

serious matter, occupying a great deal more time than the fragments of days after the adjournment of the Court allow.

THE CASE OF MR. O'FARRELL.

We print in this issue a communication signed "Quebec," criticizing the judgment of the Court of Queen's Bench in the case of *O'Farrell & Brassard*. As our correspondent does not appear to have concluded his remarks, and others may have something to say on the subject, we will only observe at present that we do not by any means assent to the proposition that by-laws could not be framed in general terms which would meet Mr. Justice Cross' objection. The difficulty in Mr. O'Farrell's case was that there was no by-law, and no notice to the accused that he was incurring the penalty of suspension. Now, let us take an example of a general by-law. Suppose the Council enacted in general terms that engaging in trade would be punished by suspension, could an advocate who opened a grocery store plead want of notice? Or if a by-law stated that engaging in any mechanical occupation for hire would be considered derogatory to the honor of the profession, could an advocate who eked out his subsistence by mending tinware or repairing boots and shoes, plead that he had no intimation that he was laying himself open to prosecution? We see no serious difficulty in covering by a few clauses every case that is likely to arise.

REPORTS.

COURT OF QUEEN'S BENCH—APPEAL SIDE.

Montreal, December 22, 1877.

Present:—Chief Justice DORION, and Justices MONK, RAMSAY, TESSIER, and CROSS.

McDONNELL, (def. below) Appellant; and GOUNDRY (plff. below) Respondent.

Trouble—Right of Way—Deficiency in Quantity of Land Sold.

In a deed of sale it was stipulated that the purchaser should have the right at any time to keep in his hands the whole or any part of the balance payable to the vendor, until such time as the vendor should have furnished a registrar's certificate showing the property sold to be "free and clear of all

mortgages, dowers or other encumbrances whatsoever." It appeared that part of a small island, which was included in the property sold, did not belong to the vendor, and there also existed a right of passage over the rest of this island. The island was of small value. *Held*, that the purchaser was not entitled, under the above cited clause of the deed, to retain an instalment of the purchase money sued for, there remaining unpaid another instalment which was much more than sufficient to cover the proved value of the island and the right of passage.

The respondent brought action, under a notarial deed of sale, for \$400, being an instalment due on the price of a certain mill property sold to appellant. The latter set up the following clause in the deed: "The purchaser shall have the right at any time to keep in his hands the whole or any part of the balance payable to the said vendor as above stated, until such time as the said vendor has furnished at his cost and expense, to said purchaser, a certificate of the registry office showing that the property, buildings and premises hereby sold are free and clear of all mortgages, dowers and other encumbrances whatsoever." The defendant alleged that a portion of an island, comprised in the property sold, did not belong to the vendor but to one McArthur. Moreover, there was a right of way in favor of McArthur over the island to communicate with this piece of land.

The Superior Court, Belanger, J., held that defendant had good reason to fear *trouble* by reason of McArthur's right of property and right of passage, but considered that he was not entitled to retain the instalment sued for, because there was still another instalment to become due, and this would more than suffice to indemnify defendant in case he was troubled.

Cross, J., for the majority of the Court, considered that the judgment must be confirmed. The defendant did not by his pleas ask that he should have security; he concluded for the dismissal of the action. If he had asked for security the answer would have been that he had enough in his hands, besides the instalment sued for, to indemnify himself. The plaintiff did produce the certificate and fulfil the condition. It was for the defendant to show that there were incumbrances. He had not done that. He had merely shown that there was a right of way and a small deficiency in quantity. This did not come within the stipulation in the contract.