The Legal News.

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ASSESSMENT ROLLS.

The two cases of *Baylis & City of Montreal* and *Bisson & City of Montreal*, decided by the Court of Queen's Bench last month, contain several points of interest. Both of these suits had reference to special assessments to defray the cost of improvements. In each case, the commissioners appointed to assess the cost of the improvement on the proprietors benefited failed to report within the time prescribed by the Court, and in each case the error was held to be fatal to the validity of the report. But in *Baylis & City of Montreal*, the plaintiff did not seek to have the roll set aside, but merely to be reimbursed the sums which he had paid thereunder. In this pretension he was supported by the majority of the Court. In the second case, the plaintiff, after bringing suit to have the assessment roll set aside, and to have the defendants restrained from proceeding to levy the assessment, actually paid the amount, in order to withdraw his effects from seizure. There remained then only his prayer that the roll be set aside, and the majority of the Court sustained this demand, the fact of payment after suit, in order to be liberated from a seizure, being held not to operate to his prejudice in any way.

There was another point of importance in the *Baylis* case. Interest was asked from the time the money was paid by Baylis to the city, but the judgment of the Court of appeal only allows interest from the date of the institution of the action.

THE TREATMENT OF PRISONERS ON TRIAL.

In a recent issue (p. 295) we had occasion to notice a case in which the rights of accused before trial were vindicated, even to the extent of forbidding the photographing of a prisoner without his consent. In New South Wales, the Legislature has been considering the treatment of prisoners during trial. A motion was made in the Legislative Council, to the effect that prisoners on trial should not be compelled to enter a dock, unless there is reason to apprehend an escape or interruption of the ordinary conduct of the trial, and that in the opinion of the House, prisoners on trial should be at liberty to sit or stand, at their option. The motion was rejected by a considerable majority, only four members voting for it, and fifteen against it. The London *Law Journal* treats the motion as the fanaticism of philanthropy, and says that "there is no real hardship in an innocent pris-"oner being put in the dock. It is the place "for all—the innocent, as well as the guilty—"to stand during trial. In the dock the pris-"oner is free from crowding or molestation, "and he can see and hear what is going on. It "seems to us that the guilty, and not the inno-"cent, would deem it a hardship to be so placed "as to be within view of the judge and jury, "and to face the witnesses for the prosecution." On the other hand, the *Albany Law Journal* considers the dock a relic of barbarism, and says that in the State of New York prisoners are allowed to sit with their counsel.

As for liberty to sit or stand, that is usually granted without difficulty, at the request of counsel. We do not know any reason why a prisoner should be compelled to stand for several hours, or several days; and certainly, where from weakness or other cause, such a position would be distressing or injurious to him, it would be hard to defend an order that he should be kept standing. We do not remember any case in which the court refused permission to the prisoner to be seated, on application being made. But the other matter discussed by the New South Wales legislature, it seems to us, is one of those grievances which are almost inseparable from the trial itself. If it be a hardship that an innocent man should be placed in a dock, it is a still greater hardship that he should be accused, or that he should be imprisoned until his trial takes place. But it is certainly desirable, in the majority of cases, that the accused should be assigned a position in the court from which escape is difficult, and where he will not be closely hemmed in by the crowd of idle spectators who are attracted to such scenes. It is also desirable, and even necessary, that he should be placed so as to have an uninterrupted view, while the jury is being impan-

elled, and also while the witnesses are giving their testimony. His counsel must have ready access to him, and confederates and strangers must be kept at a distance. These conditions can hardly be secured without giving him a somewhat elevated position. It is a matter of convenience and decorum, and nothing more. Whether the place allotted to him be called the dock or by any other name is of small importance. He is not obliged to go there until a trained magistrate, or a grand jury, have found that there is a *prima facie* case against him, and it is this, and not the mere position which he occupies in the court room, which, it seems to us, is the real stigma. With much greater reason might it be contended that persons who are under accusation should not be sent to jail for safe custody, but be lodged apart from those who are undergoing sentence of imprisonment.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 16, 1879.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER & CROSS, JJ.

MONTREAL COTTON Co. (opposants below), Appellants, and CORPORATION OF THE TOWN SALABERRY OF VALLEYFIELD (seizing party in Court below), Respondents.

