per se could not constitute an unlawful assembly. The law has long been settled as to what constitutes an unlawful assembly. Hawkins, in his Pleas of the Crown, bk. 1, ch. 28, secs. 9 and 10, thus defines it: "Any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the King's subjects, seems properly to be called an unlawful assembly, as where great numbers complaining of a common grievance, meet together armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for none can foresee what may be the event of such an assembly. Also, an assembly of a man's friends for the defence of his person against those who threaten to beat him if he go to such a market, etc., is unlawful, for he who is in fear of such insults must provide for his safety by demanding the surety of the peace against the persons by whom he is threatened, and not make use of such violent methods, which cannot but be attended with the danger of raising tumults and disorders, to the disturbance of the public peace." Dalton, in his book of Justices, in dealing with unlawful assemblies, says that, four circumstances are to be considered: first the number of people assembled; secondly, the intent and purpose of the meeting; thirdly, the lawfulness and unlawfulness of the act; fourthly, the manner and circumstance of doing it. In treating of the lawfulness or unlawfulness of the act, he says that that doth not always excuse or accuse the parties in a riot, for the manner of doing a lawful thing may make it unlawful, also the manner of doing an unlawful act by an assembly of people may be such as that it shall not be punished as a riot. For instance, he says, if in doing a lawful act the persons assembled shall use any threatening words, or shall use any other behaviour in apparent disturbance of the peace, then it seemeth to be a riot; also, if a man be threatened that if he come to such a place he shall be beaten, in this case if he shall assemble any company to go thither with him (though it be to safeguard his person) it seemeth to be unlawful. The view of the law adopted by these two learned writers has always been acquiesced in; Mr. Baron Alderson expressly adopted it in the trial of the Chartists in 1839: *Reg.* v. *Vincent*, 9 C. & P. 91. In summing up in that case he further says: "I take it to be the law of the land that any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighborhood is an unlawful assembly." The same words are used by Mr. Justice Holroyd in *Redford* v. *Birley*, 3 Stark. 106. The view taken by Justices Field and Cave of the law, was that the actual assembly complained of must, in itself, without regard to the action of others, be of such a character as to inspire terror either by its object, acts, or expressions, and that therefore a procession of Salvationists, of itself innocent, and having primarily a peaceful purpose, could not become an unlawful assembly merely because it was, to their knowledge, certain to be resisted by force. If this is a true view of the law, it seems rather difficult to reconcile it with the illustrations given by Dalton and Hawkins of the man who, knowing that he would be beaten if he went to a certain market, assembled some followers, if necessary, to protect him. Might it not be said that his primary object was going to market, but that his determination to carry out that object at all risks in company with friends made his an unlawful assembly? So, too, with the Salvation Army, who, in spite of all opposition, are determined to continue their march in procession. It may well be, their primary object in starting was to return through certain streets to their hall; but, in consequence of their determination to do so at all hazards, it may well be said, in the words of Hawkins, no one can foresee what may be the event of such an assembly.—London *Law Times*.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, February 15, 1881.

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

BOISCLAIR, (deft. below), Appellant, & LALANCETTE (plff. below,) Respondent.

Suit on a Suit—Right of Action.

An action of damages will not lie against a party to a previous suit by his adversary, for an alleged false affidavit by which such party obtained a final judgment in his favor in the previous suit. The first judgment is res judicata.