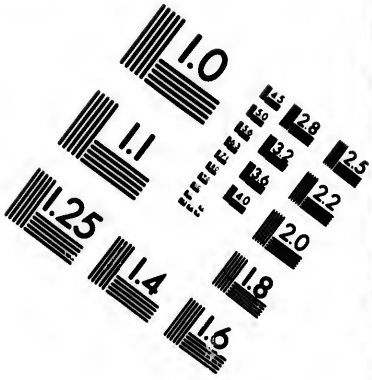
10. By the 240th section of "The Merchant Shipping Act, 1854," power is given to any Court having Admiralty jurisdiction in any of Her Majesty's dominions to remove the master of any ship, being within the jurisdiction of such Court, and to appoint a new master in his stead, in certain cases. p. 189, S. V. A. R.

11. Suit for the recovery of wages under the sum of fifty pounds, referred by Justices of the Peace acting under the authority of the 17 & 18 Vic., c. 104, ss. 188, 189, to be adjudged by the Vice-Admiralty Court. *The Varuna*, p. 357, S. V. A. R.

12. The Court of Vice-Admiralty exercises jurisdiction in the case of a vessel injured by collision in the river St. Lawrence, near the city of Quebec. (This was before the passing of the Statute of the Imperial Parliament, 2 Will. IV, c. 51, s. 6, removing doubts as to the jurisdiction.)

13. Under the 526 section of the Merchant Shipping Act, a ship cannot be seized upon an order made against a person who at the time is neither owner nor entrusted with the possession or control of her. *The Haidee*, V. A. C., 10 L. C. R., p. 101.





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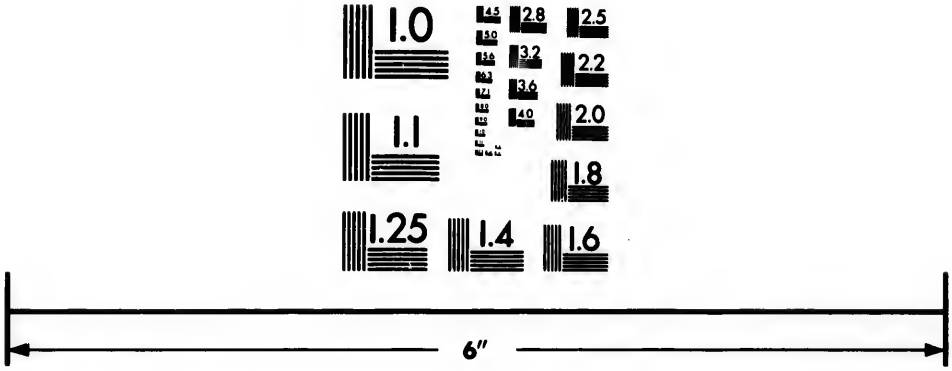

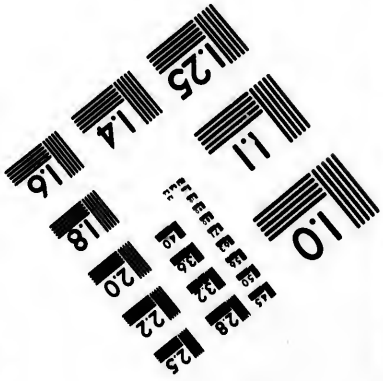

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VICE-ADMIRALTY COURT :—

14. In case of a collision, if the damage have been occasioned by accident, or by *vis major*, the loss must be borne by the party who has suffered it. *Sarah Ann*, V. A. C., 3 L. C. R., p. 485 ; *The Margaret*, V. A. C., 10 L. C. R., p. 113 ; *The Anne Johanne-Larsen*, V. A. C., 10 L. C. R., p. 411. And where the collision is the result of foggy wheather, it will be considered as owing to *vis major*. *Ib.*

15. And when a collision occurs in the night between two sailing vessels in the St. Lawrence, by the non-observance of the rule respecting lights, the owner of the vessel by which the rule is infringed, cannot recover for any damage sustained by the collision. *The Aurora*, V. A. C., 10 L. C. R., p. 445. And as between a British and a foreign ship, the Act regulating the Canadian waters, must be the rule of the Court. *Ib.*

16. The nautical rule, which has long been established, is that if two sailing vessels, both upon a wind, are so approaching each other, the one on the starboard and the other on the port tack, as that there will be danger of a collision if each continue her course, it is the duty of the vessel on the port tack immediately to give way ; and the vessel on the port tack is to bear away, so as to avoid all chance of a collision occurring. *The Roslin Castle and the Glencairn*, V. A. C., 4 L. C. R., p. 38.

17. The law imposes upon a vessel, having the wind free, the obligation of taking proper measures to get out of the way of a vessel close hauled. *The Anne Johanne-Larsen*, V. A. C., 10 L. C. R., p. 411.

18. If it appears in evidence that there was no proper and sufficient look-out on board of a ship, and a collision occurs between such ship and another towed by a steamer, because the steamer was not seen by such vessel in time to enable her to take the necessary measures to avoid a collision, the want of such proper look-out, on board of such vessel, is sufficient neglect or misconduct to make her liable for damages, although she adopted the most seamanlike and proper course, when the collision was all but inevitable. *The Niagara and the Elizabeth*, V. A. C., 4 L. C. R., p. 264.

19. When a vessel at anchor is run down by another vessel, the vessel under weigh is bound to shew by clear and indisputable evidence that the accident did not arise from any fault or negligence on her part. Neither by the marine nor common law is a vessel or a carriage justified in not taking proper precautions against a collision with another, by the fact that such other is not in its proper position or side of the road, or is in any way contravening any rule of the sea or of the road. And it is no defence on the part of the vessel under weigh to say that the vessel at anchor had not complied strictly with all the Trinity House regulations, in relation to hanging out lights at night, if it appear that the collision took place in consequence of the fault or negligence of the vessel under weigh. *The Martha Sophia*, V. A. C., 10 L. C. R., p. 1.

VICE-ADMIRALTY COURT :—

20. If any person coming to the port of Quebec having the charge or command of a vessel, refuses or neglects to obey the directions of the Harbour Master, in respect to the berth to be taken by such ship or vessel, or in respect to the mooring or fastening, shifting or removing the same, and if any loss be incurred by reason of such refusal or neglect, then such ship or vessel shall bear such loss. *The New York Packet*, V. A. C., 4 L. C. R., p. 343.

21. The old rule of the Admiralty Court, that in case of mutual blame, the damage was to be divided, is superseded by sec. 12 of the Act respecting the navigation of Canadian waters, [C. Sts. C., c. 44]; and the penalty of a party neglecting the rules enjoined by sec. 8, of that statute, is to prevent the owner of one vessel recovering from the other, although also in default. *The Arabian—The Alma*, V. A. C., 12 L. C. R., p. 238.

22. In an action against the captain of a ship, chartered by the East India Company, for an assault and false imprisonment, a justification on the grounds of mutinous, disobedient and disorderly behaviour, will be sustained. *Coldstream—Hall*, S. R., p. 518.

VICE-ADMIRALTY COURT :—*Vide* COLLISION.

" :— " JUDGE.

VICE REDHIBITOIRE :—Where the vice in an article sold is not of such a nature as to be perceived at once, the vendor guarantees that it is fit for the purpose for which it is sold. Plaintiff having paid defendant neither increases nor diminishes the right of parties. *Footner vs. Heath*, 1 Rev. de Leg. p. 92.

VIS MAJOR :—1. If a collision be preceded by a fault, which is its principal or indirect cause, the offending vessel cannot claim exemption from liability on the ground of the damages proceeding from a *vis major*, or inevitable accident. *The Cumberland*, p. 78, S. V. A. R.

2. Where the collision was the effect of mere accident, or that over-riding necessity which the law designates by the term *vis major*, and without any negligence or fault in any one, the owners of the injured ship must bear their own loss. *The Sarah Ann*, p. 301, S. V. A. R.

VOL :—*Vide* MINUTE.

" :—*Vide* MOVEABLES.

VOYAGE :—1. The law implies a duty on the owner of a vessel which carries freight, to proceed without unnecessary deviation in the usual course. *Tarr et al. vs. Desjardins*, S. C., 13 L. C. R., p. 394.

2. It is the duty of ship-masters to aid and assist ships in distress; but they have no right to risk their own freight to render salvage services. *Ib.*

3. In interpreting the Act of Parliament, the words " nature of the voyage" must have such a rational construction as to answer the main and leading purpose for which they were framed, namely, to give the mariner a fair intimation of the nature of the service in which he was about to engage himself when he signed the ship's articles. *The Varuna*, p. 361. In notes.

WAGES:—1. Freight it is mother of seamen's wages, and if during a voyage the vessel becomes a total loss, the seamen cannot recover wages, and consequently the liability of a third party to pay them their wages will cease. *Bernier and Langlois*, V. A. C., 5 L. C. R., p. 425. But a temporary detention of a ship, when the voyage is afterwards completed, will not defeat the claims of the seamen for wages. *The Jane*, 1 Rev. de Lég., p. 355.

2. Desertion of a ship by a seaman, entails a forfeiture, unless he can show good ground for leaving the ship. *The Washington Irving*, 13 L. C. R., p. 123.

And the entry in the log-book is sufficient proof of such desertion. *Ib.* Costs are rarely given against seamen for their wages. *Ib.*

3. Summary tribunal for the trial of seamen's suits for the recovery of their wages, by complaint to a Justice of the Peace, under the 5 and 6 Will. IV., c. 19, s. 15. *The Agnes* p. 58, S. V. A. R.

4. No suit or proceeding for the recovery of wages, under the sum of fifty pounds, shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty, or in the Court of Session in Scotland, or in any Superior Court of Record in Her Majesty's dominions, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of such Court as aforesaid, or unless any Justices acting under the authority of this Act refer the case to be adjudged by such Court, or unless neither the owner nor master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore. (17 and 18 Vict., c. 104, s. 189,) p. 358, S. V. A. R.

Summary tribunal for the trial of seamen's suits for the recovery of their wages, for any amount not exceeding fifty pounds, before any two Justices of the Peace acting in or near to the place at which the service has terminated. (*Ib.*, s. 188.)

5. It is a good defence to a suit for wages by a seaman, that he could neither steer, furl nor reef. *The Venus*, p. 92, S. V. A. R.

6. Discharge and wages demanded on the ground that the vessel was not properly supplied with provisions on the voyage to Quebec, whereby seamen's health had been impaired, and they were unable to return. The circumstances of the case examined, and the master dismissed from the suit, the seamen returning to their duty. *The Recovery*, p. 128, S. V. A. R.

7. Imprisonment of a seaman by a stranger for assault, does not entitle him to recover wages during the voyage, and before its determination. *The General Hewitt*, p. 186, S. V. A. R.

8. The detention of a vessel during the winter by standing in the River St. Lawrence, on her voyage to Quebec, where she arrived in the succeeding spring, does not defeat the claim of the seamen to wages during the winter. *The Factor*, p. 183, S. V. A. R. Also, Rev. de Lég. p. 358.

WAGES :—

9. Seamen going into hospital for a small hurt not received in the performance of his duty, not entitled to wages after leaving the ship. *The Captain Ross*, p. 216, S. V. A. R.

10. In cases arising out of the abrupt termination of the navigation of the St. Lawrence by ice, and a succession of storms in the end of November, seamen shipped in England on a voyage to Quebec and back, to a port of discharge in the United Kingdom, entitled to have provision made for their subsistence during the winter, or their transportation to an open sea-port on the Atlantic, with the payment of wages up to their arrival at such port. *The Jane*, p. 256, S. V. A. R.