Appeal—Procedure under 970 *Mun. Code—Security —Justification—Amendment of bond.*

The respondents moved that the appeal be dismissed, 1. Because the judgment was not susceptible of appeal. 2. Because the security bond was insufficient, said bond being signed by one surety only, who had failed to justify on real estate, giving the description and position thereof as required by law.

RAMSAY, J. The effects of the appellants were seized under a warrant from the Mayor of the Town Salaberry of Valleyfield, and being under the impression that they were not bound to pay any taxes at all, they made an opposition, under Art. 970 of the Municipal Code: "Tout contribuable qui est requis de payer, comme taxes municipales on scolaires, une somme plus élevée qu'elle ne devrait être, est admis à plaider ce fait par exception à l'encontre de toute action ou réclamation, ou par opposition sur toute saisie pratiquée en vertu de l'art. 962 sur ses biens meubles et effets." This opposition was heard before the Circuit Court, and upon a declinatory plea was dismissed. An appeal was taken from that judgment, and the respondent now moved to dismiss the appeal. The first ground taken was that appellants were not within the limits of the Municipal Code. The Court cannot examine that question until the case comes up on the merits. The proceeding being a proceeding under Art. 970 of the Municipal Code, it was brought before the Circuit Court, and was there dismissed, and the question is whether it is appealable or not. To take away the appeal it would be necessary for the respondents to show us some section of a statute or of the Code excluding the appeal. Has this been done? They have referred to Art. 1070 Municipal Code; but that refers only to proceedings "under that title." Proceedings under Art. 970 are to be decided according to the ordinary rules of procedure of the Circuit Court, and these include the rules in relation to appeal.

Then, there is a question as to the amendment of the bond. There is no doubt that the bond is a bad one. The surety states that he has real estate, and is solvent, but he has not mentioned where the real estate is. It was contended that it is too late to renew the security. It has been held in some cases that the expiration of the delay under 1143 C. P., is fatal; but we think we have a discretion where the appeal is a serious one, and the appellants will, therefore, have six days to amend the bond; costs against appellants.

Davidson, Monk & Cross for appellants.

J. K. Elliot for respondent; *W. Robertson, Q.C.*, counsel.

Ross, Atty. Gen. (plff. below), Appellant, and MONTREAL CITY PASSENGER RAILWAY Co. (defts. below), Respondents.

Corporation—Exercise of statutory powers—Unnecessary interference with the rights of the public and of adjoining proprietors.

This was an appeal from the judgment noted in Vol. 1 Legal News, p. 580, dismissing the appellant's action.

Sir A. A. DORION, C.J., said this was a pro-

ceeding in the name of the Attorney-General, to force the City Passenger Railway Company to abate a nuisance alleged to exist on the road from the Church at Coteau St. Louis to the station of the Q., M., O. & O. Railway. The Company, it was alleged, had abused and exceeded their powers, by laying their track too near the property of the late Stanley C. Bagg on one side, thereby injuring the value of the estate. The action had been dismissed by the Court below, on the ground that the Company were authorized by their Act of incorporation to lay their track along the highway, and, although they might have done so in a manner inconvenient to some of the proprietors adjoining, they had nevertheless acted within the scope of the powers conferred upon them by the Legislature. The evidence showed that the Company had placed their rails on the west side of the road, in a manner highly inconvenient to the occupiers of Mr. Bagg's property. The Company had received a franchise or privilege to lay their track along the highway, but this gave them the right only to place it on the portion of the road used by vehicles, and not where foot passengers walked. The franchise should be used so as to cause the least possible inconvenience to the public. The trustees of the Turnpike Company had no authority to permit the track to be so laid. The judgment would, therefore, be reversed, and the Company condemned, within thirty days, to remove their rails, reserving their right to place the rails in the usual manner in the centre of the street.

The judgment was as follows:

"The Court, etc....

