The Legal News.

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LEGISLATION AT QUEBEC.

The present session has produced an unusual number of suggestions for the amendment of our civil law. Besides those noticed in our last two issues, Hon. Mr. Chapleau, Q.C., has introduced a bill respecting the sale of immoveables by sheriffs in the Province of Quebec. It proposes to enact that, "whereas "certain formalities required by law, have "been omitted in certain sales of immove- "ables made by the sheriffs in their official "capacity, and whereas such omissions may "occasion serious inconvenience to the pur- "chasers;"

"1. In the registration divisions in which official plans and books of reference are in force, all Sheriffs' titles respecting real estate situated within such divisions, *procès verbaux* of seizures of the said properties, advertisements, publications and notices posted up, in which the properties seized and sold have not been designated by the numbers shown on such official plans and books of reference, are hereby declared valid for all legal purposes whatsoever, notwithstanding any law to the contrary, and specially articles 638, 648, 650 and 689 of the Code of Civil Procedure, and every law or statute amending the said articles; provided however that a notice indicating the official numbers of the properties described in the titles shall have been given, within six months from the passing of the present act, to the registrars of such registration divisions by the Sheriffs or any of the parties interested.

"2. This act shall not affect pending cases, and shall come into force on the day of its sanction."

Hon. Mr. Ross has introduced a bill to amend Arts. 2 and 3 C. C. P., respecting non-juridical days. The provisions are as follows:—

"1. The word "Governor" in the second article of the Code of Civil Procedure means, indifferently, the Governor-General of Canada or the Lieutenant-Governor of this Province, as the case may be.

"2. The first of July, the anniversary of the day on which the British North America Act came into force, shall, in future, be considered a non-juridical day as if it had been mentioned in article 2 of the said Code, and if the first of July should happen to fall on a Sunday, then the second of July shall be considered a non-juridical day.

"3. Proceedings and sales which have taken place on a day of Thanksgiving, ordered either by the Governor-General or the Lieutenant-Governor, prior to the passing of this act, shall be deemed valid as if they had taken place on the day following such Thanksgiving day.

"4. Article 3 of the said Code applies to sales announced to be made by authority of justice.

"5. The present act shall, in so far as it shall apply, form part of the said act respecting the interpretation of the statutes of this Province, 31 Vict. Cap. 7.

"6. Nothing in this act shall apply to any objection already raised before the Courts in any case now pending.

"7. The present act shall come into force on the day of its sanction."

With a view to secure the publicity of seizures of real estate, Mr. Wurtele, Q.C., has introduced a bill with the following clauses:—

"1. As soon as the sheriff of any district has made a seizure of real estate, he shall transmit to the registrar of the registration division wherein it is situate, a notice thereof; and the registrar shall, on receipt of such notice, register and index the same.

"2. The registrar shall, until the said notice of seizure is cancelled, mention it in all certificates demanded of him, either against the real estate described in such notice or against the judgment debtor upon whom the real estate was seized.

"3. When the seizure is followed by judicial expropriation, the registration of the notice shall be cancelled by the registration of the sheriff's deed of sale, and the registrar shall make mention thereof in the margin of its entry.

"4. When the seizure is released, the registration of the notice shall be cancelled by the deposit and registration in the registry office, of a certificate establishing such release, given by the prothonotary; and mention of the cancellation must be made in the margin of the registry of the notice.

"N. B.—The following section shall be proposed in committee of the whole:

"When a seizure of real estate is annulled, and the judgment creditor is condemned to pay the costs thereof, the expenses of the concellation of the notice of seizure shall be at his charge.

"6. The prothonotary is bound to deliver to any person demanding the same, a certificate of the release from seizure of any real estate that may appear by the record of the cause in which such seizure was made.

"N. B.—The following section shall be proposed in committee of the whole:

"7. The sheriff, registrar and prothonotary shall be entitled to such fees for the performance of the duties imposed by this act as may be established by order of the lieutenant-governor in council.

"8. The provisions of this act are only directory; and the omission to comply with them, shall not invalidate the sheriff's sale in any cause in which such omission may occur."

