A DIGEST

—OF—

ALL REPORTED CASES DECIDED BY THE FEDERAL AND PROVINCIAL COURTS IN THE DOMINION OF CANADA, AND BY THE PRIVY COUNCIL ON APPEAL THEREFROM, DURING THE YEARS 1901 TO 1910 INCLUSIVE.

VOLUME II.

MAINTENANCE.

Action for damages for maintenance — Discovery—Criminating answers.]—Maintenance is an indictable offence in Ontario; and in an action to recover damages for maintenance the plaintiff is not entitled to obtain from the defendants upon examination for discovery such answers as would tend to subject them to criminal proceedings. In such an action no discovery of the matters charged could be had which would not involve the defendants in matters leading up to the offence; and therefore the examination should not be allowed to take place at all.

Hopkins v. Smith, 1 O.L.R. 659.

— Aliment—Action for maintenance — Obligation of other party.]—The liability to provide maintenance, being neither joint and several (solidaire) nor indivisible, the person sued therefor cannot demand that another relation, equally liable to pay the necessary allowance, should be brought into the action as mise en cause, but in such case defendant should only be condemned to pay a moiety of the allowance claimed.

Larochelle v. Lafleur, 19 Que. S.C. 358 (S.C.).

And see HUSBAND AND WIFE.

—Relatives by blood and relatives by alliance—Concurrent obligation—Right of claimant to sue for maintenance although still in possession of some means—Articles 165 to 169, C.C.]—(1) An action for maintenance may be brought, although the claimant, at the date of its institution, is in possession of a sum of money sufficient to supply his or her wants for a short time to come, e.g., in this case, sufficient for about twelve months. It is not necessary that the claimant should wait until the money in hand is totally exhausted before instituting an action to have his right to maintenance determined. (2) The obligation of relatives by blood and relatives by alliance to furnish a maintenance is concurrent, and not successive. The father-in-law may, therefore, be condemned to contribute his proportion of the maintenance of a daughter-in-law, even where it appears that the father is equally able to furnish maintenance. (3) The mother is entitled to sue for aliment on behalf of her children, without being named tutrix to them.

Larochelle v. Lafleur, 20 Que. S.C. 184 (Archibald, J.).

—Champerty and maintenance — Void agreement—Parties entitled to take advantage of—Res judicata—Person not a party but supplying funds for litigation.]—The laws of maintenance and champerty as they existed in England on 19th November, 1858, are in force in British Columbia, and an agreement for a champertous consideration is absolutely null and void. The defence that an agreement is champertous and therefore void is open to others than those who are parties to the agreement. Per Hunter, C.J.:—It is not open to a man to stand by and assist another to fight the battle for specific property to which he himself claims to be entitled, and in the event of the latter's defeat, claim to fight the battle over again himself. He is not bound to intervene, but if he does not he must accept the result so far as concerns the title to the property. As the trial plaintiff obtained judgment declaring that defendant was a trustee for him of an undivided one-quarter interest in two mineral claims; on appeal by defendant, plaintiff's interest was reduced to one-fortieth. The Court allowed defendant the costs of the appeal, but allowed no costs of the trial to either side.

Briggs v. Fleutot, 10 B.C.R. 309.