

necessary to go back to the titles. Now Cosgrove had both the first title and possession. Guertin's subsequent possession can not prevail over this. Judgment will therefore go maintaining the *saisie-revendication* for the value of the timber, at \$3 per tree.

LIGHTHALL v. WALKER.

Verbal Slander—Taxation of Witness struck off.

Held, that the use of the term "loafer" in reference to a person, gives ground for damages.

Held, also, that where the evidence shows that the suit has been maliciously instigated and urged on by a witness, the taxation of such witness will be struck off.

BADGLEY, J.—This is an action to recover damages for verbal slander, brought by a notary of respectable standing in the city. The upper floor of defendant's house is occupied by a clergyman named Donaldson. On this upper floor was by a sink, by which the dirty water was sent down. Unfortunately, the defendant is a married man, and as it happened, the ladies of the two families were not quite harmonious in their intercourse; and long before the present action was brought, considerable differences existed. On one occasion these dissensions grew to such a height, that the Rev. Mr. Donaldson instructed the plaintiff with whom as an elder of his Church he had some acquaintance, to serve a protest upon the defendant on account of the defective state of the premises. On the day this protest was served, there was more than usual excitement about the dirty water from the upper story, some of which, owing to the condition of the sink, fell down upon the cradle in which the defendant's child was sleeping. The lady on the lower story was not pleased to see her child bathed in this dirty water, and when the plaintiff came to serve the protest, she was in a particularly bad humour. When the defendant, her husband, came home, the events of the day were of course communicated to him. He was told not only of the protest, but also about the dirty water, and the injury to the child. The defendant, with some reason in his proceedings, called in a neighbour, a respectable woman, as a witness, and went up to Donaldson's premises, to speak to

him about the overflowing of the sink. They accordingly ascended the stairs, and not wishing to open the door improperly, knocked on the partition. This brought out Mrs. Donaldson, Mr. Donaldson remaining inside, and hearing what was going on. Walker began at once by saying that it was very wrong to allow the sink to overflow in this way, and one word led to another, till Walker said, "Why did you allow a loafer like that Lighthall to come and bring me a paper," and added some further imputations on that gentleman's character. Then the clergyman told him he would kick him down stairs if he did not go at once, and used most abusive language with reference to him. He afterwards went to Walker's office to pay his rent. Walker not being in, Donaldson amused himself by abusing Walker to strangers in the place, and in fact, brought a man with him expressly to hear how he abused Walker. He also declared, "I will ruin him and see him on the street within six months; he has a house to pay for and I have none." He further spoke of his being a Minister of Christ, and likened his treatment of the defendant to the chastening which God inflicts on his erring children for their good. A man who could conduct himself in this way is not one upon whose testimony much reliance can be placed. Having told the plaintiff the story of how Walker had abused him, and said, according to his version, "Why did you send that miserable loafer, Lighthall, who had to fly from his country, to serve me with a paper?" he succeeded in inducing Mr. Lighthall to bring the present action. It is proper to state that there is not a tittle of evidence in the record that can injure the character of Mr. Lighthall. No credit is to be attached to the evidence of Donaldson and his wife. The Court will take, in preference to the statements of these people, the evidence of the woman who accompanied Walker up the stairs. She states that the words mentioned above were never spoken, though she admits that Walker did make use of the word 'loafer' in reference to Mr. Lighthall. In using this word he employed a most offensive term, which was altogether unjustifiable. He had no business to bring the name of Mr. Lighthall into his