"Considering that the Company, respondents, to wit, the Montreal City Passenger Railway Company, are authorized by their charter, to wit, their Act of Incorporation, 24 Vic. cap. 84, to construct a double or single track iron railway, the cars whereof to be drawn by horses upon and along any of the streets in the city of Montreal which are mentioned in by-law No. 265 of the Corporation of the city of Montreal, and upon and along the highways of the parish of Montreal leading into the said streets; and to use and occupy any such parts of said streets or highways as may be required for the purpose of their railway track, the laying of the rails, and the running of their cars and carriages;

"And considering that this grant, constituting as it does a privilege in favor of the Company, whether viewed as a franchise, a right of user, *un droit d'usage*, or a personal servitude, must be exercised according to the ordinary mode of using such rights and in such manner as to cause the least possible inconvenience or injury to the public and to the adjoining proprietors in the use of the said streets and roads, consistent with the exercise of such privilege;

"And considering that it appears by the evidence adduced in this cause, that in and over that portion of the highway situate in the parish of Montreal which is a continuation of St. Lawrence Main street of the city of Montreal, extending from the place in the said highway where it is intersected by St. Louis street, to the place where a road leaves the said highway opposite and leading to the station of the Quebec, Montreal, Ottawa & Western Railway, known as the Mile End Station, the said Company have placed their track and rails on the western side of the said highway, so as to encroach upon, encumber and inconvenience that portion thereof usually appropriated for and used by the public as a footpath for foot passengers, and not on that portion thereof used for carriages;

"And considering that it is in evidence in this cause that said placing of said track and rails, and the running of cars thereon, adjacent and in such near proximity to the properties situate on the westerly side of such highway, is injurious and detrimental to said properties, and particularly to that of the representatives of the late Stanley Clarke Bagg, the relators in the present case;

"And considering that it is proved in this cause that there is ample space for the placing of said track and rails upon the said highway, to the eastward of the line they now occupy, without injury to the proprietors of the adjoining properties, and that there was no necessity for placing them in their present position;

"And considering that the trustees of the Montreal Turnpike Roads, parties in this cause, who have the control of said highway, could not by any permission or authority given by them, empower or justify the said City Passenger Railway Company in placing their said track and rails in the manner they have done, so as

to unnecessarily injure the adjacent properties, and to interfere with the use of such portion of said highway as is usually devoted to the foot-path and the passing of foot passengers;

"Considering, therefore, that there is error in the judgment herein rendered by the Superior Court at Montreal on the 30th day of November, 1878, this Court doth cancel and reverse the said judgment, and proceeding to render the judgment which the said Superior Court ought to have rendered, doth order and adjudge that within thirty days of the service of this judgment, the said Montreal City Passenger Railway Company do removê and take away their said track and rails from the position and locality in which they have been so placed on that portion of the said highway in the Parish of Montreal, being the continuation of St. Lawrence Main Street from, &c., &c., reserving to the said City Passenger Railway their right to place their said rails elsewhere upon said highway as to law and justice may appertain, and in default of the City Passenger Railway conforming to the present judgment within the said delay, it is ordered that the said track and rails be removed under the authority of the said Superior Court, at the cost and charges of the said City Passenger Railway, &c."

Doutre, Branchaud & McCord, for Appellant.

Abbott, Tait, Wotherspoon & Abbott, for Respondents.

MONTREAL, September 22, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY and TESSIER, JJ.

BAYLIS (plaintiff below), Appellant, and CITY OF MONTREAL (defendants below), Respondents.

Assessment Roll — Commissioners not reporting within the time prescribed by the Court—Interest on money paid unduly.

The action was brought by the appellant to recover from the City of Montreal an amount alleged to have been collected from the appellant for assessments not legally due, the assessment roll under which the payment was exacted being alleged to be a nullity. It appeared that commissioners had been appointed for the widening of Janvier and the prolongation of Drummond and Stanley Streets, and they had made an assessment roll, fixing the amounts to be levied on proprietors benefited by the improvement. Their report, however, was not made within the delay fixed by the Court.

The Superior Court, Mackay, J., dismissed the action (see LEGAL NEWS, Vol. I., pp. 62, 78), the judgment being as follows:—

"The Court, etc.,

"Considering that plaintiff has not proved his material allegations of declaration;

"Considering that to recover the money he seeks by his declaration, plaintiff had burden to prove that it never was due by him, and to do this had to prove that the roll called on page 2 of his declaration, a pretended assessment roll distributing, &c., was irregular, illegal, or null and void, that the plaintiff's declaration, though so charging nullity of the roll referred to, does not go into any particulars, or specification of how, or why, the roll is irregular, illegal, or null and void, that in the absence of the roll it cannot be determined what illegalities, irregularities or nullities affect it, and that plaintiff had burden to prove them; as so much condition precedent to getting a judgment against defendants in an action like the present one *en répétition de l'indû*; that plaintiff has not made such proofs, and therefore *non constat* that the money claimed by him is legally due to him, or that there was not cause lawful for the payment by plaintiff to defendants;

"Doth dismiss the plaintiff's action and *demande* with costs."