The master is not at liberty to discharge the crew in a foreign port without their consent; and if he do, the maritime law gives the seamen entire wages for the voyage, with the expenses of return. *Ib.*

Circumstances as a *semi-naufragium*, will vest in him an authority to do so, upon proper conditions, as by providing and paying for their return passage, and their wages up to the time of their arrival at home. *Ib.*

It is for the Court to consider what would be most just and reasonable, as, whether the wages are to be continued till the arrival of the seamen in England, or to the nearest open commercial port, say Boston, or until the opening of the navigation of the St. Lawrence. *Ib.*

Under the peculiar circumstances of this case, wages decreed, including the expense of board and lodging, until the opening of the navigation of the St. Lawrence. *Ib.*

11. Three of the promoters shipped on a voyage from Milford to Quebec and back to London, the eight remaining promoters shipped at Quebec for the return voyage, and all had signed articles accordingly. The ship came in ballast to Quebec, and after taking in a cargo sailed from Quebec on her return voyage; and was wrecked in the River St. Lawrence, and abandoned by the master as a total loss. *Held*—1. That the seamen who shipped at Milford were entitled to wages for services on the outward voyage from Milford to Quebec, and one half the period that the vessel remained at Quebec, notwithstanding that the outward voyage was made in ballast; 2. That the seamen who shipped at Quebec having abandoned, were not entitled to claim wages; 3. In cases of wreck, the claim of the seamen upon the parts saved, is a claim for salvage, and the *quantum* regulated by the amount which would have been due for wages. *The Isabella*, p. 281, S. V. A. R

12. "The Merchant Shipping Act, 1854," (17 and 18 Vic., c. 104, s. 183,) which came into operation on the 1st May, 1855, and by which wages are no longer to be dependent on the earning of freight. *Ib.*, in note, p. 288.

13. A promise to pay wages to a mariner in advance, on condition that he proceed to sea in a ship, is an agreement to pay so much absolutely upon the performance of the condition, whether the ship and cargo be afterwards lost on the voyage or not. *Mullen vs. Jeffery*, 1 Rev. de Lég., p. 362.

WAGES :—

14. The Court here will entertain suits for wages for foreign seamen against the master of their vessel lying here, and will notice the *lex loci* to ascertain whether there is a legal and subsisting contract to prevent the mariner from enforcing payment of what is earned. *Carroll vs. Ballard*, S. C., 12 L. C. R., p. 247.

15. In actions for wages by foreign seamen against the master of vessel, a foreign ship, evidence of the master, as to validity of the ship's articles, will be admitted. *Patez et al. vs. Klein*, C. C., 13 L. C. R., p. 433.

16. In a voyage such as mentioned in ship's articles, Russian seamen are bound to remain by the vessel until discharged at port of final destination. *Ib.*

17. Where there are no ship's articles signed by a seaman, the seaman may recover the amount of his wages for the time he has served on board the ship; but the Court will not compel him to proceed to sea again with the ship to finish the voyage. *The Lady Seaton*, 3 Rev. de Lég., p. 420.

18. Under the provisions of the Merchant Shipping Act of 1854, a seaman who has contracted and signed articles for a voyage to British North America and back to a final port of discharge in the United Kingdom, is not entitled to recover for wages here, unless he be discharged with such sanction as is required by the Act. *The Haidee*, V. A. C., 10 L. C. R., p. 101. Not even on the ground of apprehension of danger to life in consequence of the unseaworthiness of the vessel. *The Pilot—Collins*, V. A. C., 8 L. C. R., p. 99.

19. When a seaman shipped for a voyage "from Shields to Barcelona, thence to any other port or ports in the Mediterranean, Black Sea, Sea of Azof, or any port or ports on the coast of Africa, West Indies, United States or British North America, from thence to a port of final discharge in the United Kingdom or continent of Europe, the voyage to terminate in the United Kingdom, and not to exceed———;" and the ship went from Shields to Barcelona, and thence to Quebec to load for a final port of discharge in England, it was held,—that no right of action accrued to such seaman for wages in Quebec, and that the Court had no jurisdiction in such action under the provisions of the 17 and 18 Vic., c. 104, sec. 190,—the voyage according to the contract not terminating at Quebec; and it is not necessary to insert the probable duration of the voyage in the mariner's contract. *The British Tar—Charleson*, V. A. C., 8 L. C. R., p. 272.

20. When a seaman shipped for "a voyage from London to Sunderland, thence to Rio Janeiro and any ports in North or South America, West Indies, Cape of Good Hope, Indian or China Seas, Australasia and back to a final port of discharge in the United Kingdom or continent of Europe, between the Elbe and Brest, the voyage not to exceed twelve months;" and the ship went from London to Sunderland, thence to Rio Janeiro, thence to the Cape of Good Hope, thence to St. Helena and the Island of Ascension, and

WAGES :—

thence to Quebec, it was held,—that the articles were bad, as being vague and uncertain ; that the voyage actually performed by the vessel in proceeding from the Cape of Good Hope across the Atlantic to the Island of Ascension ; whence, instead of returning to a final port of discharge in the United Kingdom or continent of Europe, between the Elbe and Brest, she recrossed the Atlantic and returned to the continent of America, was not a prosecution of the voyage described in the articles, and amounted, in fact, to a deviation under the Merchant Shipping Act of 1854, sec. 190. *The Prince Edward—Diaper*, V. A. C., 8 L. C. R., p. 293.

21. The description in the shipping articles as being one to North and South America, is too indefinite to answer the leading purposes for which the words were framed, under the words " nature of the voyage" in the Merchant Shipping Act of 1854. *The Marathon—Horst*, V. A. C., 10 L. C. R., p. 356. The description of the voyage in the shipping articles as being one to the United States, is sufficient, and the more general terms following, are to be construed as subordinate to the principal voyage in the preceding terms, and restricted to a reasonable distance from the United States, under the terms, " nature of the voyage," in the Merchant Shipping Act of 1854. *The Ellersley—Vickerman*, V. A. C., 10 L. C. R., p. 359.

22. An agreement entered into by the master of a vessel with his crew, subsequent to the execution of the mariner's contract, to discharge and pay them their wages at a port other than and previous to the ships arrival at her final port of discharge, is not binding upon him. *The Winscales—Innes*. The Police Court, Quebec, 8 L. C. R., p. 350. But when the articles of agreement are expressed thus.—" The several persons whose names are hereto subscribed, hereby agree to serve on board the said ship, in the several capacities expressed against their respective names on a voyage from the port of Liverpool to Constantinople, thence if required, to any ports or places in the Mediterranean and Black Seas, or wherever freight may offer, with liberty to call at a port for orders, and until her return to a final port of discharge in the United Kingdom, or for a term not to exceed twelve months," are entitled to and can sue for their wages in Quebec, and cannot be compelled to return in the ship to a final port of discharge in the United Kingdom. *The Varuna*, V. A. C., 5 L. C. R., p. 312.

23. Under the Merchant Shipping Act, of 1854, a seaman cannot institute proceedings for the recovery of his wages in the Superior Court, though process begin by *capias*. *Smith vs. Wright*, 6 L. C. R., p. 460.

24. The privilege of a clerk in a mercantile house for wages, is confined to the wages due. *Earl et al vs. Casey*, S. C., 4 L. R., p. 174.

25. In an action for wages as a sailor on board a barge, the Inspector and Superintendent of Police for the city of Montreal, has the same power as two Justices of the Peace. And as seamen have a *lien* and a right *in rem* for their wages,

WAGES :—

the registered owner is liable for wages accrued up to the date of his purchase. The defect in the summons to set forth that the barge was duly registered in the Province of Canada, is cured by the conviction which stated the barge to be duly registered in Lower Canada. *Ex parte Warner*, S. C., 11 L. C. R., p. 115.

26. A captain of a barge has no lien on the vessel for a balance of wages due to him. *Jasmin vs. Lafantaisie*, S. C., 13 L. C. R., p. 226, and 7 L. C. J., p. 119.

27. But in *Mitchell and Cousineau & divers*, it was held that seamen navigating a steamboat, navigating Canadian waters have a lien for wages, in preference to the mortgages due on the steamer. S. C., 7 L. C. J., p. 218.

28. But an advancer under the Act to encourage ship-building, 19 and 20 Vic., c. 50, [C. Sts. C., c. 42,] to whom the register of the vessel has been granted, is not, therefore, necessarily to be deemed the owner of such vessel, so as to be liable for the wages of the seamen engaged in navigating it, or of the mechanics employed in completing or repairing it. *Dickey and Terriault*, Q. B., 11 L. C. R., p. 150.

" :—*Vide* MASTER AND SERVANT.

" :— " PRESCRIPTION.

" :— " SALARY.

WALL :—*Vide* MUR MITOYEN.

WAREHOUSEMAN :—A paid warehouseman is liable for *faute legère* respecting goods placed under his charge. And if such storeman plead that his store was broken into and the goods carried away, the burthen of proof lies with him. And it is his duty in case of a robbery, to ascertain immediately the quantity of goods taken, and to endeavour to recover them or to inform the owner. *Roche vs. Fraser & al.*, S. C. 7 L. C. R., p. 472. This case went to appeal, and in the Q. B. judgment of the S. C. was confirmed, and the court also held that a written order by the seller of goods, directing those in whose care the goods are, to deliver the same to buyer, amounts in law to a delivery of them. *Fraser & al. and Roche*, Q. B., 8 L. C. R., p. 288.

WARRANTY :—1. If the recital in a deed of warranty, indicate the purpose for which the deed is executed, its effect will be restricted to that purpose, though the dispositive portion of the deed is couched in general terms. *The Bank of British North America vs. Cuvillier & al.*, S. C., 2 L. C. J., p. 154. Confirmed in appeal, where it was also held, that a deed of warranty will not cover a class of debts not contemplated by the parties at the time it was executed, though the terms of the deed be so general as to purport to extend to all debts whatever.

A deed of warranty stating that M. C. proposes to carry on business in Montreal and elsewhere, and that to enable him to do so, and to meet the engagements of a firm in liquidation of which he has been a partner, he would require bank accommodation ; and that the sureties were willing to become his security with a view of making the bank perfectly secure with respect to any debts then due, or which might thereafter become due by him ; and then containing an agree-

WARRANTY :—

ment by the sureties to become liable for all the present and future liabilities of the said M. C., whether as maker, drawer, endorser, or acceptor of negociable paper or otherwise howsoever, will not make the sureties liable for debts contracted by the said M. C. by endorsing or procuring the discount of negotiable paper in his own name for the benefit of a firm of which he became a member subsequent to the execution of the deed of warranty, although such paper had been discounted at his request, and placed to his individual credit at the bank. A defendant may be a witness for his co-defendants, if he be not interested, or if his interest be removed by a discharge.

But this case having gone up to the P. C. on appeal, it was held, that the motive in a deed of warranty, which gives rise to a general engagement, will not limit the responsibility of the surety, or cut down the effect of the guarantee itself. 5 L. C. J., 57.

2. The following words on the face of a policy of insurance imply an express warranty: "The steamer Malakoff now lying in Tate's dock, Montreal, and intended to navigate the river St. Lawrence and Lakes from Hamilton to Quebec, principally as a freight boat, and to be laid up for the winter at a place approved by the company, who will not be liable for explosions by steam or gunpowder." And if the steamer do not navigate but is burned in dock in the summer, it will be considered that the terms of the warranty have not been complied with, and if a verdict condemning the company for the loss be rendered, the Court will on motion order the judgment to be entered up for the defendant *non obstante veredicto*. *Grant vs. The Ætna Insurance Company*, Q. B., 5 L. C. J., p. 285, and 11 L. C. R., p. 330, and for case, S. C., *Ib.*, p. 128. But this case having been taken to the P. C. it was there held, that where words in a policy of insurance import an agreement that a vessel shall navigate, they must be considered as a warranty and the engagement not having been performed the insurers are discharged, whether material or not. But where, as in this case, an intention only is expressed it does not amount to a warranty. P. C., 6 L. C. J., p. 224, and 12 L. C. R., p. 386.

3. A memorandum for the sale of coals, drawn in the same terms as a previous memorandum also for the sale of coals, gives rise to no implied warranty that the coals shall be of the same quality as those delivered under the former memorandum. *Fry vs. The Richelieu Company*, Q. B., 9 L. C. R., p. 406.

4. The *garantie de faits et promesses* stipulated in a deed of *transport*, carries with it the *garantie* that the debt existed at and before the date of the deed of *transport*. *Donegani vs. Choquette & al.*, 2 Rev. de Lég., p. 301.

5. A clause of *garantie*, in a deed of exchange, confers no *hypothèque*, unless a specific sum of money be stipulated as the amount of such *garantie*. Ex parte *Casavant and Lemieux*, opposant, S. C., 2 L. C. J., p. 139.

6. In case of the sale of an immoveable property by several vendors, who in one and the same deed merely sell their

WARRANTY :—

respective shares therein, which are defined, without any stipulation of *solidarité*, although for one price for the whole property, *garantie* is divisible among the several co-vendors. *Marteau vs. Tétreau*, S. C., 1 L. C. J., p. 245.

7. In an action *en garantie d'éviction* against joint sureties, the judgment must express that the defendants are jointly and severally condemned to guarantee the plaintiff. *Demers and Parant & al.*, Q. B., 5 L. C. R., p. 36.

8. A security resulting from a *lettre de garantie*, for a limited amount, and for a time to be determined by its subsequent revocation, is not extinguished by the payment of an amount equivalent to the amount secured, paid by the debtor without imputation, if the security be *solidaire*. *Masson & al. vs. Desmarteau & al.*, S. C., 3 L. C. J., p. 186. But otherwise if the amount be limited, and if it do not appear that the caution meant to continue giving his security for a length of time, or beyond the occasion. *Leblanc vs. Rousselle*, C. C., 3 L. C. J., p. 191.

9. A letter of guarantee given to one of the members of a commercial firm, gives a right of action to the firm, if it appears that it was the intention of the parties, that the firm should give the credit, the member named not then carrying on a separate business to which such letter could apply. *Rolland & al. vs. Loranger*, S. C., 3 L. C. J., p. 249.

10. The security is not bound to pay the costs of discussion. *Ib.*

" :—*Vide* AUCTIONEER.

" :— " INSURANCE.

WATER :—The corporation of the city of Quebec cannot make any by-law imposing a water-tax upon any of the wards in the city, until it shall be ready to furnish to the inhabitants of such ward, a continuous and abundant supply of pure and wholesome water. Ex parte *Dallimore*, S. C., 11 L. C. R., p. 436. But in *Failes and The Mayor, &c., of Quebec*, it was held, that the corporation of the city of Quebec is entitled to recover from the citizens a *quantum meruit*, on the value of the water delivered, in case the supply of water is not sufficiently continued or abundant to subject them to the payment of the full rate. Q. B., 13 L. C. R., p. 335.

WATER COURSE :—1. The original *procès-verbal* of a *cours d'eau* must be homologated and not a copy. Ex parte *Vincent*, S. C., 6 L. C. R., p. 487.

2. The owner of a mill-site is entitled to a judgment affirming his right to the enjoyment of the use of the water of a stream in its natural course, which has been diverted by a neighbour for the purpose of turning a mill upon his own land, although, at the time of the action, the party complaining had no mill, and did not require the use of the water. *Bussière vs. Blais*, S. C., 7 L. C. R., p. 245.

" :—*Vide* BANALITÉ.

" :— " CORPORATION OF MONTREAL.

WATER POWER :—When two proprietors upon the same stream possess water powers of which one cannot be improved without the destruction of the other, the first occupant must have

WATER POWER :—
the preference, and is entitled to cause the dam of the other to be demolished. *Dunkerley vs. McCarthy*, S. C., 8 L. C. R., p. 132.

WAY :—The undertaking of a party in a deed of partition, to suffer a road-way upon his portion of land, and to make and macadamize the same to the extent of thirty feet in width, is a *servitude et charge réelle*, for the preservation of which the party in whose favor it is stipulated, has a right to make an opposition *afin de charge* upon a judicial sale of the property, *Murray and Macpherson*, Q. B., 5 L. C. R., p. 359.

WIDOW :—A widow guilty of unchastity, during the first year of her widowhood, is liable to be deprived of her dower, but a judgment to that effect, as to the rents issues and profits, will be prospective only. *J—— vs. R——*, S. C., 7 L. C. R., p. 391.

WIFE :—*Vide* MARRIED WOMEN.

WILD LANDS :—*Vide* POSSESSION.

WILL :—1. An holograph will of personal and immoveable property is valid by the law of England, and probate may be made thereof according to the Provincial Statute 41 Geo. III, c. 4, [Con. St. L. C., cap. 34, sects. 2 and 3.] *Grant vs. Planté*, S. R., p. 60.

2. The birth of a posthumous child revokes the will of its father partially. *Hanna vs. Hanna*, S. R., p. 103.

3. The condition of a devise to the Royal Institution for the advancement of learning, that it should within ten years cause to be erected and established a University or College bearing the testator's name, is accomplished if a University of Royal and not of private foundation be established within that period. *The Royal Institution vs. Desrivières*, S. R., p. 224, in notes.

4. It is essential to the validity of a devise of real estate that the holograph will, in which it is contained, should be entirely written by the testator, and closed by his signature. *Caldwell and The King*, S. R., p. 327.

5. A testator at the time of his decease possessed of property belonging to the succession of his wife deceased, by an holograph will, bequeaths all the property of which he might die seized to his heirs and legatees, who were also his wife's heirs, under the penalty that if any of them contested this will their share in his succession should be forfeited. He names two executors or trustees, and the survivor of them for the administration of all his property until a partition. In the making of such partition he directs his executors to act for some of the legatees, who were minors, and for another who was married, without the authorization of her husband for that purpose being requisite, and whose share they should administer during her husband's lifetime, paying her the rents, &c., and it was held that the will was valid; but that its dispositions can be carried into effect only so far as they affect the succession of the testator, and that they could not in any manner apply to the succession of the testator's wife, of which the legatees were the heirs, and of which they were, in law, seized from the day of her death, and that one of the executors having renounced to

WILL :—

the execution of the will, the other had *saisine* of the testator's succession to carry the will into effect. *Viger & al. vs. Pothier*, S. R., p. 394.

6. Under the Quebec Act a will invalid according to the French law, and not executed according to the provisions of the Statute of Frauds, so as to pass freehold lands in England, will not pass lands in Canada, although it would pass copyhold or leasehold property in England. *Meiklejohn vs. The King and Caldwell*, S. R., p. 581; 2 Knapp's Rep., p. 328.

7. The debtor sued by the heirs of his creditor, cannot oppose, in his own name, to such demand, a will of the creditor bequeathing this debt to a third party, notwithstanding the notice given to the said debtor by the executor that he would demand such bequest. And in such a case and in the absence of *délivrance de legs*, the heir may receive the amount of the debt and give therefor a good and valid discharge. *Deneau vs. Frothingham*, S. C., 3 L. C. R., p. 145.

8. A universal legatee cannot refuse to pay particular legacies, under the pretext of the insufficiency of the immoveable property if he has not rendered an account of the estate or offered to give up the same; and he may in such case be condemned to such payment individually and in his own name. *Lenoir vs. Hamelin & al.*, S. C., 3 L. C. R., p. 133.

9. A bequest on a contingency mentioned, not giving the plaintiff the power of disposing of a sum by will, does not vest the sum absolutely in her. *McGillivray vs. Gerrard*, S. C., 5 L. C. R., p. 301.

10. A bequest in trust is valid in Lower Canada. It is not necessary that the words *lu et relu* be expressed, if it be apparent by the context that this formality was observed as required by law. That the respondent having taken possession of the estate of the testator under the will appointing him executor, the appellant, heiress at law of the testator, could not claim the whole estate by reason of the respondent having so taken possession, without a previous *demande en délivrance de legs*, and that such *demande* by the executor after his taking possession, more than a year and a day after testator's death, was properly made. *Freligh and Seymour*, Q. B., 5 L. C. R., p. 492. *Vide* DÉLIVRANCE DE LEGS.

11. A legacy by which a testatrix gives and bequeaths to all her children living at the time of her decease, by equal portions among them all her property, includes her grand children issue of one of her children, such child having died before the opening of the legacy. *Lee vs. Martin & al.*, S. C., 7 L. C. R., p. 351. Reversed in appeal, 11 L. C. R., p. 84.

12. A will executed before a notary and two witnesses, may be revoked by a subsequent one executed before one witness only. *Fisher & al. vs. Fisher & al.*, S. C., 1 L. C. J., p. 88.

13. The omission to mention in express terms in a will that the witnesses were present when it was read to the testator, does not render the will null if it appears by equivalent terms that they were present. *Dubé & ux. vs. Charron dit Ducharme*, S. Q., 5 L. C. J., p. 255.

14. Want of insinuation and publication of a will cannot be opposed to a possessor *animo domini* suing for *bornage*,

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and cannot be pleaded by a party deriving title under the will. *Deroyan and Watson & al.*, Q. B., 1 L. C. J., p. 137.

15. A notary before whom a will is passed, is not obliged to mention that he wrote the will. *Bourassa vs. Bedard*, S. C., 3 L. C. J., p. 48; nor is he bound to write it. *Clarke vs. Clarke & al.*, S. C., 2 L. C. R., p. 11. And it was also held that a clause in a deed of donation to the effect that the donee could not in any way alienate a certain property during his life, or during that of his father or of his wife, does not prevent the testator from leaving such property to his wife. *Bourassa vs. Bedard*, S. C., 3 L. C. J., p. 48.

16. The existence of a will precludes all claim for *légitime*. *Quintin & al. vs. Girard & ux.*, S. C., 1 L. C. J., p. 163. Confirmed in appeal. 2 L. C. J., p. 141; also, 8 L. C. R., p. 317.

17. A will made in the form of a *testament solennel*, but defectively so, and therefore valueless as such, may be proved and avail as a will in the English form. *Lambert and Gauvreau & al.*, Q. B., 1 L. C. J., p. 206; also, 7 L. C. R., p. 277.

18. Letters of administration granted by a Court of Probate in the State of Michigan, do not extend beyond the limits of that State. The statute 22 Vic., c. 6, [C. St. L. C., c. 91.] is inapplicable to this case, having been passed subsequently to the rendering of the judgment in this case. *Côté et al. and Morrison*, Q. B., 9 L. C. R., p. 424.

19. A will must be proved in the district where the testator died. Ex parte *Sweet*, S. C., 10 L. C. R., p. 451.

20. A will declaring that a farm of the testator should be held by the male heirs of the testator's family in the manner thereinafter limited, and then giving one half to William and his lawful male heir after him, and one half to Duncan and his lawful male heir after him, and in the event of William or Duncan dying without lawful heir or issue, giving the farm to Sophia Mackintosh, and unto her eldest son on taking the name of Mackintosh. And to prevent all misconstruction declaring that the eldest son of William and the eldest son of Duncan, and no other, could inherit the farm, does not mean a bequest of the farm to the eldest son of Sophia Mackintosh,—William dying and leaving no issue, and Duncan dying and leaving only a daughter. *Bonacina vs. Bonacina and Gundlack*, S. C., 3 L. C. J., p. 80.

21. A devise to a *bâtard adulterin*, not competent by the French law, when the will was made or when the devisor died, to take such bequest, is good and valid, if it be a conditional one as a substitution, and provided that at the period when the substitution became open, the disqualification of the devisee had been removed by the 41 Geo. III., c. 4, [C. S. L. C., cap. 34, sects. 2 and 3.] *Hamilton vs. Plenderleith*, 2 Rev. de Lég., p. 1.*

* This holding is calculated to lead one into error. It is to be observed that the Court held that the devisor had power to bequeath under the 14 Geo. III., but that the devisee had not power to take. But from the holding it might be supposed that the Court meant to affirm that a will absolutely null might become valid by subsequent legislation, not of a retroactive nature, simply because there was a condition attached to it. One has however some difficulty in realizing the possibility of a man having an unlimited right to dispose, without such right including the unlimited right to accept. The limitation of the right to accept looks wonderfully like a limitation of the right to dispose. "*Quod legibus omissum est, non omittetur judicantis.*" "*Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit.*"

WILL :—

The executors of a testator have no quality to make a *reprise d'instance*, if such *instance* relate to real property. *Ib.*

Nor to intervene ; and their intervention in an action *petitoire* will be dismissed on demurrer. *Ball vs. Lambe*, S. C., L. R., p. 36.

22. A wife *commune en biens* bequeaths all her property to her husband "*pour cependant n'en pouvoir disposer en pleine propriété qu'en faveur de leurs enfants, lui laissant néanmoins le pouvoir de les avantager très inégalement, et de la manière qu'il croira et jugera convenable,*" and institutes him her universal legatee. After the death of the wife, the husband made to his son, the defendant, a donation *inter vivos* of three immoveable properties, two of which had been *conquêts*, and also of some moveable effects, and by his will he confirmed this donation, and also bequeathed to the same son, all the other property of which he might die possessed. The Court held, that the bequest to the husband by the wife was a bequest of a *usufruit*. *Benoit et al. vs. Marcile*, 1 Rev. de Lég., p. 140.

23. A bequest "to all her (testatrix') children, living at the time of her decease," includes her grandchildren, issue of one of her children who died before the making of her will. *Martin et al. and Lee*, Q. B., 9 L. C. R., p. 376.

24. The condition imposed by a testator to his liberality, with the view of preventing the creditors of the legatee seizing them, is neither impossible nor is it prohibited by law, nor contrary to good morals. And the condition attached to a legacy to the effect that the legatee cannot in anywise engage, affect, hypothecate, sell, exchange, or otherwise alienate the immoveables bequeathed within twenty years from the death of the testator, subject to the nullity of all the deeds which the legatee might make contrary to the said intention, is only a wise and prudent precaution, and the prohibition to alienate should be considered as equivalent to a clause of temporary freedom from seizure. *Guillet dit Tourangeau and Renaud*, Q. B., 7 L. C. J., pp. 238, 350.

" :—*Vide* ALIEN.
" :— " ACTION PETITOIRE.
" :— " CORPORATION.
" :— " DÉLIVRANCE DE LEGS.
" :— " EVIDENCE.
" :— " HYPOTHÈQUE.
" :— " INSCRIPTION EN FAUX.
" :— " LEGACY.
" :— " LEGITIME.
" :— " NOTARY.
" :— " PLEADING AND PRACTICE.
" :— " SUBSTITUTION.

WITNESS :—1. A witness is not liable to be sued in damages for words spoken by him under examination as such witness. *Rochon vs. Fraser*, S. C., 3 L. C. R., p. 87.

2. A witness may be examined twice by the same party *St. Denis vs. Grenier et al.*, S. C., 2 L. C. J., p. 93.*

* And oftener. I have examined the same witness three times in the same case for the plaintiff on examination in chief, by permission of the judge at Enquête, the defendant objecting.

WITNESS :—

But in the case of *Joseph vs. Morrow et al.*, it was held, that a witness could not be examined a second time in a case by the same party, without the permission of the Court. S. C., 4 L. C. J., p. 238.

3. The exclusion of the testimony of a witness who had disobeyed the order of the Court and remained in Court after being desired to withdraw, is illegal. *Irvin and Meloney*, Q. B., 6 L. C. J., p. 285.

4. It is not an absolute right of either of the parties to have all the witnesses except the one under examination, ordered to leave the Court. *Gagy and Donaghue*, Q. B., 11 L. C. R., p. 421.

5. The right of a witness is to be taxed in the court in which he is examined, and not to bring an action in another Court, on a *quantum meruit* for attendances and loss of time as such witness. *Gorrie vs. Mayor, &c., of Montreal*, S. C., 8 L. C. R., p. 236. And the witness cannot sue for the amount of his tax, but must proceed by writ of execution to levy the same from the effects of the party who summoned him, under the 22 Vict., c. 5, sec. 9, [C. S. L. C., cap. 83, sec. 153.] *Veilleux vs. Ryan*, S. C., 9 L. C. R., p. 6. And a witness examined in a case where the defendant was only a party *ès qualité* as tutor of a substitution, has no recourse against such defendant. *Dagenais vs. Ganthier*, 11 L. C. R., p. 281.

6. The taxation of a witness cannot be subsequently revised by the Court *The Grand Trunk Railway Company vs. Webster*, S. C., 1 L. C. J., p. 251.

7. When the cost of bringing a witness from Upper Canada is not greater than a *commission rogatoire*, the party requiring his evidence will be allowed his travelling expenses. *Brown vs. Gugy*, S. C., 12 L. C. R., p. 413.

8. There is no rule which prevents a party from putting more than the names of four witnesses into a subpœna. *Couillard vs. Lemieux*, S. C., 9 L. C. R., p. 393.

9. A witness about to leave the Province under the 25 Geo. III., cap. 2, sec. 12, [C. S. L. C., cap. 83, sec. 101,] may be examined before the return of the action. And irregularities in a deposition are waived if uncomplained of for a year. *Supple and Kennedy*, Q. B., 10 L. C. R., p. 458. But see *contrà Malone and Tate*, Q. B., 2 L. C. R., p. 99.

10. A motion for leave to examine a witness about to leave the Province, is exempted from the operation of the 11th Rule of Practice ; and a notice of such motion, served on Saturday, is sufficient for the presentation of such motion on the Monday. *Byrne et al. vs. Fitzsimmons and Fisher*, S. C., 10 L. C. R., p. 383.*

A rule for contempt will not be granted against a witness who has failed to appear on the signification of a *subpœna ad testificandum*, unless there be proof by affidavit of personal service, tender of reasonable expenses and wilful disobedience. *Sexton vs. Boston and Egan*, S. C., 5 L. C. J., p. 334.

* If instead of dismissing the motion, the English practice of giving the party objecting to too short notice of motion, a further day to answer, were followed, it would tend to obviate the necessity of arbitrary exceptions to this rule.

WITNESS :—

11. The evidence of a party in a cause, examined as a witness in such cause, cannot be made use of by his adversary, unless the latter at the close of *enquête*, or at some other time, declared his intention to avail himself of it. *Owens vs. Dubuc and Campbell*, S. C., 6 L. C. J., p. 121, and 12 L. C. R., p. 399.

" :—*Vide Bowker vs. McCorkill*, S. C., L. R., p. 63.

Even prior to the Statute abolishing all disqualifications of witnesses by reason of interest, parishioners could be examined as witnesses on behalf of the *Fabrique* in an action of damages. *La Fabrique de Vaudreuil vs. Pagnuelo*, S. C., C. R., p. 33.

" :— " ASSESSORS.

" :— " CORPORATION.

" :— " EVIDENCE.

" :— " FAITS ET ARTICLES.

WOMAN SEPARÉE DE BIENS :—*Vide* PROMISSORY NOTE.

" " :— " MARRIED WOMEN.

WOODEN BUILDINGS :—*Vide* BY-LAW.

WRECK :—1. In the case of the barque *Flora—Wilson*, (27th October, 1832,) Judge Kerr allowed salvage to the chief and second mates and carpenter, for their meritorious services, equal to one third of the gross proceeds arising from the sale of the articles saved from the wreck. p. 255, S. V. A. R. In notes.

2. Compensation decreed to seamen out of the proceeds of the materials saved from the wreck by their exertions. *The Sillery*, p. 182, S. V. A. R.

WRIT :—*Vide* CONSENT.

WRIT DE TERRIS :—*Vide* EXECUTION.

WRIT OF APPEAL :—*Vide* APPEAL.

WRIT OF POSSESSION :—1. A writ of possession will be allowed against the widow of a defendant who has died since the adjudication of the land by the Sheriff. *Lewis vs. O'Neill and Holbrook*, S. C., 1 L. C. J., p. 15.

2. But a writ of possession will not be granted against a person not a party to the suit, and any one so expelled may proceed by possessory action, and claim damages. *Delesderniers and Boudreau*, Q. B., 9 L. C. R., p. 201.

3. If a defendant have held property more than a year and a day after the adjudication, plaintiff should proceed by a petitory action, and not by a writ of possession. *Hart vs. McNeil*, S. C., 4 L. C. J., p. 8.

WRIT OF SUMMONS :—1. A writ of summons must necessarily accompany the declaration, and the appearance of the defendant will not cover the want of it. *Taylor vs. Senecal et al.*, S. C., 3 L. C. J., p. 53.

2. A writ of summons requiring a defendant to appear before "Our Justices of our said Superior Court," is bad. The summons should be to appear before a Court, and not before the Justices of the Court. *Macfarlane vs. Delesderniers*, S. C., 4 L. C. R., p. 25. But in a case of *Macfarlane vs. Beliveau*, the reverse was held, and this seems to have been the view taken of the objection in the Queen's Bench. 3 L. C. J., p. 306.

WRIT OF SUMMONS :—

3. A writ directed to "any of the bailiffs in and for the district of Montreal," without mentioning the name of the Court for which such bailiffs are appointed, is not null; the writ on its face bearing evidence of having been issued from the Superior Court. *Castle vs. Wrigley*, S. C., 4 L. C. R., p. 28.

4. The writ is the beginning of the action, and therefore the jurisdiction of the Court is settled by the date of its issue, so that although signified to a person who has ceased to be within the jurisdiction of the Court, owing to the establishment of the new Districts, the action is well brought. *Monty vs. Ruiter*, S. C., 3 L. C. J., p. 26.

WRITS OF PREROGATIVE :—By the 12 Vic., c. 41, [C. S. L. C., cap. 88, sec. 1, cap. 89, sec. 1,] the formalities required by the English law, in matters relating to Writs of Prerogative, have been done away with. Parties styling themselves "*citoyens notables*," without taking the quality of "*Fabriciens*" or "*Paroissiens*," cannot maintain an application to oust a person who has usurped the office of *Marguillier de l'Œuvre et Fabrique*. *Crebassa et al. vs. Peloquin*, S. C., 1 L. C. R., p. 247.

WRITTEN PROMISE :—*Vide* EVIDENCE.

NOTE OF JUDGMENTS IN APPEAL

Reported since the 1st of January, 1864, period up to which the above Index is brought, reversing, confirming or modifying judgments reported prior to that date and mentioned in the Index.

Auld and Laurent et al. Held, reversing the judgment of the S. C. :—That a pianoforte, belonging to a third party, but removed by him from the premises where it had been as partial security for the landlord's rent, can be revendicated by the landlord within eight days from its removal, and the proprietor of the piano, if it cannot be found, will be ordered to restore it to the house from which it had been taken, or pay the value thereof to the proprietor; and this without bringing the lessee into the cause. 8 L. C. J., p. 146.

