

evidently a trick of defendant to cheat plaintiff's attorney and get better terms for himself.

The deed of settlement was merely filed by defendant; there was no evidence by defendant or anybody else to explain the circumstances under which it was effected, as plaintiff's attorney thought that the defendant's motives to obtain the settlement were sufficiently apparent from the nature and circumstances of the case itself and the financial position of the parties.

The COURT, by its judgment, declared the case settled, but with costs of suit against the defendant, *distriction* to plaintiff's attorney.

*Racicot* for plaintiff.

*O'Halloran* for defendant.

(E. R.)

#### SUPERIOR COURT.

MONTRÉAL, October 6, 1880.

FORTIN V. SAY.

*Evidence—Interrogatories upon articulated facts—Holding interrogatories unanswered as admitted.*

*An action of damages may be supported, without other proof, by the failure of the defendant, an absentee, to answer interrogatories duly served, and which, under C.C.P. 225, are held to be admitted.*

The plaintiff claimed the sum of \$5,000 from the defendant as damages for verbal slander. The case had grown out of a sale of a dog by the plaintiff to Say. The defendant complained that he had been cheated in this transaction: the dog not turning out to be as valuable as the plaintiff had represented, and being subject to fits. Expressions used by Mr. Say after this, in conversation in a hotel, were the ground for the present action.

MACKAY, J. During the pendency of the case the defendant left the Province, and the plaintiff has endeavored to prove his case by serving interrogatories *sur faits et articles* on defendant, and having them taken *pro confessis*. The service was made upon the attorneys of the defendant, and they said they did not know where the defendant was, and they have made no motion before me to retard the cause. There is no proof but that resulting from the *faits et articles* to the absentee, which, of course, are unanswered. I do not think it is a good rule to allow a case to be proved by having

interrogatories which are unanswered taken *pro confessis*, without other proof. It was well known that the defendant was an absentee, and the interrogatory was put, "Is it not true that the plaintiff was damaged to the amount of \$5,000?" The Code, however, sanctions such a proceeding, and says that the facts may be held to be admitted, and the Court must give judgment in favor of the plaintiff. But the amount of damages awarded will be restricted to \$11.

The judgment is as follows:—

"Considering that there is no proof in this cause but that resulting from the *faits et articles* administered to defendant, who is absent, by service of the rule and interrogatories on his attorneys of record;

"Considering that under our Code of Procedure such service of *faits et articles* and interrogatories, with defendant's default and his attorneys' failure to indicate defendant's place of abode, may authorize the Court to hold the interrogatories as confessed, *avérés*;

"Taking them for confessed, but only because the law orders, the Court finds that plaintiff's case is sufficiently made out to entitle plaintiff to some money damages from defendant for the causes mentioned in plaintiff's declaration; judgment therefore for plaintiff for \$11, with costs as in an action for \$100 in this Superior Court;—the Court considering the plaintiff's case, supported only as it is, not to be entitled to so much favor as if it had been made out otherwise; as usually such cases are."

*Loranger, Loranger, Pelletier & Beaudin* for plaintiff.

*Keller & McCorkill* for defendant.

Ex parte PELLETIER, petr. for certiorari, HURTEAU et al., Justices, & ROCHELEAU, prosecutor.

Master and servant—Desertion from service—Conviction.

*The conviction of a servant for deserting from service should find desertion after a hiring by written contract or verbally before a witness.*

This was a certiorari, to test the validity of the conviction of Elmire Pelletier for deserting the service of Mr. Rocheleau, her employer. It appears that the girl was a minor, only 15 years of age, and her father, being unwilling that she should be in the service of Rocheleau,