tion of another the power which the Legislature has authorized him personally to exercise; that no power of substitution had been conferred, and therefore the indictment was improperly laid before the Grand Jury.

Appeal allowed.

J. Doutre, Q. C., for Appellant.

C. P. Davidson, Q. C., for Respondent.

OTTAWA, February, 1881.

GINGRAS, Appellant, v. DESILETS et al., Respondents.

Damages—Judgment of the Court of first instance.

This was an action brought by appellant against the late P. O. Desilets, the original defendant in the cause, claiming a sum of $4,000 damages: 1st. by injurious words, threats and false arrest; 2nd. by violence and wounds causing the appellant to have one of his fingers amputated, as well as a long and excessively painful disease, to wit: the lock-jaw, which put him for a long time in imminent danger of death, and left him crippled and with his general health gravely affected for the future.

The defendant appeared by his attorney, but did not file any plea. After taking the evidence, the Superior Court at Three Rivers, condemned the respondents, (the present cause having been continued against them by *reprise d'instance*, as heirs and testamentary executors of the said P. O. Desilets), to pay to the appellant the sum of $3,000 damages.

On appeal to the Court of Queen's Bench, the judgment of the Superior Court was reduced to $600, the amount allowed to the appellant, and he was condemned to pay all the costs of appeal.

Held, that inasmuch as the damages awarded were not of such an excessive character as to show that the Judge who tried the case had been either influenced by improper motives or led into error, the amount so awarded by him ought not to have been reduced. [Taschereau, J., dissenting.]

Appeal allowed with costs.

O'Gara, Q.C., & Hould, for Appellant.

Angers, Q.C., for Respondents.

LEVI, Appellant, v. REED, Respondent.

Jurisdiction—Right of appeal by plaintiff, respondent in Court of Queen's Bench—Slander—Verdict of Judge.

The present appellant had sued the respondent before the Superior Court at Arthabaska, in an action of $10,000 damages for verbal slander. The judgment of the Superior Court awarded to the appellant a sum of $1,000 for special and vindictive damages.

By the judgment of the Court of Queen's Bench, the amount awarded was reduced to $500, and costs of appeal were against the present appellant.

Held, on appeal, 1. That the plaintiff, although respondent in the Court of Queen's Bench, was entitled to appeal, as in determining *the amount of the matter in controversy* between the parties, the proper course was to look at the amount for which the declaration concludes, and not at the amount of the judgment. *Joyce* v. *Hart*, 1 Can. S. C. R. 321, reviewed. [Taschereau, J., dissenting.]

2. That, as in the case of *Gingras* v. *Desilets*, the amount of damages fixed by the judge who tried the case ought not to have been reduced.

Appeal allowed with costs.

Geo. Irvine, Q.C., and *Gibson*, for Appellant.

W. Laurier, Q.C., for Respondent.

DOMINION TELEGRAPH COMPANY, Appellant, v. GILCHRIST, Respondent.

Trespass—Right of Company to cut ornamental trees.

The servants of the Company, in erecting their line through Norton, King's County, cut down ornamental trees on Dr. Gilchrist's property, claiming the right to do so under their act of incorporation. In an action of trespass, tried at King's County, Dr. Gilchrist obtained a verdict for $235 damages, which was sustained by the Supreme Court of New Brunswick. The Company appealed on the following grounds: 1. That the practice of the Court not to allow the defendant to cross-examine a witness to prove his plea, as decided in *Atkinson* v. *Smith*, 4 Allen, 309, was erroneous; 2. That as the Company had the right to cut down ornamental or shade trees where necessary for the erection, use or safety of their line, they were the judges of that necessity; and 3. That the plaintiff's remedy was under the clause in the Company's Act referring to arbitration, and ousted the jurisdiction of the courts.

Held, overruling these objections, that the Company should be held to a strict construction of their act of incorporation, and were bound to prove that it was neces-