Aylwin and Judah. Held, modifying the judgment of the S. C., as to costs :—1. That in an hypothecary action brought by a plaintiff, *cessionnaire* of a debt, the signification of the action on the defendant, *tiers détenteur*, cannot be held as a signification of the transfer to the principal debtor.

2. That where a plaintiff brings his action as upon a debt due and payable, and it appears from the *titres de créance* produced by himself that the debt is not due, (*exigible*) the action cannot be maintained.

3. That by the jurisprudence of Lower Canada, the *cessionnaire* of a debt may maintain an action against the debtor without a previous signification to him of the *acte* of transfer. 14 L. C. R., p. 421.

Boston and Lelièvre. Held, dismissing the appeal:—That a judgment of the Superior Court rendered on a writ of *Certiorari* is a final judgment; and that, in the case submitted, no appeal from such judgment lies to the Court of Queen's Bench, as constituted in Lower Canada. 14 L. C. R., p. 457.

Brown and Gugy. Held, confirming the judgment of the Q. B. :—1. That obstructions to navigable rivers are public nuisances, and that no action by an individual lies for such nuisance, unless such individual suffers special and particular damage.

2. That, in the case submitted, the action *en dénonciation de nouvel œuvre* did not lie, inasmuch as such action can only be brought by a party claiming protection against a work commenced, and still in progress, by which, if completed, he alleges he will be injured. 14 L. C. R., p. 213.

Carden and Finlay et al. Held, reversing the judgment of the S. C. :—That to prove the payment of a promissory note, recourse must be had to the laws of England ; and the payment of such note may be proved by parol testimony. 8 L. C. J., p. 139.

David and McDonald. Held, confirming the judgment of the S. C. :—That where the floors of a building have sunk, in consequence of the insufficiency of the timber used to support the bridging joists and floors, the Architects and Superintendents and the carpenters and joiners employed in erecting the building are jointly and severally responsible for the damages incurred, and may be sued in one and the same action; and in estimating the damage allowance will be made, in favour of the Architects and Contractors, for what the work would originally have cost had timber been originally used of a size and quality sufficient to support the bridging joists and floors; and no allowance will be made to the proprietor for moneys paid by him to his tenants, for actual expenditure by them in removing out of the building during the time that the necessary repairs are being made. 8 L. C. J., p. 44.

Davis and Cushing. Held, confirming judgment of the S. C. :—1. That where in a deed of sale certain lots of lands in consideration of a certain sum paid down, and " of the further " payment to be made forever thereafter, to the vendor, of " the one-tenth part of all net profits to result after deduc- " tion of losses and charges of all mining operations, as the " purchaser shall carry on in and upon the said lots, the same " to be ascertained to the 31st day of December, yearly; and " to be duly accounted for and paid over within the six " months next following." Such *per centage* is payable, not only on mining operations by the purchaser individually and alone, but also on all mining operations carried on by him in conjunction with others, or in which he was, or was to be interested.

2. That an account rendered allowing only to the plaintiff, as representing the vendor, one tenth of the profits realised by the defendant personally from the mines, without regard to the amount realised or retained by a lessee or person actually working or carrying on the mines, is contrary to the meaning of the clause referred to, and that a new account will be ordered. 14 L. C. R., p. 288.

Desjardins and La Banque du People. Held, reversing the judgment of the S. C. :—That an *adjudicataire* of a land described as containing 400 arpents, whereas in reality it only contained 188 arpents, has an action against the plaintiff, to whom the proceeds of sale have been awarded and paid as mortgage creditor, to recover the excess of price, and in such case neither the sheriff nor the defendant need be summoned, and no prescription short of ten years exists against such action. 8 L. C. J., p. 106.

Greenshields and Plamondon. Held, reversing the judgment of the S. C. :—That a note given in excess of the composition accepted by the creditors generally, where it is not proved to be prejudicial to such creditors and is not com-

plained of by them, is binding on the maker of such note. 8 L. C. J., p. 194.

Heugh et al. and Ross et al. Held, confirming the judgment of the S. C.:—That in the case of an affidavit to obtain a *saisie-arrêt* before judgment, the prothonotary must state in the jurat that the affidavit was sworn to *before him*. 14 L. C. R., p. 429. And the omission of the words "before us" in the jurat of affidavit sworn to before the prothonotary of the S. C., is a fatal irregularity and a writ issued on such an affidavit will be quashed on motion. 8 L. C. J., p. 96.

Jarry et vir and the Trust and Loan Company. Held, reversing the judgment of the S. C.:—That a rule for *folle enchère* against a married woman, *séparée de biens* must be served on her husband, *à peine de nullité*. 8 L. C. J., p. 29.

Johnson and Archambault. Held, reversing the judgment of the S. C.:—That a strip of ground used for upwards of 30 years as a public lane or street will be held to be such, and a neighboring proprietor whose access thereto has been prevented by a fence or other obstruction erected by another neighbouring proprietor has a right of action to compel the removal of such fence or obstruction. 8 L. C. R., p. 317, also 14 L. C. R., p. 222.

Joseph and Castonguay. Held, reversing the judgment of the S. C.:—That the words "*jouissance*" and "*usufruit*" in a donation do not necessarily imply a mere *usufruit*, where the whole context of the deed evidently points at a *substitution*, and where the enjoyment passes to several persons collectively, "*leur vie durant*," it accrues to the survivors. 8 L. C. J., p. 62.

Leslie et al. and Molsons' Bank. Held, reversing the judgment of the S. C.:—That the truth of the facts sworn to in the affidavit may be attacked by an *exception à la forme*. 8 L. C. J., p. 1.

Lloyd and Boswell. Held, reversing the judgment of the S. C.:—1. That in a action *en licitation*, the plaintiff, the proprietor of one half, having concluded for a *partage* between himself and the two defendants, the co-proprietors of the other half, the defendants having separately acquiesced in these conclusions, and a judgment having been rendered in accordance therewith, the *experts* appointed to establish the divisibility or otherwise of the property, must confine themselves to reporting whether the property can or cannot be divided into two portions, the question of a further division between the defendants not having been raised.

2. That in such action, where two *experts* have been appointed to report on the divisibility or otherwise of a property, and where they have not agreed in the *expertise* one reporting the property divisible, and the other indivisible, the appointment of a third *expert* by the Court, *nommé d'office*, to decide between them must be made. 14 L. C. J., p. 274.

McDonald et al. and David. The respondent employed architects to plan and superintend alterations to certain stores in the city of Montreal; the appellants contracted to do the carpenters' work; the floors sank from one to two inches after the completion of the works, and after the

appellants had been paid. By the plans of the architects the joists provided were insufficient to support the floorings. And it was held, confirming the judgment of the S. C.:—That the architects and carpenters were liable, *in solido*, and could be sued in the same action for damages claimed by the respondent, by reason of the sinking of the floors. 14 L. C. R., p. 31.

Monjeau and Dubuc. Held, confirming the judgment of the S. C.:—That the purchaser of an immoveable, one half of which was possessed by the vendor simply *à titre d'usufruit*, may refuse payment of the price of sale, if he be threatened with eviction, and this without being obliged to accept the sureties offered by the vendor. 14 L. C. J., p. 344.

Pappons and Turcotte. Held, modifying the judgment of the S. C.:—That the owner *par indivis* of a property charged with the payment of a *rente*, are not liable *solidairement* for the arrears thereof. 8 L. C. J., p. 152.

Perrault et vir and The Ontario Bank. Held, modifying the judgment of the S. C.:—That the assignment of a debt accepted by the notary, in the name of the assignee, is sufficiently ratified and perfected by the signification which is made in the name of such assignee, and takes effect from the day of such notification. 14 L. C. R., p. 3.

Stoddart et al. and Lefebvre. Held, confirming the judgment of the S. C.:—That when it is proved, in a petitory action, that the possession of the defendant's predecessors in the occupation of the land claimed, is antecedent to the date of the plaintiff's title, although the defendant may not be able to avail himself of possession in support of a plea of prescription of thirty years, for want of a title thereto, the action of the plaintiff will, nevertheless, be dismissed. 8 L. C. J., p. 31.

Torrance and Allan. Held, confirming the judgment of the S. C.:—That where a bill of lading for goods placed on board a lighter in Montreal for transhipment at Quebec, on board the Ocean Steamer there contains a clause, that if, from any cause, the goods shall not go forward on the ship, the same shall be forwarded by the next steamer of the same line, the carrier is not liable for loss arising from a delay in transhipment, owing to the steamer being already full. 8 L. C. J p. 57.

Warde and Bethune. Held, confirming but reforming the judgment of the S. C.:—"That a builder is responsible for the sinking of a building erected by him on foundations built by another, but assumed by him both in his tender and contract, without protest or objection, although such sinking be attributable to the insufficiency of such foundations and of the soil on which they were built, and is liable to make good at his own expense the damage thereby occasioned to his own work. 8 L. C. J., p. 289.

NOTE.—From 15 L. C. R., p. 60. In *Jackson and Filteau*, it was held in Q. B., that a party will not be allowed to examine a witness twice without leave of the Court. *V. Supra*, INDEX, Vbo. Witness No. 2.

APPENDIX

Being an Index to Perrault's Précédents du Conseil Supérieur et de la Prévosté.

ABSENTEE :—The wife of an absentee allowed to appear, and seek delay for her husband, a mariner, to answer until his return from a voyage. *Decouagne and Beaulieu*, P. Pre. de la Prev., p. 47.

" :—*Vide* CURATEUR.

ACTE SOUS SEING PRIVÉ :—1. Judges forbidden to take notice of *saisies-arrêts* made on notes under private signature. *Palin, Ve. Baine, and Guillemin*, P. Pre. du Con. Sup., p. 22.*

2. Homologation of an award of arbitrators, rendered on a *compromis sous seing privé*. *Ve. Cachelièvre and Lemoyne*, P. Pre. de la Prev., p. 51.

ADJUDICATAIRE :—1. Judgment discharging an *adjudicataire* from the necessity of depositing the price of his adjudication in the *greffe*, subject to his paying interest for the sum. *Fournel and Dumont*, P. Pre. du Con. Sup., p. 50. *Vide* Index Vbo. PLEADING, Oppositions, No. 5.

2. Judgment condemning an *adjudicataire* to pay the price of acquisition, and in default of his so doing ordering resale at his *folle enchère*. *Lemoyen and Ve. Duverger*, P. Pre. de la Prev., p. 13. *Vide* Index, Vbo. FOLLE ENCHÈRE.

ALIMENTARY PENSION :—*Ve. Couture and Jean Couture & al.*, P. Pre. de la Prev., p. 77.

ANTICIPATION :—Respondent about to leave the province may be allowed to anticipate the delays of an appeal, on his oath administered *d'office*. *Barolet and Galocheau*, P. Pre. du Con. Sup., p. 13 ; also *Lefèvre and Sorbes, Ib.*, p. 16. See also for an analagous procedure, Index Vbo. PLEADING—In the Court of Vice-Admiralty—No. 5 ; also Vbo. CAPIAS, No. 37.

APPEAL :—1. Dismissed, the appellants failing to prosecute. *Mainville and Parant*, P. Pre. du Con. Sup., p. 12. *Vide* Index Vbo. APPEAL to the Privy Council—*Bond*, No. 10, and INTERLOCUTORY JUDGMENT, No. 4.

2. The respondent may be foreclosed from his right of answering an appeal. *Landron and Gaillard*, P. Pre. du Con. Sup., p. 12. Appeal maintained respondent refusing to appear. *Guyon and Gravelle*, P. Pre. de la Prev., p. 30.

3. Respondent about to leave the country may be allowed to anticipate the delays of the appeal, on his oath administered *d'office*. *Barolet and Galocheau*, P. Pre. du Con. Sup., p. 13 ; also *Lefèvre and Sorbes, Ib.*, p. 16.

