

RAMSAY, J. This is a peculiar action. The appellant sued in the Commissioners' Court as Tutor to the minors "Maximé Proulx," and, condemned in this quality, sued out a writ of *Certiorari*, and in the affidavit of circumstances he declared: "qu'il n'était pas le tuteur des mineurs Proulx ainsi qu'allégué dans le dit jugement, et que la dite Cour des Commissaires n'était autorisé et n'avait aucune juridiction pour rendre jugement de cette manière." The judge in the Superior Court, it would seem, set aside the judgment of the Commissioners' Court owing to this allegation of the affidavit of circumstances. The plaintiff before the Commissioners' Court, now Respondent, sued Appellant in damages for this false statement, as he calls it, and proved as the measure of damages what he had lost by the setting aside of the judgment in the Commissioners' Court. The question now arises whether such an action will lie. Had it not been for the decision in the case of *Gugy v. Brown*, I should have had no hesitation in saying that there could be no suit on a suit, except to set aside judgments in specified cases, and this on the general principle that otherwise a legal difficulty might be made perpetual. In that case the parties who had neighboring properties near Quebec, had been in litigation for many years. At last all causes of quarrel seemed to be about exhausted, when one of them sued the other for having sued him so often, in suits in which he had been unsuccessful, and without probable cause. The Court of Appeals held that such an action would lie. This decision seems to me to be open to the objection I have just mentioned; but it would not warrant, even if sustainable in principle, what is sought in this case. If such an action as the present could be maintained it would be a mode of evading the rule of *res judicata*. It is therefore open to the general objection to the decision in *Gugy v. Brown*, with this one added.

But it is contended that Boisclair was not a party to the proceedings on the *certiorari* in the same quality as he is sued in this action, and that identity of quality is requisite to make good the defence of *res judicata*. I think this answer to the objection is put forward without due reflection. It is perfectly true that there is no *res judicata* where A as heir of C has sued B to recover a certain thing, and again sues him as heir of D, for a man may have two titles to a

thing. In the first suit against B the title adjudicated upon is the succession of C, in the second suit it is the succession of D. The question, then is different. But to hold the plaintiff *es qualité* liable personally for his conduct in a suit would be virtually to try the issue over again. It is even much to be doubted whether a civil action will lie against a witness who has sworn falsely to a material fact, for his evidence was there to be contradicted. The decision of the matter before us has nothing to do with the question of the concurrent proceedings civil and criminal. There never was any doubt that as a general rule the criminal prosecution did not prevent the civil remedy, and I fancy it is quite as clear that the civil suit would be no bar to a prosecution.

The judgment in appeal is as follows:—

"La Cour, etc...."

"Considérant qu'il n'appert pas par la preuve faite en cette cause que l'affidavit donné par l'appelant au soutien de sa demande pour *certiorari* à l'effet de faire annuler le jugement rendu par la cour des commissaires de St. Aimé, du 7 janvier 1878, ait été la seule raison pour laquelle le jugement aurait été annulé et mis de côté par la Cour Supérieure, le 14 février, 1879;

"Considérant, en outre, que l'intimé ne pouvait, au moyen d'une action en dommages, et en produisant de nouvelles preuves, renouveler une contestation sur une question définitivement jugée entre les parties par le jugement rendu en dernier ressort par la Cour Supérieure;

"Et considérant qu'il y a erreur dans le jugement rendu par la cour de circuit pour le district de Richelieu, siégeant à Sorel, le 26 octobre, 1879;

"Cette cour casse et annule le dit jugement du 25 octobre, 1879, et prononçant le jugement que la dite cour aurait du rendre, déboute l'action de l'intimé, et condamne l'intimé à payer à l'appelant les frais encourus, tant en cour de première instance, que sur le présent appel."

Judgment reversed.

A. Germain, for Appellant.

C. A. Geoffrion, Counsel.

Longpré & David, for Respondent.