

MACKAY, TORRANCE, JETTÉ, JJ.

[From S. C. St. Francis.

CHAGNON V. GIROUX, and GIROUX, opposant.

Procedure—Opposition by third party.

MACKAY, J. The judgment of the Court below, which found that the plaintiff had not made out his case, was correct, and the *terce opposition* was properly maintained with costs. There was a point of law, as to whether the opposant had a right to come in by *terce opposition*. The judgment on this point was correct. The Code of Procedure, Art. 510, says that any person interested where the judgment, in a case in which he was not a party, affects his rights, may come in by *terce opposition*. Here the judgment declared a certain horse to be common to two persons, and as the opposant claimed to have a property therein, he had a right to come in.

Judgment confirmed.

L. C. Bélanger for opposant.

Doak & Co. for plaintiff contesting.

MACKAY, TORRANCE, JETTÉ, JJ.

[From C. C. Shefford.

BOUSQUET V. ROUSSEAU.

Purchase of land by minor—Plea of minority.

MACKAY, J. The defendant was sued for the price of a lot of land. He said he was a minor, and had no right to buy land. The Court was of opinion that a minor, even if he had not pleaded his minority, had a right to suggest the fact to the Court at any stage of the case, and get relief, as he was incapable of defending himself in a Court of Justice. Rousseau had no right to buy land even for the purpose of his business. The authorities from Merlin were conclusive. Judgment reversed, with costs against plaintiff.

Judgment :—“Considering that defendant, a minor sued alone, (though in a case like the present one), is incapable *seul* to *ester en justice pour se défendre*, and that defendant pleaded it well enough, and that in the judgment *a quo*, finding to the contrary, there is error ;

“Considering this, of itself, to be fatal, this Court, declaring plaintiff's action badly brought, and the condemnation of defendant, though only for costs, illegal, doth reverse the same,” &c.

T. Amyrault for plaintiff.

Girard & Girard for defendant.

MACKAY, TORRANCE, RAINVILLE, JJ.

[From S. C. St. Hyacinthe.

BOCAGE V. LARAMÉE dit HARNOIS.

Damages inflicted in repelling an assault—Excess of violence.

MACKAY, J. The plaintiff sued for damages suffered through the defendant having assaulted him. The sum of \$500 was claimed. The plea was that the defendant was not guilty,—that it was plaintiff who commenced the fight. The Court found that the plaintiff did commence the fight, and his finger was bitten in the struggle. The doctor was called in some time afterwards, and it was necessary to cut off a joint of the finger. Since the institution of the action, the man had lost his arm, the gangrene having extended upwards. This circumstance, however, could not be taken into consideration in the present case. The plea of self-defence could not enable the defendant to go free, where the violence used to repel an assault was greatly in excess of that committed by the other side. The authorities were clear on that point. Here the defendant used unnecessary violence, and the Court reverses the judgment of the Court below, and judgment must go against him for \$150 damages, and costs.

Judgment :—“Considering plaintiff's allegations proved sufficiently to entitle him to a judgment for \$150 against defendant, partly for actual, and partly for nominal damages ; it being found by the Court here that defendant did bite plaintiff as charged, and that in so doing defendant was guilty of an excess, for the consequences of which he must answer ;

“Considering that plaintiff has proved outlays of over \$40 in endeavoring to cure himself from the consequences of said bite, and has suffered so much personally from it up to institution of action as to be well entitled for damages in consequence, to the sum of \$150, doth, reversing said judgment, reverse and cass the same,” &c.

Mercier & Desmarais, for plaintiff.

Fontaine & Co., for defendant.

MACKAY, PAPINEAU, JETTÉ, JJ.

[From S. C. Montreal.

LA BANQUE NATIONALE V. LA SOCIÉTÉ DE CONSTRUCTION DU CANADA ; and LA BANQUE VILLE-MARIE, contesting collocation.