Sir A. A. DORION, C.J., said the Court had already decided in the Hubert case, that a roll produced by the commissioners after the delay fixed by the Court was an absolute nullity. This case was taken to the Privy Council, and the judgment was there confirmed. It was objected that the assessment roll was not before the Court, but this was not necessary where the Corporation admitted that there was a roll. The appellant would be allowed to recover what he had paid. There was a difficulty in ascertaining the precise amount, and judgment would go for only $1406.

The judgment was in these terms:—

"Considérant que par le rôle de cotisation mentionné dans la déclaration de l'appelant, et qui a été fait par Messrs. Workman, Masson et Benning, pour subvenir au coût de l'élargissement de la rue St. Janvier et la continuation des rues Stanley et Drummond, dans la cité de

Montréal, le 8 Août 1867, et promulgué le 21 Septembre de la même année, le dit appelant a été cotisé pour une somme de $1406.10 ;

" Et considérant que les pouvoirs conférés aux dits Workman, Masson et Benning étaient expirés lorsqu'ils ont fait ce rôle de cotisation, qui est considéré nul et de nul effet ;

" Et considérant que le 12 Décembre 1872, l'intimée en cette cause aurait fait émettre de la cour du Recorder un bref d'exécution pour recouvrer le montant de la dite cotisation, et qu'après l'émanation du dit bref d'exécution, le dit appelant aurait payé à l'intimée la dite somme de $1406.10, que la dite intimée n'avait aucun droit d'exiger du dit appelant ;

" Et considérant que le dit appelant est bien fondé dans sa demande en répétition de la somme qu'il a ainsi été forcé de payer sans cause à l'intimée ;

" Et considérant qu'il y a erreur dans le jugement rendu par la cour supérieure siégeant à Montréal, le 28 Décembre 1877 ;

" Cette cour casse et annule le dit jugement du 28 Décembre 1877, et procédant à rendre le jugement que la dite cour supérieure aurait dû rendre, condamne l'intimée à rembourser et à payer à l'appelant la dite somme de $1406.10 avec intérêt sur icelle, à compter du 14 Novembre 1873, jour de l'assignation en cette cause, et à payer les dépens," &c.

Judgment reversed, Tessier, J., dissenting.

E. Barnard, Q.C., for Appellant.

R. Roy, Q.C., for Respondents.

BISSON (plff. below), Appellant, and CITY OF MONTREAL (deft. below), Respondent.

Assessment Roll—Payment under coercion.

The appellant brought an action in the Court below to have an assessment roll set aside as illegal. The roll in question was made by commissioners appointed for the expropriation of land required for the opening of Dominion Square, and the objection to it was that it was not made until after the date fixed by the Court. The appellant also prayed that the city be enjoined from proceeding with the seizure of appellant's effects; but the latter having paid the amount of the assessment after the institution of the action, desisted from that part of his conclusions.

The Superior Court, Mackay, J., dismissed the action, the judgment being as follows :—

" The Court, etc., doth grant *acte* to plaintiff of her said discontinuance or *désistement* made on the said 11th day of April instant ;

" And, on the merits ; considering that plaintiff's action now is only for annulling the assessment roll in her declaration mentioned and the proceedings in connection with the expropriation referred to, and for getting an order prohibiting defendant's troubling plaintiff in her possession of her property for the future, and for damages ;

" Considering as to the assessment roll and the proceedings in connection with the expropriation referred to, that there is not means to annul them upon what little is put before the Court and in the vagueness of plaintiff's objections to them, and in the absence of those proceedings and roll, the nomination of the commissioners even not being legally and regularly proved by plaintiff; that as to an order to oblige for the future the defendants not to trouble plaintiff, it is too vague, and not necessary, and when plaintiff shall be troubled she will have all the power of the law at command to make such trouble cease, if wrongous (as by the custom of Paris, and our Code) ; that as to the damages claimed there is not proof to warrant any ;

" Doth dismiss said plaintiff's action with costs."