* This was in obedience to the article 160 of the Custom of Paris, now not in force. See my note on this article, p. 23, 2nd ed.

APPEAL:—

4. An appeal may be converted into an opposition and the parties be sent back to seek their remedy in the *Prévosté. Lalande de Gazon, Vc. Aubert, and Les Dames Religieuses de l'Hôtel-Dieu*, P. Pre. du Con. Sup., p. 15; also *Maisonbasse & ux. and Dupère, Ib.*, p. 28.

5. Appeal from an interlocutory. *Cussy & others and Guignière, ès qualités*, P. Pre. du Con. Sup., p. 34.

6. *Desistement d'appel. Marchand and Vergeat*, P. Pre. du Con. Sup., p. 39.

APPEARANCE:—Appearance of parties without assignation. *Amariton & al.*, P. Pre. du Con. Sup., p. 11. *Vide* Index, WRIT OF SUMMONS.

ARBITRES:—1. Commercial cases sent to arbitration. *Fournel and Bruguière*, P. Pre. de la Prev., p. 28; also *Havy & al. and Desaunier*, P. Pre. de la Prev., p. 56. But sometimes evoked to Con. Sup. to be judged *au fonds. Portès and Deviennes*, P. Pre. du Con. Sup., p. 59.

2. Their award declared null, plaintiff having treated them. *Delorme and Moufle*, P. Pre. de la Prev., p. 41.

ASSEMBLÉES DE PARENTS:—1. Injunction to the judges with respect to *assemblées de parents. Daillebout and Charly, père*, P. Pre. du Con. Sup., p. 22.

2. In default of *parents* the advice of neighbours and friends is taken as to an intended marriage. *Ruffio and Ruffio*, P. Pre. du Con. Sup., p. 66.

" :—*Vide* TUTOR.

BAIL:—*Vide* LEASE.

BAIL JUDICIAIRE:—*Vide* TUTOR.

BANALITÉ:—*Censitaire* condemned to take his flour to be ground at the *banal* mill and the seignior ordered to furnish a practicable road. *Roi and Turgeon*, P. Pre. de la Prev., p. 71.

BENEFICE D'INVENTAIRE:—*Vide* INVENTORY.

BILL OF EXCHANGE:—1. Drawer of a bill of exchange discharged until the holder has used diligence against payee. *Lefèvre and Sorbes*, P. Pre. du Con. Sup., p. 16.

2. Drawer of bill of exchange condemned to pay it, and *par corps. Delaise and Hiché*, P. Pre. de la Prev., p. 14.

3. Endorser of bill of exchange discharged, the holder having made no demand until after the delays of the Ord. de Commerce. *Havy and Perrault*, P. Pre. de la Prev., p. 26.

BORNAGE:—1. Where an incorrect line of concession has been given to a number of *habitants* according to which however they have all worked for nearly 30 years such line will be maintained. *Peltier and Peltier*, P. Pre. de la Prev., p. 7. Confirmed in appeal. P. Pre. du Con. Sup., p. 7. *Vide* Index Vbo. BORNAGE, No. 2.

2. An interlocutor will be pronounced to decide on what lands *abatis* has been made and its value, and this by *experts. Rouleau and Labrèque*, P. Pre. de la Prev., p. 31.

3. *Bornage et arpentage* with authority to *Curé* to swear the *arpenteur. Anctil and Leclerc*, P. Pre. de la Prev, p. 70.

4. *Bornage et arpentage* declared informal, the titles of the parties not being mentioned. *Anctil and Grondin, Ib.*, p. 71.

CABARETIERS:—1. Action for a tavern debt dismissed. *Rouillard and Dechamp*, P. Pre. de la Prev., p. 66. *Vide* Index, Vbo. HOTELLIER, No. 4.

2. *Cabaretiers* fined for selling drink during divine service. *Le Procureur du Roi and Perche & al.*, P. Pre. de la Prev., p. 67.

COLLOCATION:—Privilege given to costs of suit, fees of office and per centage on deposit. *Taché and Lacroix*, P. Pre. de la Prev., p. 24. *Vide* Index, Vbo. COSTS, No. 18.

COMMISSION ROGATOIRE:—Addressed to Lieut. General of the Baillage of Bordeaux. *Degraves and DeBelcourt*, P. Pre. de la Prev., p. 24.

COMMUNAUTE:—*Veuve commune* cannot be held liable for more than one-half of the arrears of rent *de titres clericaux*. *Brassard & al. and Brassard*, P. Pre. de la Prev., p. 78.

CONCESSION LINE:—*Vide* BORNAGE.

CONTEMPT:—Fine for *manque de respect à justice*. *Abel and Girard dit Breton*, P. Pre. de la Prev., p. 71.

CONTRACT:—1. The stipulation in a contract that one party shall alone keep up the fences and ditches will be set aside. *Mercier and Desaunier*, P. Pre. du Con. Sup., p. 52.

2. The *enduits* are included in a contract bearing "*que la maçonne sera faite et parfaite.*" *Berlinguet and Lambert*, P. Pre. du Con. Sup. p. 65.

3. Interlocutor to determine if a barn has been built according to contract. *Mouste and Delorme*, P. Pre. de la Prev , p. 32.

CONTRAINTE PAR CORPS:—1. Always accorded in commercial cases. *Jayat and Marsal*, P. Pre du Con. Sup., p. 21. Also *Veyssiere and Butteau*, *Ib.* 27. Even against a *conseiller Jayat and Marsal*; or a woman *marchande publique Corbière and Laverdière, femme de Chs. Demars*, P. Pre de la Prev., p. 26. *Ib. Observations préliminaires*, p. V.

2. Not granted against the widow of a merchant, condemned to pay the commercial debt of deceased husband. *Gouze and Lambert*, P. Pre. du Con. Sup., p. 21

3. For the return of papers communicated. *Maufait and Ve. Maufait*, P. Pre. de la Prev., p. 27.

CONTRAT DE CONCESSION:—*Censitaire* condemned to take a contract if he has only a *billet de concession*, and a *titre nouvel* in case of his having already a *contrat de concession*. *Roi and Girard*, P. Pre. de la Prev., p. 67.

CONTRAT EXECUTOIRE:—Defendant obliged to furnish *grosse* in executory form of his contract. *Davienne Desmeloises and Armand dit Maisons de Bois*, P. Pre. de la Prev., p. 40.

" :—*Vide* ACTE SOUS SEING PRIVE.

COSTS:—*Vide* COLLOCATION.

" :— " DEFAULT.

" :— " DISTRACTION.

" :— " SURVEYOR.

CURATEUR:—1. Appointed to presumptive heirs absent. *Les Religieuses de l'Hôtel-Dieu Petrs.*, P. Pre. de la Prev., p. 27.

2. Condemned *ès qualités* to pay to plaintiffs seizing creditors and opposants. *Pascaud & al. and Guiguière*, P. Pre. de la Prev., p. 40.

CURE:—A *curé* can maintain a possessory action to prevent another priest from occupying his *cure*. *Soupiran and Leclusseur*, P. Pre. du Con. Sup., p. 38.

DAMAGES:—1. Abandon of a goat for the damages done by it. *Normand and Lajou*, P. Pre. du Con. Sup., p. 16.

2. Condemned to return a stove and pipes let to defendant or to pay the price. *Minet and Eker*, P. Pre. du Con. Sup., p. 69.

" :—*Vide Courtant and Sert*, P. Pre. de la Prev., p. 59. In appeal, P. Pre. du Con. Sup., p. 38.

" :—*Vide* REPARATION D'HONNEUR.

DEBATS DE COMPTE:—*Haimard and Ve. Haimard*, P. Pre. de la Prev. p. 35. Also judgment giving 250 livres provisionally. *Haimard and Ve Haimard*, P. Pre. de la Prev., p. 39. *Vide* Index, ALIMENTARY ALLOWANCE, No. 3.

DECOUVERT:—A neighbour is obliged to give decouvert to his neighbour and make fences and ditches. *Demers and Ve Laberge*, P. Pre de la Prev., p. 80. *Vide* CONTRACT, No. 1.

" :—DITCHES.

DECRET:—Permission to sell, on three advertisements, real estate of so small value that it would not suffice to pay the costs of a *décret*. *Bazil*, Pétr., *and Barbel*, P. Pre. du Con. Sup. p. 9. See also general *Réglement* forbidding any inferior tribunals to permit such sales. *Ib.* p. 14.

DEFAULT:—1. Order to re-summon on first default. *Lalande de Gazon and Les Dames Religieuses de l'Hôtel-Dieu*, P. Pre. du Con. Sup., p. 15.

2. Discharged on payment of costs of *contumace*. *Marandeau & al., Pets. and Boillard*, P. Pre. de la Prev., p. 14.

" :—*Vide Marcereau and Vidal*, P. Pre. du Con. Sup., p. 8.

" :— " *Hiché and Denis*, P. Pre. de la Prev., p. 42. Confirmed in appeal, *Denis and Hiché*, P. Pre du Con. Sup., p. 31.

" :—*Lenormand and Garnier*, P. Pre. de la Prev., p. 12.

" :—*Lemire and Romain*, P. Pre. de la Prev., p. 29.

DELAY:—1. *Repit*, limited on appeal. *Corbière and Guilmain*, P. Pre. du Con. Sup., p. 20; also *Rouillard and Roberge*, *Ib.*, p. 47.

2. *Repit* dissallowed in appeal. *Jayat and Marsal*, P. Pre. du Con. Sup., p. 21.

3. Of execution, dissallowed in appeal. *Havy and Lacroix & al.*, P. Pre. du Con. Sup. p. 60.

4. Allowed on confession. *Maranda and Gigon*, P. Pre. de la Prev. p. 28.

5. Allowed payments being made by instalments. *Lanoix and Bellerose*, P. Pre. de la Prev. p. 34.

6. Delay to bring in *garant formel*. *Gagnon & ux. and Belanger*, P. Pre. de la Prev., p. 37.

DÉLIVRANCE DE LEGS:—Action en *délivrance de legs* maintained *Ve Rouel and Laurent*, P. Pre. de la Prev., p. 77.

DESAVEU:—*Vide de Belleville and Patrimoulx*, P. Pre. du Con. Sup., p. 44.

DESCENTE SUR LES LIEUX:—*Chalou and Montigny*, P. Pre. de la Prev. p. 69.

DISTRACTION DE FRAIS:—*Ve. Fornel & Perot and Gilbert & Saillant*, P. Pre. de la Prev., p. 70.

DITCHES :—1. *Vide* Vbo. CONTRACT. Also *Damour & al. and Jehanne*, P. Pre. du Con. Sup., p. 57.

2. Interlocutory ordering the inspection of a water-course. *Drolet and Harnois*, P. Pre. de la Prev., p. 57.

" :—*Vide* CONTRACT, No. 1.

" :— " DECOUVERT.

DIXMES :—Defendant condemned to pay two years tithes. *The Curé de Québec and Gauvreau*, P. Pre. de la Prev., p. 74. *Vide* Index, Vbo. DIXMES.

DONATAIRE MUTUELLE :—*Vide* WIDOW.

DONATION :—1. Declared null owing to be *dementia* of donor. *Haimard and Guillot*, P. Pre. de la Prev., p. 15. Confirmed in appeal, *Guillot and Haimard*, P. Pre. du Con. Sup., 17.

2. Declared null the donees having failed to carry out their promises. *Leblond & ux. and Drouin*, P. Pre. de la Prev., p. 60. Confirmed in appeal, P. Pre. du Con. Sup., p. 43.

" :—*Vide* LÉGITIME.

