

among others, but we fail to see any violation of law by opposant. The License Act said that the license should be given to a man having certain requisites. This had been complied with.

There was another point. There were a few dollars seized in the till, and a portion of them belonged to a cigar dealer and not to Mr. Stephens. But we are not informed how much. This portion plaintiff thinks should remain seized. We have no evidence enabling us to distinguish these moneys. Stephens is responsible for them and should hold them.

Judgment confirmed.

*Trenholme & Co.* for opposant.

*Béique & Co.* for plaintiff contesting.

#### COURT OF REVIEW.

MONTREAL, February 28, 1882.

MACKAY, RAINVILLE, BUCHANAN, JJ.

McLEOD v. MARCIL *alias* MARSHILLE.

*Revision on a question of costs.*

*The Court of Review will reform a judgment of the Court below which condemns the defendant to pay plaintiff's costs of enquête on a demand of plaintiff for damages which was overruled by the Court.*

The inscription was by the defendant, on a judgment of the Superior Court, District of Richelieu, Gill, J., Nov. 11, 1881.

MACKAY, J. The plaintiff sued for \$305.25, and obtained judgment for \$107.63. In the \$305 were included \$197 for alleged damages caused by defendant to plaintiff.

The defendant admits that the plaintiff did the works for \$472.78 as alleged. There is no dispute as to that, nor as to what money payments the defendant made, to wit \$365.15, leaving a balance due to plaintiff upon them, "balance sur les travaux" the defendant styles it; but the \$197 damages have been disputed by a plea of general denial, and the defendant further sets up against plaintiff's demand, even for the work that he is admitted to have done, a claim for damages of \$147.50; in other words for \$39.87 beyond what plaintiff could possibly be found entitled to, even had he never asked any sum for damages.

The Court below has given plaintiff judgment for only the \$107.63, disregarding his claim for damages, disregarding also the de-

endant's set off and claim for damages, putting the parties, as regards their several claims for damages, out of court; but it has condemned the defendant to costs, generally or largely; as, in ordinary cases, it is usually expressed, with costs against the defendant.

The defendant appeals to us: 1st, to be freed from the total of the plaintiff's demand, and 2ndly, subsidiarily to be freed at any rate from the costs of the *enquête* upon plaintiff's demand for damages; upon which part of plaintiff's case he has not succeeded. These costs are the costs upon nine depositions. The defendant says that he, who has not lost, has been condemned to pay these costs to the opposite party, who has *not* maintained his action in so far as claiming damages from the defendant.

We do not, generally, entertain appeals upon mere question of costs, yet now and then we have to, as in *Hall v. Brigham*,\* and so has the Queen's Bench acted. In the present case we think that we may interfere; for the defendant is not, in one aspect, a losing party, and it is easy to distinguish what costs are appropriate to the condemnation of the defendant for the \$107.63 balance due to plaintiff *sur ses travaux*, and what costs plaintiff has been at urging his demand for damages, and resisting the defendant's. So we say that the defendant shall not be charged plaintiff's costs of depositions.

The judgment in revision finds the judgment *a quo* not erroneous in substantial, but only in so far as condemning the defendant to pay the total of plaintiff's costs, so that judgment is modified, and the defendant is freed from the costs of depositions of plaintiff's witnesses in the Court below; each party in revision to bear his own costs.

*R. J. Cooke* for plaintiff.

*J. B. Brousseau* for defendant.

#### GENERAL NOTES.

A correspondent writes of the new Law Courts in London: "I had a look over them yesterday, and found it easy to get inside the labyrinth of stairways and corridors with which the place abounds. But the getting out! I seemed to wander miles and miles. I went upstairs and downstairs with the perseverance of the knight in the nursery tale, who sought the lady's chamber. Past doors upon doors, and archways by the million (or thereabouts), did I tramp. Everybody seemed as lost as I was. Bewildered barristers were asking each other, and everybody else, their way to this or that set of chambers."