

in law said that the opposition was unfounded in law as to said undivided tenth. 1st. Because it appeared by the allegations of the opposition that the defendant Dame Marie Emma Alphonsine Beaudry, upon whom the seizure had been made, was then proprietor in possession of a tenth of the land: 2nd. because the conclusions of the opposition should only have demanded the nullity of the seizure for the part of the land not belonging to the defendant, and not for the totality.

PER CURIAM. This case is before the Court on a law hearing. The question simply is whether the seizure of the one undivided tenth of the defendant Dame Marie Emma Alphonsine Beaudry remains good, and whether the opposition should be declared unfounded in law as to this tenth. The Court is with the contestant on this question. The rule was so applied in the case of *La Société de Construction Métropolitaine v. Pitre dit Lajambe*, and *Felix Pitre dit Lajambe*, *oposant*, Nos. 486 and 1948, Superior Court, *Coram Loranger, J.*, on the 31st March, 1879.

Demurrer maintained as to one tenth undivided share.

*S. Bethune, Q.C.*, for opposants.

*C. A. Geoffrion* for contestant.

#### SUPERIOR COURT.

MONTREAL, Dec. 29, 1879.

Before JOHNSON, J.

Ex parte GAUTHIER, on writ of *Certiorari*.

*Conviction—Punishment not sanctioned by law.*

JOHNSON, J. The conviction in this case is technically bad. The plaint and summons were for an assault, and the defendant pleaded guilty, but the conviction shows a punishment of a kind not warranted by law, viz., a condemnation to pay the doctor's fee for sewing up the lip of the complainant. Whatever may be thought of the apparent reasonableness of such an exercise of jurisdiction, (and I confess to a certain reluctance in disturbing it), there is no authority in the law for it; nor, indeed, did any body appear to support it; but though the defendant will be relieved from illegal consequences under this conviction, I see he pleaded guilty, and I will give him no costs.

Conviction quashed.

*Bourgoin & Co.* for petitioner.

*Geoffrion & Co.* for Justices of the Peace.

#### SUPERIOR COURT.

MONTREAL, December 29, 1879.

Before JOHNSON, J.

DE MONTIGNY V. THE WATERTOWN AGRICULTURAL INSURANCE Co.

*Admission by plea without deposit — Costs of Contestation.*

JOHNSON, J. The plaintiff insured originally with another Company; and the present defendants assumed the risk. The amount of loss asked for by the action is \$1,173, though the actual loss suffered is alleged to have been greater; and the subjects of insurance were two barns designated as barn No. 4 and barn No. 5, and their contents.

The defendants met the action by four pleas. 1st, a plea of over valuation, which is waived: and then two other pleas which it is admitted are not established by evidence; and, fourthly, by a plea (the only one now remaining) to the effect that the 12th condition of the policy stipulated a reference to arbitration, to determine finally the amount of any loss about which the parties might differ, and the plea goes on to say that this arbitration has taken place, and a final award has been made, and they offer the amount of it, that is, they offered it with the costs of the action, before contestation; but they do not make any consignment, so that this is only an admission and nothing more. But it is an admission that the plaintiff is entitled to judgment for that amount, and if the latter contests the case afterwards, he must pay costs if he fails in his contestation.

In my opinion the plaintiff has failed in contesting the amount thus admitted, and has not established anything beyond it. Besides the stipulation in the policy, there was a subsequent agreement after the fire to submit the amount of loss to arbitration to two persons, who were to call in a third in case they differed. All this has been done, and there is judgment for the amount admitted in the plea, i.e., for the sum of \$646.10, which includes the costs up to filing of plea; and the plaintiff must bear the costs of contestation after that.

*Trudel & Co.* for plaintiff.

*Davidson, Monk & Cross* for defendants.