In support of the judgment, the respondent submitted :

" Deux motifs rendaient impossible un jugement en faveur d'appelante ; d'abord son désistement de cette partie de son action qui concluait à une inhibition de la troubler à l'avenir, et ensuite le paiement par elle fait, après l'institution de son action, du montant de sa contribution ; de ce moment elle n'avait plus d'intérêt à demander l'annulation du rôle de cotisation, il lui restait la voie de la répétition de l'indû, si elle avait payé par erreur."

Sir A. A. DORION, C.J., considered this case even more favorable to the appellant than that of Baylis, because here the action specially sought to have the assessment roll declared null. As to the pretension that appellant had paid the money, it was proved that the payment was made under coercion, after an execution had been issued against appellant's effects.

When a person pays under a writ of execution he is not bound to protest, because he pays only because he is forced to pay. The judgment would grant the conclusion of the action, and the roll would be declared null.

The judgment was as follows :—

" Considérant que par un rôle de cotisation fait par Thomas Cramp, Joseph Barsalou et Pierre Lamothe, pour pourvoir au coût de la place publique connue sous le nom de " Dominion Square ", dans la cité de Montréal, le 9 Décembre 1873, et modifié par eux le 27 du même mois, l'appelante a été cotisée à raison des lots 690, 692 et 694 des plan et livre de renvoi officiels du quartier St. Antoine, de la cité de Montréal, pour une somme de $270.35 ;

" Et considérant que les pouvoirs conférés aux dits Thomas Cramp, Joseph Barsalou et Pierre Lamothe, étaient expirés depuis longtemps lorsqu'ils ont fait ce rôle de cotisation, qui est par conséquent nul et de nul effet ;

" Et considérant que le paiement que l'appelante a fait du montant de la dite cotisation depuis que cette action a été portée, n'a été fait que sous protêt de la part de la dite appelante, et après que ses meubles eurent été saisis pour le paiement de cette cotisation, et pour en empêcher la vente, et que le paiement ainsi fait ne constitue pas un abandon du droit de l'appelante de faire déclarer ce rôle de cotisation nul en autant qu'elle y est concernée ;

" Et considérant qu'il y a erreur dans le jugement rendu par la cour supérieure siégeant à Montréal, le 30 Avril 1878 ;

" Cette cour casse et annule le dit jugement du 30 Avril 1878, et procédant à rendre le jugement que la dite cour supérieure aurait dû rendre, donne acte à la dite appelante de ce qu'elle s'est désistée de partie de sa demande par sa motion du 11 Avril 1878, et adjugeant sur le surplus de ses conclusions, déclare le dit rôle de cotisation fait par les dits Thomas Cramp, Joseph Barsalou et Pierre Lamothe, le 9 Décembre 1873, et modifié par eux le 27 du même mois, nul et de nul effet, en autant que la dite appelante y est concernée, et condamne la dite intimée à payer à l'appelante les dépens encourus par elle tant en cour inférieure que sur l'appel."

Judgment reversed, Tessier, J., dissenting.

E. Barnard, Q.C., for appellant.

R. Roy, Q.C., for respondent.

SUPERIOR COURT.

MONTREAL, Oct. 6, 1879.

HOE et al. v. MULLIN et al.

Form of demand where obligation is in the alternative.

The plaintiffs set up that on the 11th June, 1878, defendants addressed them a letter by which they undertook to pay plaintiffs $1,000 when a certain rotary press should be put up in their establishment, and that at the end of six months they (defendants) should pay $4,500 for the press, or deliver the same to plaintiffs in New York unbroken ; that on the 13th June plaintiffs by letter accepted defendants' proposition and erected the press in defendants' premises, and on the 22nd June, 1878, by deed before Cushing, notary, plaintiffs acknowledged to have received from defendants $1,000, being as a lease of said press for six months, to be reckoned from 22nd June, and promised to sell defendants said press in terms of said letter at the expiration of lease ; that defendants retained the press, and since the 22nd December have used the same and neglected to pay the sum of $4,500 as agreed. The demand was for $4,500.

