The Legal News.

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RIGHT OF ACTION.

In rendering judgment a few days ago in the case of *Gault* v. *Bertrand*, noted in our present issue, Mr. Justice Papineau expressed a hope that some of the parties in the numerous cases before the Courts, in which the right of action in Montreal has been contested on similar grounds, would carry a case to the Court of Appeal, and obtain a decision from that tribunal. It is very evident that a rule for disposing of these cases is not likely to be arrived at, until a decision in point has been pronounced by the higher Court, for we find Mr. Justice Papineau, in an elaborate opinion, and carefully drawn judgment, coming to a conclusion exactly opposite to that of the Court of Review in *Lapierre* v. *Gauvreau*, 17 L. C. J. 241, and of Mr. Justice Johnson in the recent case (against the same defendant) of *Gnaedinger* v. *Bertrand*, 2 Legal News, 377. With six Judges of the Superior Court resident in Montreal, and at least as many more fluttering in from the country districts, and occasionally participating in its deliberations, the Court of Review, with its variable composition, does not afford the best means of testing a question such as this, for the judgment would simply depend on the names of the three Judges who happened to be on the Bench when the case was heard. The uncertainty is still greater as to the result of any future case before a single Judge, so that we must concur in the hope expressed by Mr. Justice Papineau.

EX-JUDGES RETURNING TO PRACTICE.

We have noticed some communications in the daily papers, from which it might be inferred that alarm is felt on the subject of pensioned ex judges returning to practice at the bar. On principle, such a course is objectionable, because judges are not supposed to retire on pensions so long as they are qualified for active work. We do not remember any case in England of a retired Judge re-appearing at the bar. As a rule, Judges are inclined rather to cling to office after the period for active work is passed than to relinquish their duties prematurely. In Canada, the English custom of bidding farewell to active work on retirement from the Bench, has prevailed. In some exceptional cases, however, a Judge may be forced to resign owing to an infirmity which disqualifies him for the Bench, though still in the full enjoyment of his mental powers. Under such circumstances it would be rather hard to exclude him from the only employment in which he may feel an interest. The exceptions to the ordinary practice have been too infrequent and unimportant to constitute an abuse, and the bar, at least, cannot feel aggrieved, for the Judge's place on the bench has been supplied from their body.

In the United States, where the Judges are elected, and, after their term of office has expired, usually return to practice, there is no pension provided. In the State of New York, however, it has recently been suggested by the Bar Association that Judges retired by age or failure of health, should be allowed a portion of their salary, and by way of *quid pro quo*, should be required to act gratuitously as referees in cases where they are agreed upon by parties or appointed by the Court. Perhaps, if our ex-Judges begin to evince an ardent desire for wholesome occupation, some similar arrangement might be devised for them.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, Dec. 1, 1879.

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

LING v. THE QUEEN.

Record of Conviction—Motion that original bill of indictment be sent up with return to writ of error.

Motion on the part of the prisoner that the original bill of indictment should be sent up with return to a writ of error.

The COURT was of opinion that under sec. 77 of the Cr. Pro. Act (32 and 33 Vic., c. 29), it was unnecessary to send up the original bill.