Mr. Racicot has introduced a bill respecting contracts to defraud creditors, and to amend 1040 C. C., and 68, 615, 1058 and 1198 C. C. P. The clauses are as follows:—

"1. Article 1040 of the Civil Code is amended by striking out the words 'one year,' in the third line of the first paragraph, and the words 'a year,' in the second line of the second paragraph, and replacing them respectively, by the words: 'ten years,' and further by adding the following provisions to the said article:

'Such nullity may also be demanded and obtained, either by contesting the declarations of garnishees made on writs of attachment by garnishment either before or after judgment, or by contesting oppositions filed by third parties to seizures of moveables or immoveables or by any other incidental proceeding, according to circumstances, without its being necessary to have recourse to a revocatory action (*action revocatoire*).

'The service of the suit, the contestation or the proceeding necessary to obtain the setting aside of the fraudulent deed upon the debtor who shall have left his domicile in the province of Quebec, and who cannot be found in the district, in accordance with article 68 of the Code of Civil Procedure, shall be sufficient if it be made at the office of the prothonotary or clerk of the Court before which the suit is pending, and the said articles 68 and 615 of the said Code of Civil Procedure are in consequence amended on this point.

'Any interested party may evoke the case to the Superior or Circuit Court (as the case may be) by adopting the proceeding indicated in articles 1058, 1198, 1200, 1201 and 1202 of the Code of Civil Procedure.'

"2. Chapter 2 of Book 2 of the Code of Civil Procedure is amended by adding, after article 842, the following article:

'842*a*. Every creditor who shall have obtained a writ of *capias ad respondendum* or a writ of attachment before judgment, may immediately give notice of the issuing of such writ to the registrar of the county, in which the immoveable property of the debtor is situated, in the form A of the Schedule to this act annexed, and the registrar shall be bound to at once register such notice in the usual manner and for the usual fee, and every deed of transfer of the immoveable or immoveables designated in the said notice, executed after such registration, shall be *prima facie* deemed fraudulent and shall be void as regards the creditor who shall have given such notice.'

"3. This act shall in no wise affect pending cases and shall come into force on the day of its sanction."

Hon. Mr. Ross has introduced a bill to amend section 9 of 34 Vict., chap. 4, respecting the jurisdiction of the Circuit Court in certain districts. It is to the following effect:—

"1. Section 9 of the act of this Province 34 Vict. chap. 4, is amended by striking out, in the third line of the said section, the words: 'Quebec and Montreal,' and substituting there-

for the words: 'Quebec, Montreal and St. Francis.'

"2. Nothing in the present act contained, shall apply to nor affect cases pending before the Circuit Court for the district of St. Francis.

"3. The present act shall come into force on the day of its sanction."

The Quebec Election Act (38 Vict. c. 7) is proposed by Mr. Fortin to be amended as follows:—

"1. The Quebec Election Act, 38 Vict. Cap. 7, is amended by adding the following section, after section 45 of the said act:

'45*a*. In cases of suspense or delay at any stage of the appeal, the judge or the court seized of the case, may allow one or more persons to intervene and continue the proceedings to judgment and execution.'

"2. Section 2 of the said act is amended by striking out the paragraph commencing with the word: 'Whenever,' in the third line thereof, and ending with the word: 'Estate,' at the end thereof.

"3. The present act shall come into force on the day of its sanction."

And Mr. Lavallée proposes the following additional amendments:—

"The Quebec Election act is amended by adding the following paragraph to section 30 of the said act:

'But every person who shall file a complaint in writing, in accordance with sections 28 and 29, must, at the same time, deposit in the office of the council, a sum of money sufficient to cover the cost of such public and special notices;'

And by substituting for section 32, the following:

"32. By its decision on each complaint, the council may confirm, or correct each duplicate of the list, and order the Secretary-Treasurer to repay to the complainant such portion of his deposit as it may deem advisable, according to the result of the evidence."

Mr. Loranger proposes to give a privilege upon vessels for towage, by adding in the second paragraph of Art. 2383 C. C., after the word "pilotage," the words: "and towing."

A bill, introduced by Mr. Fortin, proposes to amend the Game Laws (40 Vict., Chap. 21) as follows:—

1. Section 5 of the act of this province 40 Vict., Chap. 21, is amended by adding the following paragraph thereto:

"No one shall, at any time, make use of canoes, boats or other craft to go amidst the ice and take or kill the birds mentioned in the preceding sections; and the canoes, boats or other craft used for such purpose, may be confiscated and sold."

PERSONAL INSULT.