The defendants in effect pleaded that by the agreement they had the option either to pay the price or return the press ; that there was no obligation to pay but to return, and there was a lease for $1,000 for six months, and they had tendered back the press.

TORRANCE, J. We have to look at the notarial lease of date 22nd June for the final agreement between the parties, but it does not differ materially from the previous letters. By this lease the defendants had the use of the press for six months at $1,000, and bound themselves to deliver the press here with freight paid to New York, but they had the privilege of purchasing the press for an additional sum of $4,500, and on the final payment the press should become the absolute property of the defendants. I do not see any obligation on the part of the defendants absolutely to pay the sum demanded by this action, and the action should, therefore, be dismissed.

Davidson & Co. for plaintiffs.

Doherty & Doherty for defendants.

THOMPSON v. FOSTER.

Action to enforce purchase of land—Failure to join all proprietors in the suit.

The plaintiff sues the defendant to compel him to accept the transfer of a piece of land bought by plaintiff by a private writing and to pay the purchase money. The defendant pleads that the purchase was dependent upon the plaintiff furnishing him all the documents necessary to prove his title; that plaintiff had not furnished such documents, and, in fact, plaintiff was only proprietor of one-half, the other half belonging to the succession of his wife, with whom he was common as to property; that by the will of his wife, plaintiff was bequeathed the usufruct of his wife's share, and the property was bequeathed to his children. The plaintiff replied that if the names of all the owners of said property were not in the action, it was owing to defendant, who kept possession of the deeds, and plaintiff declared that he was willing to be bound by the judgment of the Court to join as vendors the children issue of his marriage with his late wife.

TORRANCE, J. The plea is made out. The plaintiff is only proprietor for one half and usufructuary for the other half. The title could only be given by all the proprietors.

Doutre & Co. for plaintiff.

Geoffrion & Co. for defendant.

SCHOOL COMMISSIONERS OF STE. MARTHE v. ST. PIERRE et al.

School Commissioners—Pleas of prescription and absence of notice of action, where public officer has acted in bad faith—Costs.

This was an action by the School Commissioners as a corporation against three Commissioners. It was alleged that the defendants in December, 1877, without cause or reason, but illegally, fraudulently, and in bad faith, had paid to a certain Dame Amanda Chartrand, to whom nothing was due, out of the funds of the plaintiffs, $136. Further, that in January, 1878, another sum of $20.20 was paid by the defendants with the money of plaintiffs, for costs on a judgment rendered in December, 1877, by the Magistrates' Court at Ste. Marthe, against plaintiffs, at the suit of Josephine Allard, who claimed her salary as a teacher, which sum defendants illegally, unjustly and in bad faith refused to pay to her.

The defendants pleaded, 1st, that they were entitled to one month's notice of action under C.C.P. 22, and that they did not receive such notice; 2nd, that more than six months had elapsed since the acts complained of before the action was instituted, and there was prescription under C.S.L.C., cap. 101, ss. 1 and 7; 3rd, that the acts complained of were done in good faith in their public capacity, and therefore no action lay. Sec. 8 required good faith to protect them. The pretension of plaintiffs was that the defendants were in bad faith. *Ferland* v. *Latour*, 6 R.L. 89, and *Brown* v. *School Commissioners, Laprairie*, 1 L.C.J., 41.

The evidence showed that Mlle. Allard had been engaged and served as school teacher in the year previous to June, 1877, and by 35 Vic., c. 12, ss. 7 and 8, her engagement for another year was only terminable by a special notice to her, given as pointed out by the Act. No such notice was given, and the evidence of the Secretary-Treasurer shows that it was understood that the engagement of Mlle. Allard should continue. Under these circumstances, on the 29th July, 1877, the Commissioners (present, Antoine Meloche, President, Jean Bte. Schmid *dit* Campeault, and Evangeliste Campeault) agreed that Dame Amanda Chartrand be engaged as teacher for the *arrondissement* No. 5, at a salary of $136 currency, in the place and stead of Miss Josephine Allard, teacher, provided that the said E. Campeault be *garant* of damages and costs, which may arisè against the School Commissioners by reason of a certain promise of engagement made to Miss Allard. On the 4th August, 1877, at a meeting of the Commissioners, present, the three defendants and Thomas Burke, who took the chair, it was agreed that Dame Amanda Chartrand, wife of Jean Bte. Brabant, be engaged teacher for the *arrondissement* No. 5, in the place and stead of Miss Josephine Allard, at a salary of $136 for the year 1877-8, without the said Evangeliste Campeault being responsible for damages and costs which may arise against the said Commissioners by reason of a certain promise of engagement made to Miss Allard, as mentioned in the minutes of last meeting. Madame Brabant was the sister-in-law of Evangeliste Campeault. In fact, a judgment

