

dren resided and where he spent one day in seven. This case appears exactly parallel. Also 6 C.P. 312, case of Bond & St. George, Hanover Square.

Mr. Monk for the corporation cited *inter alia* the case of the *Queen v. St. Pancras*, 2 L. R. Queen's Bench, 457. Giving to it the fullest consideration, still I think I am justified in holding that the petitioners are entitled to be on the Electoral list of the Parish of Coteau.

Petition granted.

Bisailon for petitioners.

F. Monk for Corporation.

SUPERIOR COURT.

MONTREAL, May 28, 1883.

Before TORRANCE, J.

HEYNEMAN v. DAVIS.

Procedure—Option of jury trial.

Where the plaintiff has made option of a jury trial, he cannot withdraw it without the consent of the other party.

The plaintiff had made option of a jury trial by his declaration as his right was, and issue was joined accordingly. He now made a motion that his option be cancelled, leaving to defendant the same option if he chose to avail himself of it.

PER CURIAM. This option once made was binding on the other side, and should not be withdrawn or annulled without the consent of the other side.

The Court refuses the motion.

Atwater, for plaintiff.

W. H. Kerr, Q.C., for defendant.

CIRCUIT COURT.

MONTREAL, May 23, 1883.

Before MATHIEU, J.

NELSON v. THE CANADIAN DISTRICT TELEGRAPH COMPANY.

Duty of common carrier if he cannot find the person to whom the goods are to be delivered.

The defendants were a Company who undertook the delivery of parcels and messages. The plaintiff had entrusted them with a parcel addressed to one Beaulieu, a purser on board the Richelieu Company's steamer "Montreal". The message-boy, not finding Beaulieu there, left it with a man in charge of the Richelieu

Company's sheds on the wharf. The parcel did not reach its destination, but was lost.

The plaintiff was examined to prove the value, under authority of *Robson v. Hooker* (Stephens' Digest I., p. 209, and of 1256 C.C.), the defendant objecting that *Robson v. Hooker* came before the Code, which (1677) admitted this oath only to travellers. Constructive delivery was also alleged in defence, and that there was no evidence, especially as to the defendants being common carriers.

For plaintiff, the Code's definition of common carriers in Art. 1666, par. 2, was invoked; and, as to liability, Art. 1675, making them liable "for loss or damage of things entrusted to them," except by fortuitous events, etc. The commentary to this article is found under the similar one, 103 Code de Commerce, Sirey, where it is stated that the carrier must notify the sender and keep the goods or deposit them at the direction of the *tribunal de justice*. The plaintiff's counsel also cited Bédarride, *Chemins de Fer*, §419, and Chitty (Am. Ed., note to p. 80; pp. 155, 153).

MATHIEU, J. As to receiving the plaintiff's oath, even suppose it cannot be insisted on as *matière de droit*, still the court has a right to so complete the proof. There was sufficient proof that the defendants were common carriers; and they should be condemned, but without costs, as the plaintiff had not furnished them a statement of contents though demanded.

Stephens & Lighthall, for plaintiff.

Girouard, Würtele & McGibbon, for defendants.

GENERAL NOTES.

Chief Justice Sharswood, who recently retired from the Supreme Court of Pennsylvania, died in Philadelphia on the 28th May. The *Albany Law Journal* says he "was one of the most widely known and most respected of American lawyers, not only for his 37 years of judicial service, but for his important contributions to legal literature and the strength and dignity of his character. His mental force had not been abated by a broad general culture, and his capacity to grapple with the affairs of life had not been diminished by the lofty views which he held of his profession. He was at once one of the wisest and one of the ablest magistrates who have adorned the bench of this country, and he belonged to that school—old, indeed, but we hope not passed away—which regards the practice of the law not as a commercial pursuit, but as the noblest and most beneficent occupation of the human intellect. This great man was busy up to the last moment of his laborious life, striving to pay the debt which he thought he owed the profession already so heavily in debt to him."