

lution of the City Council assessing the cost of the improvements on proprietors interested. He claimed to be reimbursed by the city the amount of these payments, alleging the nullity of the assessment roll, but without specifying particularly the grounds of nullity. *Held*, that he could not recover without getting the assessment roll set aside.

*Barnard* for plaintiff.

*R. Roy, Q. C.*, for defendant.

WINDSOR HOTEL COMPANY V. LAFRAMBOISE.

*Company—Subscription—Change of Name.*

The company plaintiff brought action for unpaid calls on stock subscribed by the defendant. Plea, that defendant never subscribed for any stock in the Windsor Hotel Company, but in another company called the "Royal Hotel Company." He admitted his signature in a book produced at the trial, in which the name "Windsor" had been substituted for "Royal," and the capital had been changed from \$600,000 to \$500,000. *Held*, that, in default of proof by the plaintiffs that the alterations were made before the defendant signed the book, the action could not be maintained.

*Abbott & Co.* for plaintiff.

*Kerr & Co.* for defendant.

Montreal, Dec. 29, 1877.

TORRANCE, J.

LABELLE V. LES CLERCS DE ST. VIATEUR (JOLIBERTS).

*Corporation—Negligence.*

*Held*, that a body incorporated for educational purposes is liable for the negligence of its members in the performance of their trust.

The plaintiff in her own name, as widow of the late Joseph Octave Boin *dit* Dufresne, and as tutrix to her two minor children, issue of her marriage with the said Boin *dit* Dufresne, claimed damages from the defendants. On the 24th June, 1872, the inhabitants of Joliette were celebrating the day of St. Jean Baptiste. A cannon of old fashioned construction, the history of which is not known, was discharged throughout the day in connection with the celebration on the grounds of the defendants. It was managed by two of their senior pupils, and after a twelfth or thirteenth discharge it burst, about six in the afternoon. A fragment of the cannon

flew into the air and descended three or four apartments off on the land of the deceased, and struck him in the abdomen. He fell to the ground, was insensible, then recovered his consciousness for a few moments and expired. The action of damages was based upon the charge of negligence on the part of the defendants in allowing the cannon to be fired with this unhappy result. The defendants pleaded that they were incorporated for purposes of education, and could not be liable for the acts of imprudence or neglect of their members. They further pleaded that there was no negligence on their part; that the celebration was in the hands of the community; and that the death was by a *force majeure* for which they were not responsible.

TORRANCE, J. The first pretension of the defendants, that they could not be liable for the negligence of their members, being incorporated for the purposes of education, is easily disposed of. If, in the performance of their trust, as educators of the young, they or their members are guilty of negligence, they must answer for it. The facts show that the cannon was in their possession, discharged on their grounds by two of their oldest pupils, being a guarantee that the firing would be conducted with prudence. The director was from time to time looking on. I am quite ready, from the simple bursting of the cannon, to infer negligence, but it is, in addition, said that the cannon was loaded with turf for wadding, and the ramrod was a piece of iron which was used with some force or violence to drive home the charge of powder. The defendants have raised a question of contributory negligence in this, that deceased was participator in the celebration, and particularly in the discharging of the cannon. It is proved that in former years he had fired the cannon, and taken an active part in the celebration, and in the year of his death, when preparations were made for the fete, he was asked, among others, to contribute money towards the expenses, and among these expenses was the purchase of powder, used in loading the cannon. It is not proved that he was in any way connected with the discharge of the cannon on the 24th of June, 1872. He met with his death, not through any *force majeure* or inevitable accident, but, I am bound to believe and to say, through the negligent use of the ordnance in the hands of inexperienced boys. Finding negligence proved