be disturbed. Now there is no doubt some conflict of proof; but on the whole we think that the Court below took the right view of the evidence. There have been cases where there has been great difficulty in determining the precise extent of the master's interference—the general principle seeming to be that there must be *personal interference*. In the case of *Wigmore* v. *Jay*, which was cited, it was held that a master builder was not liable for the loss of life of a bricklayer, caused by the unsoundness of scaffolding built by his foreman; but that case proceeded expressly on the principle that an employer does not warrant the soundness of materials, but is only bound to use reasonable care in their selection. The principles applying to such cases are ably collected and stated by Mr. William Evans in the *Law Times* (London), quoted in the LEGAL NEWS (Montreal) vol. 1, p. 159. In the present case we have to ask ourselves what is the personal interference—what in the nature of things can be the personal interference—of a company like this defendant? Obviously it can only be by managers, superintendents, foremen, and that sort of person. We do not expect to see presidents and directors of such companies personally descending into the bowels of the earth, and drilling or blasting rocks. We think this judgment is a well considered one, and ought to be confirmed.

Fontaine & Co. for the plaintiff.
Hall & Co. for the defendants.

MACKAY, TORRANCE, RAINVILLE, JJ.

[From S. C. Joliette.

ARCHAMBAULT v. PANGMAN.

Costs—Defendant not pleading de novo.

RAINVILLE, J. The action was brought on a promissory note. The defendant pleaded a general denegation. There was a replication and articulations of facts. Then the plaintiff discovered that by a clerical error the date of the note was stated in the declaration to be 1878 instead of 1876, and he moved to be permitted to amend his declaration. The motion was granted on payment of $10 costs, with right reserved to the defendant to plead *de novo*. The defendant thereupon declared that he did not intend to plead, and submitted to the judgment of the Court. Judgment went for the debt and costs. Defendant complained now that he had been subjected improperly to costs of contestation, as he had not pleaded, and there was no plea in the record. The Court below went upon the ground that the declaration made by defendant, that he did not intend to avail himself of his right to plead *de novo*, did not constitute an acquiescence equivalent to a *désistement* from his plea, and this judgment was confirmed.

Godin & Co., for plaintiff.
Baby & Co., and *Lacoste & Co.*, for defendant.

RAINVILLE, PAPINEAU, JETTE, JJ.

[From S. C. St. Hyacinthe.

ARESSE v. DUBREUIL.

Action en complainte—Travail mitoyen.

RAINVILLE, J. This was an action *en complainte*. The plaintiff complained that defendant had committed a trespass, by making holes in plaintiff's land, and carrying earth therefrom. It appeared that the parties were neighboring farmers, and defendant had taken a few shovelfuls of earth for the purpose of fixing his fence posts, and he offered $5 to cover any damages. The judgment of the Court below held that as defendant was performing a *travail mitoyen*, he might go on plaintiff's land without any question of disturbing his possession. The damages offered were more than were proved, and the action was therefore dismissed, save as to the $5 which had been offered. The action was evidently unfounded, and the judgment must be confirmed with costs.

Mercier & Co., for plaintiff.
Sicotte & Co., and *Loranger & Co.*, for defendant.

TORRANCE, RAINVILLE, JETTE, JJ.

[From S. C. Montreal.

BOUTHILLIER v. CAIRNS.

Division of Assessment between co-tenants—Proportion of rent paid by them the basis of division.

TORRANCE, J. The demand of the plaintiff is for $120, amount of taxes alleged to be payable by the defendant as tenant of the plaintiff on Notre Dame Street, for the year 1877-8. The defendant pays a rental of $650, and the plaintiff receives a rental of $1,500 from William Wilson for another portion of the same