As the old fashioned remedy for personal insult, duelling, is strictly prohibited, there seems to be all the more reason why the law should afford adequate protection. Yet personal insults, unaccompanied by any act which can be construed into an assault, cannot, it seems, be prevented by any legal means. This point, says the *Law Times* (London), was decided last week in the case of *Phillips* v. *Justices of Gateshead*, which came before Lord Chief Justice Coleridge and Mr. Justice Field, sitting as a divisional court for hearing motions from all the divisions. The facts of the case were these: A policeman at Gateshead had been dismissed from the force, and in order to be revenged on the chief constable, who it is to be presumed was the cause of his dismissal, the discharged officer took every opportunity of using insulting language about and toward his late chief. This individual put up with the annoyance for a considerable time, but his patience became exhausted; and, not knowing what else to do in order to put a stop to the nuisance, he applied to the justices to bind over the ex-policeman to be of good behavior, on the ground that he, the chief constable, "would otherwise be provoked to commit a breach of the peace." The justices, with a natural desire to support the dignity of so important a person as the head of the police, at once acceded to the application, and ordered the defendant to find sureties for his good behavior for six months, subsequently committing him to prison for that period in default of finding the sureties required. Thereupon a rule for a writ of *certiorari* to bring up the warrant of committal to be quashed was

obtained, and, in making it absolute, it was pointed out by the court that a condition precedent to the granting an order, calling on a person to enter into recognizances to keep the peace or be of good behavior, was an oath by the applicant that he went in bodily fear of the person to be bound over. In this case it was the converse; the applicant swearing that he apprehended a breach of peace by himself, unless defendant was bound over. What would inevitably be the result of a case like the one in point must be obvious, but at the same time it brings to view a state of things by no means satisfactory. It simply comes to this, if one chooses to insult and annoy another, he may continue to do so as long and as often as he pleases, provided he does not commit an assault or make use of slanderous or obscene language. The person annoyed has no remedy. He has no right of action, there is no criminal procedure which will relieve or protect him, and if he takes the law into his own hands and avenges the insult by personal chastisement, he renders himself liable to a prosecution for an assault.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, June 30, 1879.

CORSE et vir v. HUDSON et al., and GORDON et al., mis en cause.

Pleading—Evidence.

JOHNSON, J. There is a *saisie gagerie par droit de suite* for rent in this case. The defence was 1st, a demurrer which was dismissed; and secondly, a waiver of the plaintiffs' right as regards a pianoforte—the only article seized by *droit de suite*. It appears that the defendant wished to raise money on the security of this instrument, and got money, $150, from Mr. Gould upon it, and the plaintiff expressly renounced her lien upon it. It was said that this was done for the benefit of the lender; but it was for the benefit of the borrower also, who without it could not have got the money, and she became a party to it and signed it. All this is made clear by the evidence of Mr. Dewitt. The document itself would lead one into error, perhaps; but the facts are no doubt as Mr. Dewitt states them. The renunciation is in these words: "I hereby agree not to hold the "above named piano-forte for house rent or any "other claim against Mrs. Hudson." Mrs. Hudson now judging this agreement violated, says it was made with her and for her benefit; and so it was, no doubt, to a certain extent; but only to a certain extent. The intention of the parties was clearly that Gould's rights should not be interfered with by the landlord. The defendant, however, cannot fulfil her obligation to Gould if the plaintiff does not keep her agreement with her, as to not touching this piano. The defendant has never paid Gould; but it was urged in argument that Gould had been paid by the plaintiff. Now if that is a fact in issue, it may be proved; but the plaintiff has not set up the fact of her having extinguished Gould's interest. There is nothing but a general answer to defendant's plea on this head: that is to say, the defendant pleads this exemption from seizure, and all that the plaintiff has to say in answer is that it is not true. There is nothing in issue, therefore, or susceptible of proof, as regards this fact of payment, and I cannot look at the evidence upon it. The judgment will go for the debt therefore; but the right to seize this piano *par droit de suite* has been renounced; and there is no allegation, or legal proof that it has been resumed; and the seizure is bad and must be dismissed.

Dunlop & Co. for plaintiff.

F. O. Wood for defendant.

THE ACCIDENT INSURANCE CO. v. PELL, and E. CONTRA.

Negligence—Workman failing to take necessary precaution.

