

TORRANCE, J. The facts alleged constituted an assault. Further, the conviction makes express mention of the option. The most serious objection is that the petitioner might appear to have been twice convicted for the same offence. I was struck with the objection at the argument, but on examining the first conviction, it appeared to be perfect in form, and the second follows the same form, with the important addition that the second conviction is for a different offence from the first. I think, therefore, that the *certiorari* must be quashed in both cases, and the petition rejected.

Augé for petitioner.

R. Roy, Q.C., for prosecutor.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 22, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER & CROSS, JJ.

SCOTT et al. (defts. below), Appellants, and PAYETTE (plff. below), Respondent.

Report of experts—Enquête may be had on matters not included in the reference to experts.

The action was brought by the respondent to recover a balance alleged to be due under a contract for building a house. To this the defendants pleaded that they had a right to retain 10 per cent. until the work was completed to their satisfaction, and further that they had a claim for damages for delay in doing the work, which damages exceeded the sum due to plaintiff. The case was referred to experts, to enquire whether the building had been constructed according to the terms of the contract, to determine what monies had been paid to plaintiff, and if the building had been accepted by the defendants. The experts reported that plaintiff had received the sum of \$9,998, as defendants had alleged. The case was then inscribed for *enquête*, and the plaintiff having declared his *enquête* closed, the defendants wished to proceed with their *enquête*, but the Court refused to allow any witness to be examined, and the case was then decided on the report of experts. The defendants appealed from this judgment, saying that they had a right to proceed with their *enquête*, notwithstanding the report of experts, because that did not cover all the defence.

Sir A. A. DORION, C. J., said the defendants alleged damages suffered by delay, and it was not clear by the order of the Court whether this formed part of the reference. Not a word was said about damages. Now, a report of experts was not like an award of arbitrators; the Court was not bound to rely exclusively upon it. The Court might or might not adopt the opinion of the majority. The evidence offered, therefore, should not have been excluded. Possibly it might not establish that the appellants were entitled to any damages. But at present there was nothing before the Court but a question of procedure. The judgment must, therefore, be reversed.

The judgment was as follows:—

“ Considérant que les experts nommés en cette cause n'ont pas été chargés de constater si les appelantes avaient souffert des dommages ainsi qu'elles l'alléguaient dans leur seconde exception péremptoire, et qu'elles avaient le droit de faire preuve de ce fait devant la Cour nonobstant le rapport des experts ;

“ Et considérant qu'il y a erreur dans le jugement rendu par la Cour Supérieure à Montréal, le 17 Oct. 1877, qui leur a dénié le droit de faire cette preuve, ainsi que dans le jugement final rendu le 29 Nov. 1877 ;

“ Cette Cour casse et annule les dits deux jugements du 17 Oct. 1877, et du 29 Nov. 1877, et procédant à rendre le jugement que la Cour inférieure aurait dû rendre, met à néant tous les procédés qui ont eu lieu dans cette cause en Cour inférieure depuis le dit jour 17 Oct. 1877, et ordonne qu'à la diligence des parties cette cause soit de nouveau placée sur le rôle des causes pour *enquête* et mérite, et y être procédée à la preuve sur les faits allégués dans la seconde exception péremptoire des appelantes et cette Cour condamne,” &c.

Lacoste & Globensky, for appellants.

Doutre & Doutre, for respondent.

STATUTES OF QUEBEC, 1879.

(ASSEMBLY BILL NO. 48.)

[1 Section, Honorable Mr. Irvine.

[2 Section, Mr. Wurtele, M.P.P.

An act to amend the Quebec Railway Act, 1869.

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows :