were dissimilar, but the name and the device and arms at the commencement of the defendant's issues were exactly the same as the plaintiffs'. The plaintiffs now moved for an injunction, on the ground that the defendant's issues were a colorable imitation of the plaintiffs', and an infringement of their trade-mark in their name and device. For the defendant it was contended that the plaintiffs had no special property in the name of the *Times*, which was used in conjunction with other words by numerous other papers, and further, that the only ground upon which the plaintiffs could succeed was that the issues of the defendant were calculated to deceive the public into the idea that they were buying those of the plaintiffs, which it was submitted they were not. Jessel, M. R., was of opinion that the issues by the defendant were an exact copy of the plaintiffs' paper; that the plaintiffs had a right of property in their name and heading, which the defendant had infringed; and that the defendant had also attempted to appropriate one of the most profitable branches of the plaintiffs' business—their advertisements—and he must therefore grant the injunction asked for.—*Solicitors' Journal.*

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, June 30, 1881.

DORION, C. J., MONK, RAMSAY, CROSS, BABY, JJ.

ROBERT (plff. below), Appellant, and THE CITY OF MONTREAL (deft. below), Respondent.

Prescription—C. C. 2261.

Where the action is not an action for damages resulting from an offence or quasi-offence, but merely claims the price or value of materials wrongfully taken away, the two years' prescription under C.C. 2261 *does not apply.*

The judgment appealed from was rendered by the Superior Court, Montreal (Jetté, J.), September 30, 1879, dismissing an action brought against the Corporation of Montreal for the value of certain fencing. The judgment was as follows:—

"La Cour, etc....

"Considérant que les faits établis en preuve démontrent que les clôtures dont le demandeur réclame la valeur ont été enlevées en 1874 et en 1876, c'est-à-dire plus de deux ans avant l'institution de l'action, et ce par Donnelly, l'entrepreneur des travaux de l'aqueduc;

"Considérant que les prétendues reconnaissances de la réclamation du demandeur et de la responsabilité de la cité que le demandeur prétend avoir été faites et données par Louis Lesage, surintendant de l'aqueduc, et qu'il invoque comme interruption de la prescription de deux ans acquise contre sa demande, ne sont pas prouvées et que le fussent-elles, elles ne pourraient lier la défenderesse, attendu que le dit Lesage n'avait aucune autorité pour lier la corporation sous ce rapport;

"Maintient la première défense de la défenderesse à l'action du demandeur, déclare en conséquence que la dite action était prescrite lors de l'institution d'icelle par la prescription de deux ans établie par l'article 2261 du Code Civil, et la renvoie avec dépens."

RAMSAY, J. (*diss.*) I do not think the prescription of Art. 2261 C. C. applies to a case like the present. There is no question of a *quasi-délit* here. The obligation turns on a *quasi-contrat* rather. There was an error as to rights under a contract, and without any idea of wrong-doing, the contractor made use of the fencing which he had properly removed. There is some difficulty as to the classification adopted by the C. C. 983, notwithstanding its symmetrical form (Ortolan III, Nos. 1198 and 1621). Since, then, Art. 2261, C. C. compels one to attribute the obligation to its origin, it seems to me it takes its rise in what resembles a contract, rather than in what resembles an offence—let us translate it trespass. This helps us to settle another point in this case, namely the pretension that the contractor and not the Corporation is liable. It seems to me Donnelly only acted, and indeed he could only act for the Corporation. What he did was under a misapprehension of the rights of the Corporation, therefore it is impossible to say that the Corporation can send the plaintiff to his recourse against Donnelly. They had full notice of the claim, and they should have settled the matter with Donnelly. Again, I do not think the Corporation can ignore the acts of their agents Lesage and McConnell. They were evidently performing duties which a corporation can only perform by an agent, and their acts within the scope of these duties necessarily bind the Cor-