DOUAIRE :—1. *Douaire et préciput* established by marriage contract, are subject to contribution *au sol la livre* in case of *déconfiture* of the husband deceased. *Lapointe and Ve. Bondy*, P. Pre. du Con. Sup., p. 24.

2. Judgment forbidding the payment of *douaire et remploi* of the moneys. *Lanoix & Hermier et al.*, P. Pre. du Con. Sup., p. 65.

ENQUÊTE :—*Vide Duquet and Buisson and Duquet*, P. Pre. du Con. Sup., p. 58.

EVIDENCE :—1. Judgment dismissing an action for the price of goods, in the absence of proof in writing. *Dazancette and Charly*, P. Pre. de la Prev., p. 44.

2. Judgment condemning the payment of an account on the evidence of the books of account of plaintiff. *Briard and Payés*, P. Pre. du Con. Sup., p. 64; also, *Dacarette and Courtin*, P. Pre. de la Prev., p. 57.

3. Plaintiff's wife examined in a suit. *Capellier and Ve. Poitra*, P. Pre. de la Prev., p. 33.

" :—*Vide* TAILLES.

EVOCATION :—*Vide Portés et Deviennes.* P. Pre. du Con. Sup., p. 59.

EXECUTION :—By consent of parties the immoveable property may be sold before the moveable. *Leglisse and Trudel*, P. Pre. de la Prev., p. 80. *Vide* Index, Vbo. EXECUTION—Immoveables, No. 1.

EXHIBITS :—Order to opposants to file exhibits. P. Pre. de la Prev., p. 76.

EXPERTISE :—1. *Daviene Desmeloises and Deguise.* P. Pre. de la Prev., p. 41.

2. *Expertise* to determine the divisibility or indivisibility of immoveable property. *Chapeau and Chapeau*, P. Pre. de la Prev., p. 68.

" :—*Vide* BORNAGE, No. 2.

" :— " CONTRACT, No. 3.

" :— " SURVEYOR.

EXTRA WORK :—Indemnity allowed for extra work in building the parish church of Quebec. *Moreau and Parent, marguillier en charge*, P. Pre. du Con. Sup., p. 55.

FACTURES:—*Vide Dezaunier and Dugard*, P. Pre. du Con. Sup., p. 48.

FINE:—*Vide* CONTEMPT.

" :— " PENALTY.

" :— " SEIGNIORAL DUES.

FRANC ET QUITTE:—1. Judgment condemning respondent to clear the hypothecs on the land sold by him to appellant. *Duprac and Girard*, P. Pre. du Con. Sup., p. 28.

2. Judgment condemning defendant to pay the purchase of a land, deducting arrears of *cens et rentes*. *Arnold dit Villeneuve and Michaud*, P. Pre. du Con. Sup., p. 37.

GARDIEN:—1. *Gardien* condemned *par corps* to produce effects committed to his charge, or to pay 65 livres as principal, interest and costs, and costs of suit. Confirmed in Appeal, with a month's delay *par Grâce*. *Gilbert and Joginet*, P. Pre. du Con. Sup., p. 15. *Vide* Index, Vbo. GARDIEN, No. 1. And to pay the debt. *Gourdeaux and Desmolier*, P. Pre. de la Prev., p. 62.

2. Party appointed *commissaire à une saisie réelle* to act. *Levasseur and Dufrêne*, P. Pre. de la Prev., p. 17.

3. *Gardien* discharged the moveables seized, not having been sold within two months. *Duburon and Chaumereau*, P. Pre. de la Prev., p. 19. But see my notes on the 172nd article of the Custom of Paris, p. 27, 2nd edition.

4. Tenants enjoined to pay rent to *commissaire* established to a property. *Couteleau*, Com., *and Clement et al.*, P. Pre. de la Prev., p. 29.

HEIR:—1. The obligation of a debtor deceased, declared executory against his heirs, jointly and severally. *Lefèvre et Ve. Campagna et al.*, P. Pre. de la Prev., p. 52. See my note on the 168th article of the Custom of Paris, p. 26, 2nd edition.

2. The heir of a syndic condemned to produce a sum of money collected by him to be divided *au marc la livre*. *Havy et al. and Lamorille*, P. Pre. de la Prev., p. 62.

HUISSIER:—A seizure being declared invalid, the seizing bailiff condemned to restore the costs. *Ve. Jinchereau and Gatien*, P. Pre. de la Prev., p. 13.

INJURE:—An unnecessary and imperious expression in a pleading may be struck out by order of the Court, at the instance of the party aggrieved. *Charest et al. and Charly*, P. Pre. de la Prev., p. 44. *Vide Simard and Cotton*, P. Pre. du Con. Sup., p. 45. *Lagroix and Lanouiller*, *ib.*, p. 67. *Liard et al. and Legris et al.*, P. Pre. de la Prev., p. 55; also, *Dupont and Belanger*, *ib.*, p. 79.

INSCRIPTION EN FAUX:—Judgment ordering deposit of note inscribed *en faux* and consignment of moneys for costs of proceeding. *Voyer and Michelon*, P. Pre. de la Prev., p. 23.

INTERDICT:—Form of restoring an Interdict to his rights. *Devin, Ptr.*, P. Pre. de la Prev., p. 28.

INTERVENTION:—*Ve. Vaillant and Pilotte*, P. Pre. de la Prev., p. 49.

INVENTORY:—1. Form of closing an inventory in presence of King's attorney and the subrogate tutor. P. Pre. de la Prev., p. 10.

INVENTORY :—

2. New inventory ordered the tutor of children of a former marriage not having been summoned, and order to proceed in his presence and in that of the subrogate tutors of both marriages. *Lanoix & Girard Ve. Morin*, P. Pre. de la Prev., p. 27.

3. *Entérinement de lettres d'héritier sous bénéfice d'inventaire.* P. Pre. de la Prev., p. 45.

4. Judgment against *héritier sous bénéfice d'inventaire*, in such quality, subject to *rapport* in case of contribution. *Perrault and Ruette*, P. Pre. de la Prev., p. 54.

5. *Recel* in making inventory. *Crenet dit Beauvais and Vergeat*, P. Pre. de la Prev., p. 58.

JUGEMENT EXECUTOIRE :—*Vide* HEIR.

JURISDICTION :—Defendant domiciled in Montreal could not be summoned at Quebec where he was only temporarily on special business. *Rageots et le Frère Gervais*, P. Pre. de la Prev., p. 14.

LEASE :—The tenant is obliged to *garnir* the premises for the security of the rent. *Leger and Maufils*, P. Pre de la Prev., p. 11. And defendant was also condemned to vacate the premises leased, in case of any complaints owing to the noise made by him in carrying on his trade (*faiseur de galoches.*) *Ib.* In Appeal, this sentence was confirmed, saving the Council's right to decide as to any complaint for noise. P. Pre. du Con. Sup. p. 10.

2. Resiliation of lease, but under what circumstances does not appear from the *arrêt*. *Davienne and David*, P. Pre. du Con. Sup., p. 20. For non-payment of rent. *Ve. Sarrazin and Philibot*, P. Pre. de la Prev., p. 46.

3. Notice to quit, given to a tenant, is declared good and valid, on condition that the proprietor shall himself occupy the premises. *Rouillard and Dassilva*, P. Pre, du Con. Sup p. 26 ; and pay damages. *Jehanne and Dusautoy et al.*, P. Pre. du Con. Sup., p. 51 ; and without damages. *Petitbois and Cartier, ib.*, p. 54 ; and the damages fixed at two quarter's rent. *Pouliot et ux and Vocel*, P. Pre. de la Prev., p. 75 ; or at one quarter's rent. *Ve. Boulé and Toussaint, ib.*, p. 79. *Vide* Index, Vbo. LEASE, No. 7.*

LÉGITIME :—The donee was obliged to make up the *légitime* to the heir of the donor. *Maufet and Metot*, P. Pre. de la Prov., p. 21, and Pre. du Con. Sup., p. 23. (See my notes on article 298 of the Custom of Paris.)

LESSOR :—1. Privilege of the lessor, and probably *main levée* of movenbles not belonging to defendant seized with those of defendant, without costs. *Voyer and Pichet, gardien*, P. Pre. de la Prev., p. 10.

2. *Main levée* granted of two stoves leased to tenants and seized in their hands. *Maillou and Ve. Picard and Leger et ux. and Le Frère Turc dit Chrétien*, P. Pre. de la Prev., p. 16. *Vide* Index, Vbo. SAISIE-GAGERIE, Nos. 1 and 2.

3. Notice to tenant to quit on the 8th May, good. *Dechenaux and Leeler*, P. Pre. de la Prev., p. 68. *Vide* Index, Vbo. LESSOR, No. 13.

* This right of the landlord was abolished in Canada by 16 Vic. c. 204. C. S. L. C., cap. 52.

LODS ET VENTES :—1. Are due on sale from one co-heir to another before *partage*. *Gaillard and Roberge*, P. Pre. de la Prev., p. 22.

2. Judgment for *lods et ventes* on sale from father to son. *Gaillard and Fontaine*, P. Pre. de la Prev., p. 54.

3. Seignior not obliged to *ensaisiner* contract while arrears of *lods et ventes* are due. *Vallé and Procureur du Séminaire de Québec*, P. Pre. de la Prev., p. 72.

" :—*Vide* SEIGNIORIAL DUES.

MARGUILLIERS :—The former *marguilliers* obliged to recover the debts due in their time to the *Fabrique*, on the demand of the *marguillier en charge* and conclusions of *M. le Procureur du Roi*. *Boutin, marguillier en charge, and Bonhomme et al.*, P. Pre. de la Prev., p. 12.

MARITIME :—*La prevosté* did not take cognizance of maritime contracts. *Doumere and Olivier*, P. Pre. de la Prev., p. 48.

MARRIAGE :—1. Opposition to marriage by father of the future husband. *Willitt and Louet*, P. Pre. de la Prev., p. 21. Confirmed in Appeal, Pre. du Con. Sup., p. 18.

2. Proceedings for *abus* in the celebration of a marriage. *Baudouin Ve. Rouville et le Sr. de Rouville, minor and others*, P. Pre. du Con. Sup., p. 40. *Vide* Index, Vbo. MARRIAGE ; also, Vbo. CURÉ.

MARRIAGE CONTRACT :—Declared executory against tutor *ad hoc*. *Rouer de Villeray and Perrault*, P. Pre. de la Prev., p. 23.

MASTER AND SERVANT :—A servant deserting his master's service before the termination of his engagement, cannot recover his wages. *Clesse and Gatel*, P. Pre. de la Prev., p. 78.

MINOR :—The grandfather of a minor will be given the charge and custody of the minor in preference to the father, if he undertakes to rear the child at his own costs and charges. *Normand and Marçou*, P. Pre. de la Prev., p. 13. But this case was reversed in Appeal, the father offering terms equally advantageous to the minor. P. Pre. du Con. Sup., p. 11.

MUR MITOYEN (*ou de séparation*) :—1. Neighbours condemned to furnish nine inches of ground for the building of a separation wall of three feet two inches in thickness, and to contribute for the construction in proportion of nine inches in thickness and to the height of ten feet, without costs. *Boisseau and Hubert*, P. Pre. du Con. Sup., p. 33. *Vide* articles 205 and 209, Coutume de Paris.

2. And even when there is already a fence of pickets, good and sufficient, defendant ordered to contribute according to the Custom of Paris. *Berthelot and Sabourin*, P. Pre. de la Prev., p. 73.

NOTARY :—1. Judgment ordering a Notary to produce two minutes in Court. *Leclerc and Labrie*, P. Pre. de la Prev., p. 7. But see Index, Vbo. NOTARY, No. 2.

