

Jugé: Que l'avis de huit jours et le dépôt de dix piastres, exigés par la section 26 du chapitre 36 de la 45 Victoria, pour l'émanation de l'action accordée par l'article 793 du Code municipal, ne sont pas requis dans les actions civiles intentées contre les corporations municipales à raison du mauvais entretien de leur chemin.

Qu'une exception à la forme basée sur le défaut d'avis et de dépôt devait être renvoyée.

Mercier, Beausoleil & Martineau pour le demandeur.

Préfontaine & Lafontaine pour la défendresse.

PROFESSIONAL PRIVILEGE.

No other tribunal is so impressive to look at as the full court for Crown Cases Reserved; and it decided last week a question of an importance commensurate with its dignity. The ten judges, being all agreed as to their conclusion, gave judgment at the close of the arguments; but reserved their reasons for enunciation upon some future occasion. It is, however, apparent from the course of the proceedings what were the substantial grounds of their decision; and there is therefore no impropriety in stating briefly the nature of the case.

Two men named Cox and Railton were convicted three months ago, before the Recorder of London, of a conspiracy to defraud a gentleman named Munster of the fruits of a judgment which he had obtained against them. The action in which this judgment was obtained was for libel; and the defendants had consented to a judgment against them for forty shillings and costs "as between solicitor and client." The successful plaintiff, having taxed his costs, issued execution against Railton, and was about to seize his goods. Railton and Cox were partners, and they consulted a solicitor as to whether, if Railton gave Cox a bill of sale over goods belonging to the firm, that would save them from being taken in execution. The solicitor replied that, as the partnership would be in existence at the time of making the bill of sale, this device would be ineffectual; and the two men thereupon paid his fee and went away. Railton then executed a bill of sale, falsely dated at a

time before the partnership was entered into, purporting to convey the property in the goods to Cox; and the deed of partnership between the two men was endorsed with a memorandum, also antedated and not consistent with the conditions of the deed itself, declaring that the partnership was dissolved at a time prior to the execution of the bill of sale. When the evidence of the solicitor was tendered at the trial, it was objected to, on the ground that everything which passes between a solicitor and his client is privileged and cannot be given in evidence until it is independently shown to be probable that the latter was committing or meditating some kind of fraud. The Recorder admitted the evidence, and upon the conviction of the defendants reserved a case for the consideration of the court; which, after hearing it argued twice—the second time before no fewer than ten judges, who would have been eleven but for the illness of the Lord Chief Justice—unanimously held that the evidence was properly received, and affirmed the conviction.

The difficulty in the case was to draw a line between two contending or, so to speak, conterminous principles. On the one hand, the general rule that solicitors are not to reveal communications made to them by their clients in professional confidence is manifestly necessary, in order that people may be able to instruct their solicitors upon any subject at all with the unreserve which is essential to success. On the other hand, it is clear that such privilege ought to afford the least possible protection to crime—either where the solicitor is an accomplice, putting his special knowledge at the service of his principals, or where, as in this case, there is no suggestion of any impropriety in his conduct. The merits of the case were not in any doubt. The "privilege" which protects statements made to solicitors is a privilege in fact as well as in name; and as such it clearly ought not to be extended to shield a person who has sought to abuse it by making it facilitate the commission of a crime. That Mr. Clarke, Q.C., who conducted the case on behalf of the convicted men felt obliged to admit this, appeared from his basing his argument upon the proposition that the