

and that he was not bound to submit to any reduction, and that the appellant was bound to pay the amount with all costs. This judgment has been appealed from, and it is for this Court to say whether the Court below was right. The complaint of the appellant as to the \$84 is this: "By your omission in not providing for a tin roof, I was compelled to pay \$84 more than I would have had to pay." This does not follow. In the contract a gravel roof was provided for; if it had been a tin roof, the amount would have been \$84 more; therefore the error made no difference to the appellant. The only ground on which he could complain was this: that his house was not to cost more than \$9,000, and that if he had known it was to cost \$84 more, he would not have built. That would be a good ground; but what are the facts? The house only cost \$8,666, and even adding the \$84, it would not come up to \$9,000. So that this ground cannot be urged. Then, as to the acceptance: the appellant said he had made a tender, and the respondent accepted it, and that was a contract. The answer to this is that the acceptance was not acted on. A delay of a day or two would, perhaps, not have been unreasonable; but after 19 days the letter was not answered, and the respondent wrote saying, "I withdraw my offer." Under the circumstances this Court cannot say that the Court below was wrong. The respondent was not bound to deduct this sum, and by no act of his is he bound to lose it now. In a case before the Privy Council, it was held that five days was a reasonable delay for a letter to be acted on.

TESSIER, J., who, in consequence of serious illness, was unable to be present at this sitting of the Court, transmitted his dissent, being of opinion that the judgment should be reversed with costs.

Judgment confirmed.

J. L. Morris for appellant.

W. W. Robertson for respondent.

#### COURT OF QUEEN'S BENCH.

MONTREAL, June 22, 1880.

Sir A. A. DORION, C. J., MONK, J., RAMSAY, J.,  
CROSS, J.

REGINA v. LEONARD.

*Perjury—Deposition of witness sworn in open Court—Absence of consent in writing that evidence be taken by a stenographer.*

This was a case reserved by RAMSAY, J., pre-

siding in the Court of Queen's Bench, Crown side. The question reserved will be apparent on reference to page 138 of this volume, where the report of proceedings appears.

RAMSAY, J. The defendant, Stanislaus Leonard, was indicted for perjury, alleged to have been committed by him as a witness in a suit in the Superior Court, wherein one Emelie Lamoureux was plaintiff and Didier Leonard was defendant. The defendant was duly sworn in open Court, the evidence was taken by a stenographer, who was also duly sworn, as appears by the *plumitif*, but there was no demand in writing requiring the Court to take the evidence by stenography, and no deposit of the stenographer's fees as required by law. On the part of the defence, objection was made to the production of the notes of evidence, taken and signed by the stenographer, as they were not taken in conformity to law. As the irregularity did not affect the oath, which was duly administered by competent authority (differing in this respect from the case of the Queen against Martin), and as the irregularity was as to a rule established solely for the purpose of collecting a fee, and not affecting the authenticity of the record, I ruled against the objection and admitted the notes as evidence. The defendant was convicted, and I reserved the case for the consideration of this Court, as to whether these notes were rightly admitted as evidence. This objection was only as to the regularity of the oath, but as it was suggested that the question of admitting the notes of evidence at all, independently of the question of the administration of the oath to the stenographer, is necessarily raised by the statement of the facts of the case, it was further stated by the Judge, as an amendment to the case, that the stenographer was examined as a witness with his notes, and fully established from his recollection of the case that the accused swore to the effect set forth in the notes. The questions reserved were 1st. Whether the stenographer was properly sworn; 2nd. Whether the notes of evidence can be used in the manner described; 3rd. Whether the stenographer can be examined as to what the accused said.

At the argument the learned counsel for the prisoner admitted that the stenographer was properly sworn, and that the taking of the oath was proved sufficiently; but he con-