L'opposition doit donc être renvoyée avec dépens.

Barnard, Monk & Beauchamp, for plaintiffs.

Lacoste & Globensky for defendant and opposant.

SUPERIOR COURT.

MONTREAL, February 26, 1880.

GUEST v. MACPHERSON.

Damages for Libel—Criminal proceedings not a bar to action for civil damages; but punitive damages will not be awarded after defendant has been convicted and punished in a criminal court for the same libel.

MACKAY, J., said this was an action of damages brought against the defendant for libelling the plaintiff in a certain scurrilous paper called *City Life*. There had been a criminal indictment for libel against the defendant, and a True Bill being returned, he had been tried and found guilty. The defendant was then punished by a fine of $100, and costs, under the Dominion Libel Act, taxed at $50; so that he had already paid in the Criminal Court $150. Now the sum of $500 fresh damages was asked against him by a civil action. The plaintiff claimed both special and nominal damages—special for moneys that he had expended for fees in the Criminal Court beyond what his attorney's bill was taxed at, and he alleged further, that he had been hurt in his feelings, &c. The plea denied malice, and alleged that the whole thing was meant for a mere joke; that the publication did not hurt the plaintiff, and that in the Criminal Court the defendant had made an apology for his practical joke. His Honor did not see that in this court the defendant's pleas amounted to an apology, but rather raised the objection that by the action *au criminel* the plaintiff was debarred from proceeding by civil action. The defendant was wrong as to this. The two remedies compete, and in France it is quite common to join the two. The plaintiff was entitled to both remedies. He had taken proceedings in the Criminal Court, and now he came here and asked for damages special and nominal. He was entitled to some damages. The defendant's plea was bad as to criminal proceedings being a bar to civil action. But the question of degree or measure of damages came up; for there were damages nominal, damages compensatory, and damages punitive. The plaintiff might have come here for his civil damages at once, but he had harassed the defendant by getting him convicted by a petty jury, and involved in all the ignominy of criminal punishment. There was no occasion, therefore, for more punitive damages. There was no suggestion of express malice. The defendant was evidently a stupid fellow, who went in for fun, and was in for damages here; but his Honor would not award punitive damages, but only nominal. The Court could not award as damages the *honoraires* which had been paid to lawyers in the Criminal Court for attending to the case. Jndgment would go for $20 damages, and costs of the lowest class, Superior Court.

Keller & Co. for the plaintiff.

Macmaster, Hall & Greenshields for defendant.

CREVIER v. CHAYER.

Action redhibitoire, Delay for bringing—Apparent defect.

MACKAY, J., said this was a troublesome case growing out of a horse exchange—a species of barter which often ended in a lawsuit. The plaintiff lived at St. Henri, and the defendant at Beauharnois. On the 10th December, 1878, they made an exchange of horses, and the defendant got $40.52 swap money. On the 13th December the plaintiff tried the defendant's horse for the first time, and found him unsound and worthless. Plaintiff says "le cheval avait le râle, l'asthme." He accordingly prayed that the defendant be condemned to take back his horse and pay him the $40.52. The plea was to the effect that the vice in the horse was easily discernible; that the horse was known by plaintiff to have the *souffle*; and defendant further said that the plaintiff had never tendered the horse back. The law which governed the case was to be found in articles 1522 and 1523 of the Civil Code. The authorities say that where there is no express warranty, the redhibitory action, under the warranty of the common law, must be brought within nine days. Where the action is founded on express warranty, it may be brought after nine days, so long as it is instituted within a reasonable time. It was proved that the defendant's horse was not per-