

## The Legal News.

VOL. III. JULY 24, 1880. No. 30.

### CAPIAS.

An interesting question relating to amendments in actions of *capias* was presented in the case of *Slater v. Belisle*. The plaintiff obtained leave to amend an error in the writ in which the defendant was described by a wrong Christian name; but the affidavit on which the *capias* issued, and in which the same error occurred, remained in the record without rectification. The majority in Review have overruled the decision of the Judge of first instance, and have held this defect in the affidavit to be fatal. There were two other points in the case. The plaintiff had obtained the immediate return of the writ of *capias*, in order to effect the amendment in question. The Court holds that under 820 C. P., the defendant alone has the right to apply for the immediate return of the writ. Lastly, the amended writ was served on the defendant only a few days before the return day. It is held by the Court that the usual delay of ten days, required for service of the original summons, ought to have been allowed between service and return of the amended process.

### ACTIONS OF DAMAGES.

It is obvious to any one who sees much of the proceedings in our Courts, that actions of damages of one sort or another constitute a considerable portion of current litigation. Apart from the more serious cases arising from accidents and the like, we find every month numerous petty suits in which damages are sought for slander, assault, illegal arrest, *capias*, attachment, etc., often on grounds purely frivolous. The difficulty of laying down definite rules for the determination of these cases may account to some extent for the frequency with which they are instituted. The case of *Chartrand v. Pudney*, in the present issue, affords an apt illustration of the uncertainty which attends such cases. Taking the facts as they are stated by Mr. Justice Mackay, it is somewhat difficult to see why *Chartrand* should have recovered any damages whatever, for it appears that he

was acting in a violent manner and had assaulted several persons; the only error in the case being that the person who charged him with assault was not one of those whom he had actually struck. The mistake made by *Pudney* in including *Chartrand* in the number of his assailants was therefore one of the most innocent character, yet the Judge in the Court below condemned him to pay \$100 damages, with costs probably amounting to \$200 more—obviously a very serious penalty indeed. The Court of Review reverses the judgment, and reduces the damages to \$25,—apparently in order to prevent the plaintiff from being punished for having brought an action at all; but although *Pudney* thus obtains the reversal of a very serious condemnation against him, and was therefore clearly justified in going to Review, he is condemned to pay his own costs in Review. This seems to be making each party suffer equally because the Judge in the Court below gave a wrong judgment; but might not the same reason be urged for dividing the costs in every case in which a judgment is reversed? It seems so impossible to do exact justice between the parties in these cases—to sustain the one in his right of action without unduly punishing the other—that it would probably be preferable to adopt the English rule referred to by Mr. Justice Johnson, and under such circumstances to deny the right of action altogether. That would at least have the merit of discouraging a species of litigation which seldom results in any advantage to either party. If any rule of conduct is to be drawn from the decision in *Chartrand v. Pudney*, it is that a person who by an inadvertence has accused the wrong man of an assault, must, if he wishes to escape litigation, not be content merely to rectify his mistake at the earliest possible moment, but must tender a sum of money as amends to the person wrongly charged.

### A PRIZE ESSAY.

A prize of 6,900 marks is offered for the best essay on "The Formulæ in the Perpetual Edict of Adrian, in their wording and connection." The competition is open to the world, and the essay, which must be written in Latin, German, English, French or Italian, must be sent in by the 28th of March, 1882, addressed to the Royal Bavarian Academy of Sciences, and bearing,