was rendered in the Magistrate's Court against the Commissioners for the salary then earned, of Miss Allard, in December, and in the same month they paid Madame Brabant's salary of $136.

TORRANCE, J. I do not consider that the pleas of want of notice of action and of prescription apply to a case like the present, unless the defendants are in good faith. I will go further and say that they were in bad faith, and that they had no justification for engaging Madame Brabant with an existing engagement of Miss Allard. But the facts stated above do not prove the allegations of the declaration. It does not appear, as alleged in the declaration, that the payment of $136 to Madame Brabant was without cause or reason and illegally made to her. She had been formally engaged, and therefore the payment was due. It appears to me that the charge against the defendants should have been that they wrongfully made the engagement with her, having the existing engagement with Miss Allard, and in this way they caused damage to the plaintiffs, for which the defendants should answer in a court of law. As to the item of $20.20, I do not see it proved that the defendants in bad faith refused to pay the salary of Miss Allard. The action should, therefore, be dismissed, but I shall mark my sense of the conduct of the defendants by dismissing the action without costs.

J. O. Joseph for plaintiffs.

W. Prevost, Q.C., for defendants.

TRESTLER v. DAWSON et al.

Liability for damages caused by fall of snow from roof—Inevitable accident.

TORRANCE, J. This was an action for damages for personal injuries arising out of a collision on Beaver Hall Hill on the afternoon of 4th January, 1879, between 4 and 5. The plaintiff was in a hired sleigh with four other persons, proceeding up Radegonde street, when a horse and sleigh coming down the hill, opposite the Baptist Church, now called St. Bartholomew's, came violently against the sleigh in which the plaintiff was, and threw him out, causing grave injuries. The horse coming down the hill had been frightened by a fall of snow from the roof of St. Bartholomew's. The simple question was whether there was negligence on the part of the defendants, who were trustees of this church. There had been a heavy fall of snow on the 2nd January, and a violent wind on the 3rd January and morning of the 4th. The meteorological observations show that the snow drifted on the afternoon of the 2nd, on the whole of the 3rd, and on the morning of the 4th till 10 a.m. The roof from which the snow fell was so steep that snow could hardly lodge there. The roof was in two sections—the upper one having an inclination steeper than 45 degrees, and the lower roof little less than 45 degrees. The Corporation regulation forbids the removal of snow after 9 a.m. One theory is that the snow which fell had collected on a corner of the roof by the wind, and had suddenly and without warning fallen just as the horse passed which took fright. I have difficulty in fastening a liability upon the defendants. If they had been negligent in the case of this building, they should be liable; but I do not find evidence of negligence. The case is rather one of those inevitable accidents known as a *force majeure*. Action dismissed.

Geoffrion & Co. for plaintiff.

Kerr & Co. for defendants.

BROWN v. MULLIN.

Action under Insolvent Act, 1875, s. 136—Costs where fraud is not proved.

The plaintiff proceeded against the defendant under s. 136 of the Insolvent Act and its amendment, alleging that he had bought from plaintiff, namely on the 6th September, 1878, goods to the value of $476.25, knowing and having probable cause for believing that he was insolvent, and on the 8th October following, a writ in compulsory liquidation issued against the defendant.

TORRANCE, J. The only important question is as to the guilty knowledge and fraudulent intent of defendant. It is not proved. Boswell, the witness, says that he sold the goods to the defendant acting for the plaintiff, and that the defendant was most unwilling to buy. Judgment will go simply for the amount of the debt, with costs as in a case *ex parte*.

Kerr & Co. for plaintiff.

Davidson & Cushing for defendant.