

We have acted in law reform as a foolish householder acts in a snowstorm, who clears the snow away before his door and leaves an alp of snow on his roof. We have amended practice, pleadings and evidence, and the trial is worse than ever. In our desire to root out errors we aim at the impossible. A certain degree of it is inevitable, and the invalid who is also against taking medicine, dies none the later, and has a nauseous life of it. What, then, must we do? What am I that I should advise all our mighty men? I merely tell them they are dancing in a net." There is a slight incoherence apparent in this effusion, but it is to be remarked that the writer had attained the ripe old age of 85.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, July 14, 1884.

[In Chambers.]

Before PAPINEAU, J.

ROSE et al. v. TANSEY, and THE CITY OF MONTREAL, *mise en cause*.

Charter of City of Montreal—Contestation of election of Alderman—Procedure—Rights of Defendant.

The defendant whose election as alderman for a ward in the City of Montreal is sought to be annulled, has a right to allege and prove that illegal votes were cast for the other candidate, and to claim a scrutiny, and to show that said candidate was guilty of acts which render him ineligible, even where the seat is not claimed for such candidate and he is not a party to the cause.

The petitioners complained of the return of the defendant, Denis Tansey, as the candidate elected by a majority of votes at an election of alderman for St. Ann's Ward in the City of Montreal, held on the 1st of March last, and they prayed that the election be set aside.

The defendant, among other pleas, alleged that he was elected by a large majority of the votes legally cast in the election; that apart from the legal majority declared in his favor, there were cast against him a large number of illegal votes which should be struck off the list, and which being struck off, would leave

the majority declared for the defendant not only intact but would increase it; and that the defendant was entitled to a scrutiny. He also alleged that the defeated candidate, Malone, personally and by his agents, had been guilty of acts of corruption.

The petitioners answered in law to this plea: "1. Parce que les allégués de ce plaidoyer ne peuvent affecter la présente contestation; 2. Parce que le siège n'est pas réclamé par le dit Moses Malone; 3. Parce qu'en conséquence les actes de corruption que lui et ses agents ont pu commettre ne peuvent en aucune manière changer les conclusions de la requête libellée."

The defendant cited the *Taunton case*, O. & H. 187; *South-West Riding case*, O. & H. 215.

The following judgment was rendered by the learned Judge:—

"Après avoir entendu les requérants et le défendeur par leurs avocats respectifs sur la réponse en droit des requérants à la troisième défense du défendeur, et sur la requête des dits requérants, produite le 18 avril 1884, pour faire rejeter la dite troisième défense; avoir examiné la procédure et délibéré;

"Considérant que la procédure indiquée dans la charte de la cité de Montréal (37 Vict., chap. 51, sect. 25), est de la nature d'un *Quo Warranto* et diffère notablement de la procédure établie par les lois pour la contestation des élections pour la chambre des Communes du Canada et pour la contestation des élections pour l'Assemblée législative dans la province de Québec; et que le défendeur est requis, dans la présente instance, de faire voir en vertu de quelle autorité il prétend avoir droit d'exercer la charge d'échevin de la cité de Montréal;

"Considérant que par la même charte (section 42) certains actes y mentionnés sont déclarés être des actes de corruption, et que ceux qui sont convaincus de s'être rendus coupables de tels actes sont privés pour toujours du droit de voter à aucune élection municipale dans la dite cité, ou d'être élu maire ou échevin de la dite cité pendant trois années (sect. 43), et que tous les votes enregistrés en violation des dispositions susdites seront considérés comme nuls et de nul effet;