

important practice. In 1875 he was raised to the Bench of the Superior Court, and was at first appointed to the Quebec District, but on the death of Judge Mondelet he was transferred to Montreal, where the same vigor, decision, and talent which had marked his career at the bar, distinguished his too brief administration of judicial office. The bar of Montreal, on Wednesday, unanimously adopted a resolution expressing their appreciation of "the ability, integrity, learning, and invariable affability" with which the deceased discharged his duties, and these words aptly describe the estimable qualities of the learned Judge.

REPORTS AND NOTES OF CASES.

COURT OF REVIEW.

Montreal, May 31, 1878.

MACKAY, DUNKIN, RAINVILLE, JJ.

MACKAY V. ROUTH *et al.*, and BANK OF MONTREAL,
T. S.

[From S. C. Montreal.

Concurrent Garnishment.

This was an inscription in Review from the judgment reported ante, page 161.

MACKAY, J. A seizure of moneys being made in the hands of the Bank of Montreal, the defendants contested it, because there was a previous *saisie-arrêt* in their hands against plaintiff at the suit of Duncan Macdonald. This was demurred to, and the Judge *a quo* had found the demurrer well-founded. The Court here could not but confirm the judgment, as the *saisie-arrêt* referred to was not disposed of, and there was nothing to show that anything would ever come from that proceeding of Macdonald.

Judgment confirmed.

Abbott & Co., for plaintiff.

Loranger & Co., for defendants.

SUPERIOR COURT.

Montreal, May 31, 1878.

JOHNSON, J.

LEFUNTUN V. BOLDOC *et al.*

Malicious Prosecution—Whence Malice and want of Probable Cause may be inferred.

Malice and want of reasonable and probable cause may be inferred from the acts, conduct and expressions of the party prosecuting, as for example, the existence of a collateral motive, such as a resolution on his part to stop the plaintiff's mouth.

JOHNSON, J. The plaintiff brings an action for damages against the defendants for malicious prosecution under the following circumstances:—He possessed a property in the Township of Milton, and had given an obligation to Bolduc for \$400, on which Bolduc sued him, and got judgment by default. The present plaintiff made a *requête civile* to get that judgment set aside, and was unsuccessful, and Bolduc brought the land to sale, and became the purchaser for \$55. The plaintiff then presented a petition *en nullité de décret*, which is still pending. The foundation of the *requête civile* was alleged want of service; and it is the affidavit which the plaintiff made in support of the *requête* that was said to be false, and upon which the three present defendants, Bolduc, François-Thibault, the bailiff who made the return of service, and Charles Thibault, the attorney for Bolduc in that action, caused him to be arrested for perjury. When the case came before the magistrate, the prisoner—the present plaintiff—who was brought before him to be committed for the offence of perjury, was discharged for want of proof of his identity with the person who had made the affidavit. The action as against the attorney has been discontinued, and the two other defendants have pleaded, Bolduc admitting the arrest at his instance, and the bailiff saying that he gave evidence by compulsion, but both denying any malice or want of probable cause,—and also denying that the plaintiff had suffered any damage. They also plead that the *requête civile* was dismissed after consultation and evidence.

The only points now before me are the malice and want of probable cause for arresting this unfortunate man on a charge of perjury. They are both essentials of the plaintiff's action, and certainly the contestation on the *requête civile* and between the same persons, at least as far as Bolduc and the plaintiff are concerned, must be taken as decisive of the question whether there had been a legal service or not. But it is also undeniable that there may have been a legal service, and the plaintiff may nevertheless have been in good faith in swearing there was not, and may not therefore have committed perjury. That, however, does not touch the real point in the case, which is whether these two defendants acted maliciously, and not *bona fide*, in bringing the charge of perjury. The