

Conférence de Bornier, Tome 1er, Edition, 1723, Titre XXXI, Des Dépens

" Il faut encore observer, que quicque la partie ait omis de demander
 " la condamnation des dépens, cette omission ne donne point d'atteinte
 " à la sentence, et n'empêche pas que la partie qui succombe n'y doive
 " être condamnée, tout de même que si l'on les avait demandez. La
 " raison est, parce qu'en matière de contrats et de sentences on supplée
 " aux choses, de quibus verissimile est partes cogitasse, *Gloss, in l. 3 § si*
 " *rem, verbo Fortussis, de leg 3. Anfrer. decis. 5. Mattesil. Singul 81. Re-*
 " *buff. trait. de Expens. art. 2. Gl. un. num. 49. Boer. decis. 18 G. P. qu.*
 " *55. & ibi Ranchi.*"

" Cette condamnation était si indispensable, que si le juge n'avait pas
 " prononcé sur les dépens, il était obligé de les payer en son nom propre
 " à celui qui avait gagné le procès par son jugement."

The Judges of the Court of Queen's Bench being divided on the question of costs, directed the Prothonotary of the Superior Court to certify the practice. That officer accordingly certified that since Sir James Stuart became Chief Justice in October, 1838, the uniform practice had been to grant costs to Attorneys who conducted their own causes.

In proof of this practice during a period of twenty-three years, I would cite the cause No. 846, decided upon the 2nd June, 1846. The plaintiff, "*James Motz, Advocate,*" on that day obtained judgment against the two defendants, Lampson and Arnold, and although he had conducted his own case in person, the Court granted fees. That Court was composed of the four Judges, Chief Justice Sir James Stuart, and Justices Bowen, Panet and Bedard. A different course may have been previously pursued, but the practice was thus settled and adhered to from the above-mentioned date. It is inconceivable that you should ignore the existence of that practice. To prove it, the case of Motz ought to suffice. But in April, 1839, three similar judgments were pronounced—Firstly No. 632, in which J. U. Ahern was plaintiff, another, No. 643, in which J. W. Lloyd was plaintiff, and a third in which Félix Fortier was plaintiff, all three practising attorneys, as you know. I submit further that the case of a defendant is more favorable than that of a plaintiff. Then there were in 1856, No. 2133, *Alley vs. Gilbride*; in 1857, No. 1417, *Pentland vs. Smith*; in 1859, No. 1959, *Pentland vs. Bell*, and No. 2147, *Pentland vs. Bell*.

The series you see is unbroken, and, as Judge Mondelet intimated, in the District of Montreal, the question has never been raised.