

## The Legal News.

VOL. II.

JUNE 28, 1879.

No. 26.

### DELAYS FOR SERVICE.

In the last two issues of this work, there have been notes of two judgments laying down opposite rules as to delays running upon holidays. In *Boulerisse v. Hebert*, ante, p. 196, Judge Belanger held that an ejectment suit may be served upon Saturday returnable Monday; while in *Darby v. Bombardier*, p. 202, Judge Dunkin held precisely the reverse. This question was settled by the Court of Appeal (June '77) in the case of *Preston v. Paxton*. Judge Papineau having held that a notice of motion given on Saturday for Tuesday was insufficient, Monday being a legal holiday, the defendant moved for leave to appeal from this judgment. The Court of Appeal intimated that the interlocutory judgment was wrong, and allowed the appeal, but the plaintiff having thereupon desisted from the judgment, there remained only the question of costs. Judge Belanger's judgment was, therefore, correct, and we may add that a decision was given last week in the same sense by Mr. Justice Mackay.

### ATTORNEY AND CLIENT.

In the case of *Dorion & Brown*, a note of which appears in this issue, the Court of Appeal has pronounced an opinion of great importance to the bar. It is to be regretted, probably, that there was not greater unanimity on the part of the Bench. As the matter stands, a general principle has been enunciated in which two of the honorable members of the Court were unable to concur, and though the judgment of the Court below has been affirmed, it is upon a different ground from that assigned by the Judge who tried the case. Under these circumstances, there will probably be a disposition on the part of other Judges not to stretch the rule laid down by the appellate tribunal beyond the strict limits to which it may fairly be confined.

The facts may be taken from the appellant's own statement, which was substantially accepted by the majority of the Court as conclusive against him. The appellant Brown,

an old man nearly 70 years of age, had an action, *in forma pauperis*, pending in 1874 against his son for an alimentary allowance. The suit apparently was not regarded as very promising, and it was being allowed to sleep. Then Brown applied to Mr. Dorion, who did not feel sanguine of success, but finally agreed to take up the case, provided the plaintiff would consent to make over to him all the arrears of alimentary pension which might be due up to the date of the judgment. The promise was given, the case was then prosecuted successfully, and judgment was rendered in favor of the plaintiff for \$200 per annum, the arrears of which amounted to \$566. Mr. Dorion obtained a notarial transfer of these arrears, of which, however, he handed his client \$100, leaving his gains by the case, in addition to taxed costs, at the figure of \$466,—less some small sums said to have handed to his client by way of charity during the progress of the suit. Mr. Brown afterwards became dissatisfied that his lawyer should have retained so large a sum, and finally brought an action for the recovery of \$466, balance of the arrears. The Court below, apparently, 'was very far from taking the view of the relation between attorney and client which has been enunciated by the Court of Appeal. Mr. Justice Papineau, who sat in the case, maintained Mr. Brown's claim for the \$466, but his Honor did so upon the ground that this old man had been taken by surprise, and had not understood perfectly the purport of the document which was presented for his signature. This is clear from the following extract from the judgment:

"Considérant qu'il n'est pas prouvé que le défendeur eut fait connaître au demandeur, avant de lui faire signer le dit transport, que les dits arrérages étaient de \$566,78;

"Considérant qu'il n'est pas prouvé que le demandeur, étant alors dans l'indigence à la connaissance personnelle du défendeur, ait jamais consenti à donner à ce dernier tout le montant des arrérages lui appartenant en vertu du dit jugement, pour l'indemniser du trouble et des risques susdits encourus par lui durant le dit procès;

"Considérant qu'en l'absence de preuve d'un don ou d'une promesse expresse par écrit à cet effet, un si pauvre homme n'est pas présumé avoir consenti librement à donner une si forte somme à son avocat en sus des frais ordinaires réglés par le tarif pour avoir gagné son procès;" &c.

The last clause of this extract from the judgment seems to indicate that Mr. Justice