

moreover, the power to tax ferry-boats being possessed by the city before Confederation.

2. The jurisdiction of the Harbour Commissioners of Montreal within certain limits, does not exclude the right of the city to tax and control ferry-boats within such limits.

4. An Act consolidated in similar terms by a subsequent Act is not repealed by such consolidation, but is continued in force thereby. *La Compagnie de Navigation de Longueuil & La Cité de Montréal*, Dorion, Ch. J., Tessier, Cross, Baby, JJ., (Cross, J., *diss.*), March 26, 1887.

Action—Property registered in name of owner's agent—Costs.

Held:—That while a creditor has a right of action against the agent of his debtor, in whose name real estate of the debtor is registered, to have it declared that such property really belongs to the debtor, yet where it appears that the action is unnecessary, the judgment maintaining it will be confirmed without costs in either Court. *Schwob & Baker et al.*, Monk, Ramsay, Tessier, Cross, Baby, JJ., June 30, 1886.

SERVANTS' WAGES DURING ILLNESS.

A recent decision of the courts reversing a decision of a magistrate, where an apprentice, who had been disqualified by illness from work, was held, nevertheless, entitled to claim the usual wages during this disability, shows that justices are apt to go wrong on this point. And as the subject is of great practical interest and the circumstances must be of frequent occurrence, it will be useful to notice some of the authorities, so that justices may be able more accurately to discriminate the important elements of the question. In the case of domestic servants, the difficulty caused by illness is mitigated by this circumstance, that owing to the ready way of determining the contract by a month's notice, the loss can seldom be very serious if deemed irksome; but as a rule, the master requires to determine the contract altogether, in order to escape the duty of paying the usual wages

while the servant is disabled, for as an old case expresses it, "the master takes his servant for better and for worse, for sickness and for health." Common charity has not allowed this point to be often contested in the case of domestic servants, but in the case of workmen and apprentices and skilled artists, there have been occasional litigations, and some of them attended with nicety. Again, there are peculiar contracts where it is necessary for a court to consider whether the good health of the contracting party was not necessarily assumed as a condition of the contract or a basis on which the whole contract was founded. The simplest of the cases may however first be looked at.

In *Harmer v. Cornelius*, 5 C. B. (N. S.) 236, the question arose whether an artisan who has been engaged for a term to work in his art, and proved incompetent, could be discharged on that account, and the right to dismiss servants for illness, and the relations between master and servant were carefully considered by judges of great insight. A scene painter had been employed at wages of £2 10s. per week, to work at Manchester. An advertisement had been put in a theatrical newspaper asking for two first-rate panorama and scene painters, and the plaintiff was engaged and was set to paint some scenes, but in a short time was dismissed as incompetent. He then sued the employer for damages. After time taken to consider, Willes, J., delivered the judgment of the court to the effect, that when a skilled laborer, artisan, or artist is employed, there is on his part an implied warranty that he is of skill reasonably competent to the task he undertakes. If there is no general and no particular representation of ability and skill, the workman undertakes no responsibility. Here the correspondence showed that there was an express representation that the plaintiff did possess the requisite skill. So the plaintiff lost his cause.

This decision paved the way to another, more closely bearing on the subject of a servant's illness, namely, *Cuckson v. Stone*, 1 E. & E. 248. In that case, the plaintiff had entered into an agreement to serve the defendant for ten years in the capacity of a brewer, at weekly wages of 50s. with dwelling-house