make out slander—wrong. There is nothing in this case from which wrong or wickedness reparable by damages can be reasonably inferred. The relation of the parties must be considered, and if the defendant can be shown to have said anything unfair or untrue, to any one not interested in the plaintiff's character, he should be condemned. But I see nothing of that sort. In fact, no ground of action whatever.

Action dismissed with costs.

Lafleur & Co. for the plaintiff.
Doutre & Joseph for the defendant.

COURT OF REVIEW.

MONTREAL, June 30, 1882.

JOHNSON, JETTE, and GILL, J J.

[From S. C., Montreal.

LUREAU v. DE BEAUFORT.

Pleading—Chose Jugée.

The allegation in a pleading that a judgment has become executory and has the force of chose jugée, is sufficient in law, though the delay for appeal from such judgment has not expired at the time of so pleading.

The case was inscribed by the plaintiff on a judgment of the Superior Court, Montreal, Torrance, J., March 30, 1882.

JOHNSON, J. The judgment which is inscribed for review dismissed an answer in law to the incidental or supplementary demand put in by plaintiff. The incidental demand alleged as a fact a judgment that had the effect of *chose jugée*, that is to say, it alleged a judgment of the same point between the same parties by a competent court, and it drew the conclusion of law that it operated a *rem judicatam*. The defendant answered in law, and he alleged three grounds: "First, he said the facts alleged would only justify a demand for permission to make additional answers. There is nothing in that ground. The 3rd number of art. 149 C. P. allows the incidental demand (*eo nomine*) in such a case as this. It is in effect the same thing as an additional answer: there is only the difference of the name. The second ground was more important, and was in fact the only question or semblance of question in the case. It was this: that the judgment invoked by plaintiff as a conclusive *res judicata* had not the force and effect of *res judicata*, because the delay to appeal had not expired. This ground of the answer was maintained by the Court, and it is the point now before us.

The incidental demand, after setting out that the issue in the previous case between the parties was the same as in the present case, with one exception which is unimportant at present to notice, alleges that since the issue was joined in this present case a judgment has been rendered by this Court which has become executory, and has acquired the force of *chose jugée*, and that this judgment disposed, adversely to the defendant, of his present pretensions.

The case of *Bourgouin* v. *O. & O. R. R.*, 28th Dec., 1877, is relied on to support the judgment of the Court below; but we are of opinion that that case does not support the present one. It decided merely that a judgment susceptible of appeal did not constitute *chose jugée*. We say that too; but the judgment invoked here is alleged to be executory and to have the force of *chose jugée*. The Ordinance of 1667 says that judgments which can be pleaded as *choses jugées* are those not susceptible of appeal, whether the appeal has been lost, and whether there has been acquiescence. Therefore, it appears to us that when it is alleged that the judgment is executory, and has the force and effect of *chose jugée*, it is put forward as a matter of fact and of law that there has been acquiescence, and that there is no longer an appeal; and that the party putting this forward ought to have had an opportunity of proving his allegation.

The judgment is as follows:—

"The Superior Court, now sitting in Montreal as a Court of Revision, etc.

"Considering that there is error in the said judgment:

"Considering that the allegation in the plaintiff's incidental demand, that the judgment therein set forth was executory and had the effect and force of *chose jugée* between the present parties in this cause, and that therefore the party so alleging the effect of the said judgment had a right to prove that there was no appeal from it by reason of all or any of the matters and things which constitute *chose jugée*, and amongst them the acquiescence of the defendant in the said judgment;

"Doth reverse the said judgment of the 30th