The Legal News.

Vol. IV. APRIL 30, 1881. No. 18.

SUPREME COURT DECISIONS.

Mr. Duval is over-sensitive. No one ever said that *some* critic would be "on the heels of the reporter of the Supreme Court." Mr. Duval has misquoted our words and misunderstood the remark to which he refers—which is really of little or no importance. Nor was the correctness of his notes called in question; but we said they were an unsatisfactory substitute for the full reports of the decisions of the Supreme Court, for the preparation and publication of which a considerable sum of public money is annually expended. We now learn from Mr. Duval that the reason why two cases, in which the judgments of the Court of Queen's Bench were reversed, have not been reported is, that the judges have not authorized the reports. One of these cases was not unimportant, for what purported to be the opinion in MS. of one of the judges was flaunted in the face of the Court of Queen's Bench in a subsequent case, without, however, producing any marked effect. It might have been otherwise had the judicial argument been fortified by the approbation of the Court.

Mr. Duval's letter has some further significance as being the semi-official defence of the Supreme Court judgments in the cases of *Shaw* v. *Mackenzie*, *Reg.* v. *Abrahams*, *Levi* v. *Reed*, and *Gingras* v. *Desilets*.

We are told that the two last cases were decided on the authority of the decision of the Privy Council in the case of *Lambkin* v. *The Eastern Counties Railway*. This is confirmatory of what we said in the previous article. *Lambkin's* case was decided by a jury, *Levi* v. *Reed*, and *Gingras* v. *Desilets* by a judge. In applying the principles of *Lambkin's* case to the two others, the judges of the Supreme Court appear to have jumbled up two systems essentially different. To some people it may appear a hypercritical difference, but we think the bar would find it convenient to know precisely whether the Supreme Court has laid it down as a rule that the Court of Appeal can only touch the decision of the court below on matter of fact, for reasons similar to those on which the verdict of a jury can be set aside. It is the more important this decision should be made as public as possible, for it is at variance with the general principles of jurisprudence, and with the positive law of this province.

It is unnecessary in the *Abrahams* case to go over the ground already fully discussed, as to whether the Attorney-General can delegate his powers to direct that a bill, in certain cases, should be laid before the Grand Jury. Chief Justice Ritchie's *dictum*, that a statutory power must be strictly pursued, adds nothing to the controversy, and the introduction of the word "special" before statutory does not complicate the question. The question is, what is pursuing the terms of the statute, and the decision turns entirely on whether the power conferred is judicial or not But when the Chief Justice tells us in so many words, that "it is admitted that the Attorney-General gave no directions with reference to this indictment," we must say that the Chief Justice has had peculiar facilities accorded to him which others had not, and the record says exactly the reverse. The direction was as follows:—"I direct that this indictment be laid before the Grand Jury." L. O. Loranger, Attorney-General; By J. A. Mousseau, Q. C.; C. P. Davidson, Q. C., 24 L. C. J., p. 327. Next, the question reserved is in these words: "Whether the Attorney-General could delegate his authority to direct that the indictment be laid before the Grand Jury, *and whether the direction, as given on the indictment was sufficient to authorize the Grand Jury to enquire into the charges and report a true bill.*" 4 Legal News, p. 42, and 24 L. C. J., p. 327.

The fourth and last case to which we referred was that of *Shaw* v. *Mackenzie*. Our previous observations have drawn forth an excerpt from the opinion of Mr. Justice Taschereau, "who delivered the judgment of the Supreme Court." This is textual and consequently valuable, as it may be considered the pith of the reasons of the Court. From this we learn that this august tribunal is of opinion that because an affidavit to hold to bail is insufficient, and because the plaintiff was under a wrong impression as to what was a sufficient cause of arrest, therefore the plaintiff is liable