who tried the case had been either influenced by improper motives or led into error, the amount so awarded by him ought not to have been reduced." (Taschereau, J., dissenting.) It is difficult to suppose that this ruling is a mistake of the reporter. It is too like a bit of English law rudely fitted on to the law of this country by an inexpert mechanic. It is a very fragmentary and imperfect exposition of the English rules as to according a new trial before a jury, and it is not our law at all. No one ever heard of the motives of a judge being a consideration in appeal. Where the appeal is from a Court it is a rehearing, and the appeal Court is not dispensed from looking at the evidence and judging of it independently on its merits. An appeal Court failing to do so would be neglecting its duty. The rule invariably insisted on by the Court of Queen's Bench is that it would look at the evidence; but that it would not disturb the judgment unless it thought the decision absolutely wrong. This is the disposition of our positive law, which in its turn is in accordance with general principle. Sir James Stephen, in an article in "The Nineteenth Century" Review of January last, has thus exposed the difficulty which seems to have embarrassed others besides the majority of the Supreme Court: "First, then, I say, that the full introduction of what is called the one judge system is inconsistent with the maintenance of trial by jury in civil cases. It is surprising to me that this obvious fact should require to be stated, and should apparently have been generally overlooked. It is, however, self-evident. The essence of the one judge system is, that the case is first tried by a single judge, who decides both the fact and the law, and then retried by three judges, who also decide both on the fact and the law. The appeal, in fact, is a rehearing.

"On the other hand, the essence of trial by jury is, that the jury find the facts under the direction of the judge, who tries the case, and that the judges, to whom the appeal lies, do not enter upon the question of fact for the purpose of deciding it, but only for the purpose of considering the correctness of the direction given to the jury by the judge who tries the case, in order to decide whether the matter of fact shall be remitted to another jury."

It would seem, then, that the majority of the Supreme Court has confused two systems essentially different.

In the case of *Levi & Reed* the Supreme Court appears to have been guided by the same erroneous analogy with the jury trial system.

A complete report of the cases may of course show that the majority of the Supreme Court did not fall into this error, but that they thought that a reasonable *solatium* for a labouring man having the end of his finger crushed in a squabble where he was nearly as much to blame as his adversary, was $3,000, (more than the principal of the greatest wages he could possibly make, capitalized at six per cent.) The Dominion Government provides the necessary means for supplying full reports; it seems strange that the public does not obtain the full benefit of the expenditure. On a better method let us hope that the government of Quebec will see the necessity of supplying means for complete reports of its local courts, as a necessary part of the administration of justice, for which the local authority has undertaken to provide. R.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Nov. 30, 1880.

SICOTTE, TORRANCE, JETTÉ, JJ.

[From S. C., Montreal.

Re DAVID, insolvent, BEAUSOLEIL, assignee, & THE TRUST & LOAN CO., petr.

Sale by assignee—Commission payable on the whole price, including the amount of the hypothecs assumed by the purchaser.

The assignee of the insolvent estate of David sold fourteen pieces of immovable property, subject to the hypothecs which existed thereon in favor of the Trust & Loan Company.

The Trust & Loan Company became the purchasers, for the sum of $5 in addition to the amount of the hypothecs; and the Company now asked that the assignee be ordered to execute a deed of sale to them.

The question was whether the assignee was entitled to his commission on the sum actually received, or on the whole amount of the price, including the hypothecs.

The Court below (Mackay, J.) held that the assignee is entitled to his commission on the whole *prix de vente*.