MACKAY, J. This suit was instituted four and a half years ago. The issues were completed more than four years ago. The plaintiffs' case is simple, as stated. They say to defendant: In October 1874, we gave you 800 thin paper printed show card colored impressions or sheets, to be stretched, mounted on cotton and varnished by you, to serve as show cards. You mounted and delivered to us in good order, one hundred, and the other 700 you, by want of skill, spoiled; they were useless to us, and we have had to refuse to accept them, and have returned them: so pay us their value as per

lithographer's bill: $157.50, less only the value of your work on the 100 received, $20. The suit is for $137.50.

The defendant denies that he was negligent, and says that no notice was given that the lithographed sheets delivered to him were lithographed in such manner and with such coloring that the colors would run, or spread, or that more than ordinary care would be required of defendant; that the 800 cards or sheets were all mounted with the same care, that defendant delivered them to plaintiffs, but plaintiffs have refused to accept 400, and further attempt to make defendant take back 300, but these the defendant has refused, and if they are damaged it is by plaintiffs' fault, and the manner in which they had been lithographed; that defendant has often tendered the 400 in his possession, but plaintiffs refuse them; and defendant reserves recourse against plaintiff for the value of his work and labor.

The defendant proceeds by an incidental or cross demand for this alleged value of his work and labor, repeating again in substance the allegations of his plea to the principal action, and offering the 400 cards, asks that the Insurance Company be condemned to pay him $200. Of course, the Company denies indebtedness, and persists in its original statement of grievance against defendant, and charges him with owing them the $137.50.

It is certain that the cards are blurred, as is charged; the green color on the original lithographers' sheets has spread over the adjoining field, making an ugly blur. What was or is the cause of this? There were 100 perfectly varnished and mounted by defendant and not blurred. Scott, another picture framer and mounter, mounted in 1874 a great many like lithographed sheets, and experienced no difficulty, but took precautions against the running of the colors, having been told that Pell had met with difficulty. Little, the lithographer, swears that all his lithographed sheets were printed with the same colors. This, with Scott's evidence, and the fact that Pell mounted 100 of the impressions for plaintiffs perfectly well, makes the weight of evidence on the company's side preponderate. The sizing, or the paste, or the varnish, or the wetting, by Pell, has been carelessly or imperfectly done, presumably. It is of little use to say that *if* chromo paper had been used by Little the blurring, perhaps, would not have happened. Gebhart is a strong witness for Pell. He would attribute the blurring to Little's bad coloring and to potash in his paper; this may have dissolved (he says) on the papers being wetted, and may have produced the stains. But the weight of evidence goes to support the theory of *too much* damping; why were not the 100 stained? Why did not the potash in the paper of the 100 dissolve? And why did the potash in the papers that Scott worked upon not dissolve? Judgment must go for plaintiffs on the principal demand, and for incidental defendants upon the incidental demand.

Hatton, Q.C., for plaintiffs.

Monk & Co. for defendant.

COURT OF REVIEW.

MONTREAL, July 9, 1879.

MACKAY, TORRANCE, JETTÉ, JJ.

[From S. C. Richelieu.

LAFLEUR v. REV. MESSIRE GUILMETTE.

Slander—Non-actionable words.

MACKAY, J. The action is against a *curé* for verbal slander, at a meeting of *marguilliers* and others, for the election of a *marguillier*. There were fourteen or fifteen persons present, including the plaintiff, a very worthy and respectable man, who had formerly been a *marguillier*. The *curé* made an explanation of the reasons why he had only called certain persons to the meeting. Thereupon the plaintiff, Lafleur, called his attention to the fact that the meeting was, perhaps, irregular, because the law ordered that notice should be given to a greater number than had been notified in this instance. Thereupon the *curé* became a little warm, and commenced to read from a book in defence of his course; and Lafleur said:—"What book are you reading from?" and intimated that the Consolidated Statutes was the authority that should prevail. The *curé* exclaimed: "Vous êtes un homme dangereux!" and several persons who were present heard him. For that, the plaintiff brought suit for thousands of dollars damages. According to the judgment *a quo* (Papineau, J.) the plaintiff was over-sensitive. He was perhaps right in his law, but his reputation was not damaged by what the *curé*

said, and he had no right to recover pecuniary damages. The judgment dismissing the action would, therefore, be confirmed.

A. Germain for plaintiff.

M. Mathieu for defendant.

CIRCUIT COURT.

