

posed, even if I felt that I was permitted by law to do so, to extend, by way of interpretation and by doubtful inferences, the jurisdiction of the judges of the Sessions of the Peace, so as to deprive any accused from the invaluable privilege of being tried by his peers, especially when I find that in England, where these laws are administered by men well versed in the practice and with the principles of the criminal law, an advantage which we do not always possess here, the penalty for similar offences under the Act already cited, is three months' imprisonment, and the extreme punishment which a stipendiary magistrate can in any case inflict is a penalty not exceeding £100 or imprisonment for a period not exceeding six months. (17 & 18 Vic., c. 104, s.s. 237, 518 & 519.)

If the legislature wishes to abolish the trial by jury in any particular case and to leave the citizens to be tried by an exceptional tribunal, especially when their liberty for such a period as five years may be in jeopardy, it must say so in clear and unmistakable terms;—and I shall not deem it my duty to assist in such a work by any decision which is not clearly justified by the very letter of the law. I find no such justification in this case, and I would therefore have allowed the writ of prohibition on both grounds: 1st, that the Judge of Sessions had no jurisdiction under the Act, even if the offence had been properly stated; and 2nd, because, as I read the complaint, there is no offence charged. However, as my learned colleague on my left (Mr. Justice Ramsay) and myself are alone of that opinion, the judgment of the Court below will be confirmed.

NOTES OF CASES.

CIRCUIT COURT.

MONTREAL, JANUARY 31, 1882.

Before JETTÉ, J.

WATSO V. THE MONTREAL TELEGRAPH CO.

Telegraph Company—Error in transmission of message—Action by receiver of telegram.

A telegraph company is responsible to the receiver of a telegram for damages caused to him by an error which occurs by the negligence of an employee in the transmission of an unrepeatable message; even where the sender of the telegram

writes it on a blank form on which is printed a condition that the company will not be responsible for mistakes in the transmission of unrepeatable messages.

The plaintiff, Samuel Watso, of Pierreville, claimed \$10 damages from the defendants under the following circumstances: On the 3rd August, 1881, he received from Montreal through the defendants the following telegram:—"Send us per express to Port Huron, Michigan, ten dozen hats at \$5. Answer. (Signed) Dominion News Co."

The plaintiff immediately sent the hats as directed, but when he wished to collect the account therefor, the Dominion News Company stated that they had offered only \$4 per dozen, and it appeared that this was the case, and that it was through an error of the agent of the Telegraph Company at Pierreville that the \$4 had been changed to \$5. The plaintiff, therefore, was obliged to accept \$40 from the News Company instead of \$50, and he claimed the difference, \$10.

The defendants pleaded that they had never entered into any contract with the plaintiff, who was the receiver of the message, and that they were not liable towards him for any damages.

By another plea the defendants alleged that the message, being unrepeatable, was sent subject to the condition printed on the form used, viz., "it is agreed between the sender of the following message and this Company, that the said Company shall not be liable for mistakes or delays in the transmission or delivery of any unrepeatable message."

The defendants denied that there had been negligence on their part, and claimed that they were not responsible.

The plaintiff cited the following authorities:—Bell v. Dominion Telegraph Co., 3 L. N. 405; Redfield on Railways, No. 131; Civil Code L. C., Arts. 1053 & 1054.

JETTÉ, J., maintained the action, on the ground that there had been fault and negligence on the part of an employee of the Company, and under the articles of the Code which had been cited, the defendants were responsible for the damage caused thereby to the plaintiff.

Judgment for Plaintiff.

J. G. D'Amour for the plaintiff.

H. Abbott for the defendants.