2. Sr. Vancour Bellevue forbidden to act as a notary, not having the quality. *Le Procureur du Roi and Bellevue*, P. Pre. de la Prev., p. 66.

3. Notary authorized to take the affirmation of an account. *Vignaud and Lamaletie*, P. Pre. de la Prev., p. 69.

OFFERS :—The offer to settle, declared valid. *Chaumont and Goguet*, P. Pre. du Con. Sup. p. 62.

OFFRES RÉELLES :—Tender to a bailiff declared valid. *Amiot and Dupère*, P. Pre. de la Prev., p. 20. Confirmed in Appeal. Pre. de Con. Sup., p. 19. V. Index, Vbo. OFFRES REELLES, No. 2. And it must be observed that there being at that time no *Avocats* or *Procureurs*, the *huissiers* often conducted the procedure on special powers of attorney. Introduction to P. Pre. de la Prev., p. v.

PAIN BENI :—Defendant condemned to give the *pain béni*, a *cierge* and a *quêteuse*. *Boutin and Riopel*, P. Pre. de la Prev., p. 12.

PATERNITÉ :—Action *en déclaration de*. *Fabas dit St. Louis and Roi*, P. Pre. du Con. Sup., p. 56 ; also, *Roi and St. Louis*, P. Pre. de la Prev., p. 63. *Vide* PROCEDURE.

PENALTY :—Defendant condemned in a penalty of 20 *livres* for having offered to affirm, contrary to good faith, that he owed plaintiff nothing. *Arguin and Jean dit Touranjeau*, P. Pre. de la Prev., p. 60. In appeal the judgment was confirmed. P. Pre. du Con. Sup., p. 42.

" :—*Vide* SEIGNIORIAL DUES.

PRESCRIPTION :—1. Of promissory note by 30 years. *Vallé and Riverin*. P. Pre. de la Prev., p. 15.

2. Of supplies furnished by an *ouvrier* by six months, under article 126 of the Custom. *Fournier and Chaussegros de Léry*, P. Pre. de la Prev., p. 76. See also my note on same article of the Custom, p. 21, 2nd Ed.

" :—*Vide* DIXMES.

PROCEDURE :—1. *Chaplin and Ve. Giroux*, P. Pre. de la Prev., p. 35.

2. Action dismissed, the petition not being signed either by plaintiff or attorney. *Nouchel and Greysac*, P. Pre. de la Prev., p. 43.

3. Judgment by default on assignation at last domicile of defendant in *déclaration d'hypothèque*. *Poisset and Larchevesque*, P. Pre. de la Prev., p. 53.

4. *En paternité*. *Roi and St. Louis*, P. Pre. de la Prev., p. 63.

" :—*Vide* SAISIE, No. 3.

PROCUREUR :—Condemned in his own private name in the costs of an opposition. P. Pre du Con. Sup., p. 61.

PROMISSORY NOTE :—1. Judgment condemning debtor to pay a conditional note in money. *Cosse and Philibert*, P. Pre. du Con. Sup., p. 35.

2. Husband discharged from paying the promissory note made by his wife, without his authorization. *Jérémie and Bellorget*, P. Pre. de la Prev., p. 8. *Vide* Index, Vbo. PROMISSORY NOTE, Nos. 11, 12, 13 and 14.

3. Lost. Judgment condemning drawer to pay it. *Trepagny pour Bouchard and Dauteuil*, P. Pre. de la Prev., p. 9. In *Castle vs. Baby*, suit was brought on a promissory note lost. S. C., 5 L. C. R., p. 411.

4. Prescribed by 30 years. *Vallé and Riverin*, P. Pre. de la Prev., p. 15.

PROMISSORY NOTE :—

5. A note payable "during the month of October," and not "during the *whole* month of October," is payable and may be demanded any time during October. *Guignière and Foucher*, P. Pre. de la Prev., p. 43.

6. An action on a promissory transferred after signification of a *saisie-arrêt* on holder, known to plaintiff, will be dismissed. *Liquart and Nouette*, P. Pre. de la Prev., p. 61.

RATIFICATION :—Sale declared null for want of ratification. *Chavigny de la Tesserie and Ve. Frs. de Chavigny*, P. Pre. de la Prev., p. 42.

REBELLION A JUSTICE :—Judgment condemning party accused of *rebellion à justice*. *Normand and Clesse and Courtin*, P. Pre. du Con. Sup., p. 32. *Vide* Index, Vbo. REBELLION A JUSTICE.

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RENTE CONSTITUÉE :—The debtor who fails to pay a *rente constituée*, will be compelled to pay the capital. *Louet and Louet*, P. Pre. du Con. Sup., p. 41 ; also, *Hiché & Ve. Morville*, P. Pre. de la Prev., p. 18.

RENTE FONCIERE :—1. *Détenteur* condemned to pay 29 years arrears of a *rente foncière*. *Ve. Duchesnay and Ve. Chambalon*, P. Pre. de la Prev., p. 18.

2. *Rentes foncières* are always redeemable in the town and its suburbs. *De Boisclerc et Les Dames Religieuses de l'Hôtel-Dieu*, P. Pre. de la Prev., p. 63. (The words in the Custom article 121, are "*en la ville et fauxbourgs de Paris*," they were therefore extended to any town or its suburbs. There are other cases in which difficulty has arisen with us as to the extension or restriction of similar words ; for instance, in article 112, where they are restricted, and articles 116 and 209, where they are extended by interpretation, See my notes, pp. 15, 18 and 40.)

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" :—*Vide* SEIGNIORIAL DUES.

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SAISIE:—1. For rent of a farm declared valid and lease resiliated for non-payment of rent. *Ve. Sarrazin and Philibot*, P. Pre. de la Prev., p. 46.

2. *Saisie* without title or judgment declared invalid. *Boutin and Lebreton & al.*, P. Pre. de la Prev., p. 56.

3. Where seizing creditors neglect to prosecute the seizure another creditor may be subrogated in his stead. *Perrault, créancier de Chs. Lapalme and Charest & al., créanciers saisissants*, P. Pre. de la Prev., p. 58.

4. Seizing creditor ordered to be paid by special privilege out of goods by him sold to defendant, probably under article 177 of the Custom. *Daillebout and Campeau*, P. Pre. de la Prev., p. 59. *Vide* Index, Vbo. SAISIE REVENDICATION, No 8.

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" :—*Vide* WIDOW.

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SEPARATION DE BIENS:—Ordered, the wife renouncing to the community, and the husband being condemned to restore 600 livres paid by marriage contract, and maintaining hypothec in favour of wife for her *avantages matrimoniaux*, also alimentary provision in favor of wife and maintaing seizure of husband's effects by wife. *Renaud, femme de Thomas Doyon, and Doyon*, P. Pre. de la Prev., p. 51.

SEPARATION DE CORPS ET DE BIENS:—Cannot be voluntary. *Coulombe and Renaut sa femme*, P. Pre. de la Prev., p. 73.

SERMENT DECISOIRE:—1. *Côté and Philibert*, P. Pre. du Con. Sup., p. 31. *Dussaut and Ve Gendron*, P. Pre. du Con. Sup., p. 44.

2. The *serment décisoire* or *supplétoire* cannot be taken against authentic deeds. *Cugnet and Revol*, P. Pre. du Con. Sup., p. 68.

3. Defendant discharged on his oath that he had paid the sum demanded. *Sombrun and Chalou*, P. Pre. de la Prev., p. 47.

4. Interlocutory ordering the examination of plaintiff as to certain receipts and the price of hay. *Normand and Besançon*, P. Pre. de la Prev., p. 47.

5. Interlocutory deferring *serment décisoire* to be taken by both husband and wife within a month declaring note paid, else the defendant condemned to pay amount. *Taché and Desbergeres*, P. Pre. de la Prev., p. 49.

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2. *Saisie-arrêt* declared valid on the revenues or products present and future of the seigniory of Bellechasse. *Coriveaux and Levasseur*, P. Pre du Con. Sup., p. 26.

3. *Tiers-saisi* condemned by default may be discharged of the personal condemnation. *Prat and Petrimoulx*, P. Pre. du Con. Sup., p. 46.

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5. Ordered to hold over balance of note until further ordered to whom to pay it. *Lefevre and Castillon and Lafontaine*, P. Pre. de la Prev., p. 34.

" :—*Vide* ABSENTEE.

" :— " SAISI-ARRET.

" :— " SIGNIFICATION.

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2. A tutor discharged from the tutorship because he had six children living. *Fornel and Lanoullier de Boiscler*, P. Pre. du Con. Sup., p. 36. Also *Valin and Delorme, Ib.*, p. 45. And likewise because he had not been called to the *assemblée*.

3. Tutor condemned to continue the tutorship against his will. *Voyer and Dolbec*, P. Pre. de la Prev., p. 61. Confirmed in appeal, P. Pre. du Con. Sup., p. 42.

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CORRECTIONS.

Preface, line 33, read too for two.

Page	10,	line 34,	read	recision for rescission.
"	11,	" 18,	"	*Doutre and Elvidge* for *Doutre vs. Elvidge.*
"	13,	last line,	"	*S. vs. L.* for *L. vs. L.*
"	14,	line 2,	"	adultery for addultery.
"	22,	" 17,	"	*Blanckensee* for *Blankensee.*
"	22,	" 23,	"	*Fergusson* for *Fargusson.*
"	22,	" 46,	"	*Goldsmid* for *Goldsmith.*
"	54,	" 12,	"	*Mailhot* for *Maillot.*
"	54,	" 49,	"	*Whitby* for *Whitly.*
"	55,	" 46,	"	*Blanckensee* for *Blankensee.*
"	56,	" 25,	"	*Kemp vs. Kemp* for *Kempt vs. Kempt.*
"	76,	" 48,	"	*Ruston* for *Roston.*
"	93,	" 32,	"	personal for personel.
"	93,	" 53,	"	falling for failing.
"	105,	" 31,	"	*Marion* for *Marrion.*
"	107,	" last,	"	socage for soccage.
"	108,	" 6,	"	" " "
"	140,	" 5,	"	" " "
"	175,	" 44,	"	*Morisset* for *Morriset.*
"	177,	" 20,	"	solicitor for sollicitor.
"	179,	" 52,	"	indelible for indellible.
"	180,	" 28,	"	*Macdouall* for *Macdonall.*
"	189,	" 33,	"	*Limoges* for *Lemoges.*
"	209,	" 45,	"	*tiers-saisi* for *tiers-saisie.*
"	213,	" 13,	"	*Batten* for *Butler.*
"	213,	" 3,	"	*Farnan* for *Farman.*
"	220,	" 54,	"	*Crevier* for *Grevier.*
"	221,	" 31,	"	*Fleming* for *Flemings.*
"	227,	" 3,	"	set-off for sett-off.
"	228,	" 20,	"	" " "
"	241,	" 5,	"	*Perrault* for *Perault.*
"	249,	" 17,	"	*Evans* for *Evens.*
"	250,	" 29,	"	note for not.
"	282,	" 20,	"	*Mathews* for *Mathew.*
"	282,	" 34,	"	*Alain* for *Allain.*
"	290,	" 38,	"	recision for rescision.
"	291,	" 14,	"	*rentes* for *rents.*
"	293,	" 44,	"	*Berthelet* for *Berthelot.*
"	294,	" 37,	"	bailiff for bailliff.
"	294,	" 38,	"	" " "
"	294,	" 48,	"	bailiffs for baillliffs.
"	297,	" 28,	"	goods for gsods.
"	314,	" 51,	"	*Goudie* for *Goulie.*
"	319,	" 5,	"	*grosses* for *grosse.*
"	319,	" 18,	"	Maritime for Maratime.