this purpose. So far it was perfectly clear that that plaintiff was the assailant. Now, however, Mr. McCready becoming exasperated seized his whip and struck the plaintiff with the butt, inflicting severe injuries. He then drove off.—The wounds, though extremely serious, were not dangerous, and the plaintiff recovered. He proceeded to have Messrs. McCready and Homier arrested and indicted. The Grand Jury threw out the bill against Mr. Homier. Mr. McCready was indicted but acquitted by the Petit Jury. Subsequent to the criminal proceedings the plaintiff brought the present action for damages against both. Now Mr. Homier seemed to have acted very properly throughout the whole affair. It was impossible to attach the slightest blame to him. The action against Mr Homier was perfectly unjustifiable and would therefore be dismissed. With respect to Mr. McCready, the Court could easily understand that the language of the plaintiff must have been exasperating, and if Mr. McCready had struck the plaintiff with the lash of his whip merely, there might have been nothing to say. But he resisted the assault in an unjustifiable and violent manner. He exceeded the measure of resistance which the occasion called for, and the Court must therefore award the plaintiff some damages. Under the circumstances, it was impossible to award less than $100 damages, with costs as of an action of the lowest class in the Superior Court.

## CIRCUIT COURT.

MAILLET *vs.* DESILETS.—

An action of damages for injurious language. The parties, shoemakers, had been in the habit of abusing each other. $10 only awarded.

BADGLEY, J.—

This was an action for $200 damages brought by a shoemaker against a brother shoemaker, for injurious language. It appeared that Maillet had employed the defendant for nine or ten years back. On one occasion, the 26th February, 1864, the defendant took some work to the plaintiff's store on Jacques Cartier Square. The plaintiff refused to receive it, saying it was not properly done. The defendant said he would do it over again. One word led to another, and the defendant called Maillet a thief. It appeared that this was the sort of language ordinarily used between the parties for ten years back while arranging the account between them. They always called each other *voleur*. It was all leather and abuse between them. But on this occasion there was unfortunately a witness present who was the busybody who made all the mischief. This man said to plaintiff, "you are not going to let him use you thus?" The plaintiff set out these facts in his declaration, stating that he had always borne an honest and irreproachable reputation, and stood high in the esteem of all who knew him. The defendant made answer that they were in the habit of joking with each other while regulating their accounts. That on the occasion referred to, the plaintiff refused to pay him for 25 pairs of shoes. Defendant laughing answered: "*C'est bien, M. Maillet, vous ne voulez pas me payer; et bien! vous ne pouvez pas faire vos Pâques avec ces 25 paires de chaussures; car en me faisant perdre toute cet ouvrage et mon cuir, ce n'est pas bien.*" The defendant farther asserted that then the plaintiff in a furious tone replied, "*Desilets, écoute; il y a long temps que tu devrais le savoir, mais c'est moi qui te l'apprends. Sache que tous ceux qui entrent chez toi pour y apprendre le métier de cordonnier finissent toujours par être des sacrés voleurs comme tu en es un toi-même.*" Thus had they amused themselves for ten years back. But the only question for the Court now was, did Desilets apply the term thief to plaintiff? There was no doubt that he did. Had he any provocation? There was no doubt that he had. But all the witnesses concurred in saying that Maillet never sank in their estimation on this account. Under these circumstances judgment would go for plaintiff for only $10 damages.

## COURT OF QUEEN'S BENCH—APPEAL SIDE—JUDGMENTS.

PRESENT: Chief Justice Duval; Justices Aylwin, Meredith, Drummond and Mondelet.

Montreal, June 6th, 1865.

HON. JUDGE LAFONTAINE, (Defendant in the Court below), Appellant; and CUSSON, (Plaintiff below), Respondent.—

An action for the price of a carriage sold and delivered.—A question of evidence only.

DUVAL, Ch. J.—

This is an action brought by a carriage maker of Montreal, against the Defendant, a Judge residing in Ottawa, for the sum of £80, the price of a covered four-wheeled carriage, sold and delivered to him in June, 1860. At the time the carriage was sold, at the plaintiff's place of business in Montreal, the last coat of varnish had not been put on, and it was agreed that this should be done, and then the carriage was to be shipped to Ottawa. The plea was that the carriage which was delivered to defendant had been made in an unworkmanlike manner; that the painting, varnishing and the stuffing were so inferior, and had been done in such a slovenly manner, that it was quite impossible for the defendant to accept the carriage, which he accordingly sent back to Montreal, where it was put into one of Dickinson's sheds. This is altogether a question of evidence. No question of law comes up. The Court has, therefore, only to determine whether the carriage delivered to defendant was the carriage which he purchased, or whether it was another carriage. The judges are all decidedly of opinion that it was the same carriage. The defendant saw this carriage in the shop of the carriage-maker when it was almost completed. It had to get another coat of varnish and the wheels had to be put on. As defendant wished to see how it would look with the wheels on, the carriage-maker told him he had sold one precisely similar to a carter in Montreal, called St. John, and