

"Considering finally the plaintiff's action and *demande* unfounded and unproved save only to the extent allowed by defendants' pleas: doth adjudge and condemn the defendants to pay to plaintiff the sum of \$18.89 offered by said defendants, and doth dismiss plaintiff's action and *demande* as to the surplus, with costs," &c.

Archambault & David for plaintiff.

Trudel, DeMontigny, Charbonneau & Trudel for defendants.

MONTREAL, January 31, 1880.

STATE V. THE CITY OF MONTREAL.

Work and labor—Defence on ground of overcharges—Remarks on effect of resolution of committee of City Council.

JOHNSON, J. This is an action for \$377, balance of an account for work done and materials furnished. The plaintiff is a roofer and plumber, and was employed to do things pertaining to his trade, and the whole charge made exceeded eleven hundred dollars. The contestation is only as to seven of the items in an account of forty-one items, certified by the defendants' own inspector of buildings; but the market committee, when the time came for a final settlement, appear to have found some objection to these items, and the defence of the Corporation to the present action is, that this committee passed a resolution that the charges were too high, and offered what they thought right both to the plaintiff and to his attorneys, and this offer is repeated with the plea. Well, any one, of course, can pass a resolution not to pay his debts, or to get his creditors to reduce the amount of them; but there are two parties to be considered. The plaintiff, in his turn, seems to have passed a resolution to go on with his case, notwithstanding the counter resolution of his debtor. The case was treated at the hearing as one of evidence with respect to the fairness of some of the charges, and so perhaps in some cases it might be. I do not mean to say that if you neglect to make a bargain, you can always reduce your tradesman's charges by a few cents, by the evidence of rival, or perhaps inferior tradesmen. I don't say that: I am rather against that. I think if I choose to go to Poole for my coats, without asking for his

prices, I must pay Poole's prices, and not those of his cheap and excellent rivals who are content to undersell him. But what I do mean to say is that a corporation, or any other debtor, must not only resolve that they want to get off cheaply, but they must answer an action like this, if they want to prove exorbitant charges, by saying that those charges are exorbitant, and that is just what the defendants have *not* said here; and I can make no difference between them and anybody else. I can't say when a man is sued for a tradesman's bill that he can plead—not that it is improperly and dishonestly overcharged; but that his servants met in the kitchen, and said so. He must aver the overcharge as a fact, independently of what others may say. If the Market Committee is infallible, of course the Corporation will never want any evidence at all but the resolutions of their committees. But if the Corporation has only the same rights as others in matters of procedure, it must plead in the same way that others do, and they must say that a thing is so before they can prove it. Therefore, there is really no issue here as to whether these items are overcharged, or not, and the evidence on this head is thrown away. The only point in issue is whether the Committee resolved that some items are too high. I see that they did, but this is no answer to the action; and I must give judgment upon the plaintiff's evidence, and the certificate of the Inspector, for the amount asked.

Judah & Branchaud for plaintiff.

R. Roy, Q.C., for defendants.

LIBEL IN WAY OF PROFESSION.—The English Exchequer Division in *Botterill v. Whytehead*, 41 L. T. Rep. N. S. 588, held that to impute to a person actually employed to execute certain work, that he has no experience in the work in which he is so employed, is a libel upon that person in the way of his profession or calling, and that it is no justification to say that such person cannot show any experience in work of the kind which in the opinion of the person making the imputation was requisite; that a man who receives information which if true is injurious to the character of another, is not justified in publishing that information to the prejudice of that other merely because he believes it to be true.