

the money was stolen, and allowed the amount to be charged in his books to profit and loss. And now he merely takes the ground that the clerk is responsible for negligence, and tries to set off the loss against a claim for wages. In *Gravel & Martin* the clerk was unable to show that the money had been stolen from him, and the employer held him accountable immediately.

Judgment confirmed.*

F. W. Terrill for appellant.

M. Hutchinson for respondent.

CITY OF MONTREAL (deft. below), appellant; and
DUGDALE (plff. below), respondent.

DUGDALE (plff. below), appellant; and CITY OF
MONTREAL (deft. below), respondent.

*Officer of Corporation performing additional duty—
Claim to extra compensation—Dismissal of an
employee—37 Vict. (Que.) cap. 64—Intellectual
services—Tacite Reconduction.*

These appeals arose from an action brought by Dr. Dugdale against the City of Montreal. This gentleman was employed as health officer, at a salary, and during his engagement a civic small-pox hospital was established, which Dr. Dugdale attended during fourteen months. It appeared that there was no agreement as to remuneration for this service, and Dr. Dugdale, having rejected an offer of \$400, sued the city for \$2,100, being at the rate of \$150 per month, and got judgment. He also claimed \$266.67 for four months' salary as health officer, at a salary of \$800, on the ground that he had been illegally dismissed during the year. This portion of his demand was rejected, and the result was that each party appealed from the judgment.

The *considerants* of the judgment of the Superior Court (Montreal, June 14, 1878, Torrance, J.) were as follows:—

"Considering that plaintiff is entitled to recover from defendants the sum of \$2,100, being the value of his services as physician of the civic small-pox hospital for the period beginning the 10th November, 1874, and ending the 10th January, 1876, estimated at said \$2,100, namely, the first item of plaintiff's account, exhibit No. 1, doth condemn the said defendant

to pay to said plaintiff the said sum of \$2,100, with interest from the 7th of September, 1877, day of service of process, until paid, and costs of suit *distracts*, &c.

"And the Court doth dismiss plaintiff's action, *quant au surplus*, as not proved according to the allegations of the declaration."

RAMSAY, J. Dr. Dugdale sued the Corporation of the city of Montreal for professional services rendered by him as health officer, and as physician attending the small-pox hospital established by the city. In the year 1868 Dr. Dugdale and Dr. Larocque were appointed health officers for the city. The employment was gratuitous, but at the end of the year the Corporation voted these gentlemen each a small fee, and engaged them for the year 1870 at the rate of \$500. This was continued yearly till 1873, when the salary was raised to \$800. In March, 1877, the Corporation resolved to employ only one health officer, and Dr. Dugdale's services were dispensed with from and after 1st May, 1877.

In 1874 the Board of Health determined to establish a small-pox hospital, which went into operation in November, 1874. Dr. Dugdale and Dr. Larocque attended there together till the 1st January, 1876, when Dr. Dugdale resigned his functions there. He now claims a salary of \$2,100 for his services there.

A third item is for visits at the small-pox hospital during January and February, 1876, \$90.

The judgment of the Court below allowed him \$2,100 for his services at the small-pox hospital from November, 1874, to 1st January, 1876, and dismissed his action for the balance of his year's salary as health officer in 1877; also for the fees for visits in 1876 to the small-pox hospital.

From this judgment the Corporation appealed, and so did Dr. Dugdale.

The general principle involved in a claim for extra remuneration seems to me to be very clear. If a person employed in a particular capacity by another is charged to perform some duty not theretofore performed by him, he may decline to do it, and then the question will arise nakedly whether the new employment is of a similar kind to that which he was employed to perform. If it is, he is bound to perform the

*TESSIER, J., who was not present at the delivery of the judgment, concurred.