

that the tariff shall govern, but holds that this presumption may be rebutted by evidence as to the unusual or unexpected importance or duration of the litigation.

Another important decision rendered by the Court of Appeal at Montreal, on the same day, was that pronounced in the case of *Reid & McFarlane*. This judgment is remarkable as it reverses the ruling of the same Court, three years ago, in the case of *Davie & Sylvestre*, M. L. R., 5 Q. B. 143; nay, more, it reverses the decision of the Court pronounced two years previously in *McFarlane & Fatt* (M. L. R., 6 Q. B. 251) on the same agreement which the Court was called upon to construe in *Reid & McFarlane*. An English judge, when a case of *Brown v. Robinson* was cited before him in argument, informed the counsel that he should not feel himself bound by that case unless a suit were before him in which the facts were precisely similar; indeed, added his lordship, "unless the plaintiff's name were Brown and the defendant's Robinson." Our Court of Appeal has hardly paid as much regard to precedent as the learned judge above referred to, for in a case turning upon the same agreement, the facts being exactly the same and one of the parties the same, it has declined to follow its own decision of two years ago. Of course, the composition of the Court is changed, the judges, with one exception (Mr. Justice Baby), being different, and he entered a dissent. The ground on which the Court overruled the precedents referred to was, that in the first case, *Davie & Sylvestre*, the Court had been misled by an incorrect appreciation of the decision of the Privy Council in *Singleton & Knight*, 11 L. N. 401, and that in the subsequent case of *McFarlane & Fatt* the Court had merely followed the precedent of *Davie & Sylvestre*, without any special examination of the facts of the case. In *Davie & Sylvestre* the Court laid down the broad rule that participation in profits makes the person participating liable as a partner to third parties, creditors of the person in whose name the