

Papineau agrees with Justices Monk and Tessier, that such an agreement is not illegal, and, if proved in this case, would have been sanctioned by him.

Now let us see what the majority of the Court have decided. The judgment is this: that an attorney cannot stipulate for a share of what may be recovered by the suit. The Chief Justice remarked that this was not the case of an attorney stipulating for a fee, but stipulating for a share in the proceeds of the suit, and that such a bargain was utterly illegal. Where the client is possessed of means, the distinction is obvious, because the attorney's remuneration is not dependent on his success. But where the client is confessedly a pauper, the distinction, it must be admitted, is not so palpable. Suppose Mr. Dorion had said to his client, "you must agree to pay me \$400 for my services, or I will have nothing to do with the case." He would have been perfectly aware that the payment of this sum, in the case of a septuagenarian pauper, would depend on the success of the suit. We do not suppose, however, that the majority of the Court intended to go further than to stamp with illegality all bargains by which attorneys are to have a share in the proceeds of suits. That, it will be admitted, is not going very far. Were it otherwise, attorneys might be the real plaintiffs in half the suits before the Courts, just as much as if their names appeared on the record, and the privileges of the profession would be at an end. One of the consequences, it may be remarked, which must follow from such a state of things would be the disqualification of Judges in all cases in which relatives within the degree of cousin-german were engaged as attorneys.

## NOTES OF CASES.

### COURT OF QUEEN'S BENCH.

MONTREAL, June 14, 1879.

HAMILTON (plaintiff below), appellant; and WALL (defendant below), respondent.

*Servitude—Title establishing.*

MONK, J. (*diss.*) It appeared that Hamilton, the plaintiff in the case, in 1875, sold a property in St. Antoine Suburbs to one Perrault. The deed passed was an ordinary deed of sale, but it

contained a clause in the following terms:—  
"Il est encore entendu, que toute bâtisse qu'érigera le dit acquéreur sur le dit terrain sera en ligne avec celle du dit vendeur." The respondent, Wall, having purchased the property from Perrault, commenced to build a dwelling 12 feet 6 inches in front of the line of Hamilton's building. The latter remonstrated, and the present action was instituted. His Honor thought a clause, to create a servitude, must be very clear and definite, and that the words in the deed cited above had not that effect. He therefore considered that the action was properly dismissed by the judgment of the Court below.

TESSIER, J. The Court was called upon to say whether this clause in the deed of sale was to have any effect or not. According to the pretension of the respondent, the clause had no effect at all. His Honor believed there could be no doubt as to the intention of the parties, and that a servitude was created on the land.

DORION, C. J., referred to a case decided by the *Cour de Cassation* in France, A.D. 1825, in which a servitude was held to exist under analogous circumstances.

RAMSAY, J., thought it desirable that a servitude should be set forth more particularly than this. The words of the deed were very meagre. But there are no sacramental words for the establishment of a servitude, and it was for the Court to decide what the parties intended. The words in the deed must have a meaning, and the intention evidently was that no buildings were to project beyond the line of the vendor's building. The proprietor, in selling the land, wished the line to be kept as it was.

CROSS, J., concurred with some hesitation in the judgment of this Court, and, for his own part, would like to see the law established differently from what it was. He would like to see the servitude established on the land, and not by a personal convention. The law, however, was clear, and warranted the judgment about to be rendered.

Judgment reversed.

*Judah, Wurtele & Branchaud* for appellant.

*Bethune & Bethune* for respondent.