MONTREAL, July 9, 1879.

HENDERSON v. THE ST. MICHEL ROAD CO.

Turnpike Roads—Manure exempted from Toll.

JOHNSON, J. Action by a farmer of the Cote de la Visitation in the Parish of Montreal, to get back $8 taken by the defendants without right as toll for passing on their road with carts containing manure. The plaintiff's position is that he comes within the operation of the 7 Vic., c. 14, sec. 1, which is reproduced in the Consolidated Statutes of Canada, cap. 86, sec. 3, and exempts such loads from toll, when taken for the purposes of agriculture from any city into the country parts within 20 miles from it. The plaintiff proves the necessary facts; but the defendants pleaded that they were originally incorporated by an Act of the special council, which authorized them to levy tolls on this road with certain exemptions, not however, extending to loads of manure; and that the 7 Vic., c. 14 was passed in violation of the 46th section of the Act of re-union of the Provinces, which said that all laws in force in either of the Provinces should remain in force, and have the same authority and effect as if the Imperial Act had not been passed, and the 7th Vic. is moreover a violation of the vested rights of the corporation created by the Act of the special Council, and therefore a violation also of Magna Charta, which provides that no freeman shall be dis-seized of his rights except by the judgment of his peers or by the law of the land. Turnpike roads were first established on the Island of Montreal under the authority of the Act of the special Council, 3rd Vic., c. 31, but the Act invoked here is the 4th Vic., c. 22, of the same body, and seems an extension of the system to a particular road under a joint stock company. Still it was a public Act, and passed in the public interest, and it is entitled, "An ordinance for the improvement of a certain part of the road from the City of Montreal to the Cote St. Michel, in the parish of Sault-au Recollet." The Parliament of Canada, after the re-union of the provinces, was competent to legislate for all public purposes for either of the previous provinces. The end of the first section of the 7th Vic., c. 14, as reproduced in the chap. 86 of the Consolidated Statutes, shows that they intended to legislate in the public interests whether they were confided to trustees, commissioners or companies, and they say by this Act that it is good for the health of the towns, that manure should be carted out of them, and good for the fertility of farms that they should get it, and therefore it is to go free over the roads in whosesoever hands the roads may be; and I must give effect to this law. See Potter's Dwarris, pp. 75 to 79 and notes; also Cooley's Constitutional Limitations, pp. 164 to 167. I decline to go into a discussion of the limits of legislative and judicial powers. The authorities and cases cited in the two books I have mentioned make it plain that except where the constitution has imposed limits on the legislative power, it must be considered as practically absolute, whether it operate according to natural justice or not in any particular case. The Act of re-union merely preserved existing laws subject, as they always were, to alteration by competent authority. Judgment for plaintiff.

SUPERIOR COURT.

MONTREAL, July 11, 1879.

Ex parte JODOIN et al. v. THE CORPORATION OF THE VILLAGE OF VARENNES.

Electoral List—Correction.

The petition of Jodoin et al. set forth that Joseph N. A. Archambault, secretary-treasurer of the Village of Varennes, prepared and deposited as required by law, the electoral list of the Village, and gave notice thereof, and gave notice, contrary to Section 21 of the Quebec Electoral Act, that the list was subject to inspection till 7th April, that it was not corrected or amended within thirty days limited by the statute, but that on the 7th April, the council illegally struck out certain names from the list and added others. The demand was that these corrections and amendments should be held for nought, as not having been made within thirty days.

TORRANCE, J. The facts are not disputed, but the Corporation objects that the notice

served upon the secretary-treasurer of the petition was not sufficient; that the notice should also have been addressed to the Corporation. I am quite satisfied with the manner and form of the notice given. It is in strict compliance with the statute. It further appears that the corrections and amendments were made after the thirty days, namely, on the 7th April. The prayer of the petition must therefore be granted, and the list restored to the condition in which it was before the 7th April and after the 1st March.

Geoffrion, Rinfret & Dorion for the petitioners.

Mousseau & Archambault for J. N. A. Archambault, secretary-treasurer.

SUPERIOR COURT.

MONTREAL, July 22, 1879.

MARCHAND v. CATY et vir.

Landlord and Tenant—Repairs—Recourse of Tenant when Landlord neglects to make repairs.

The plaintiff complained that he had leased from the female defendant by verbal lease, a house and premises in Sanguinet street for one year, beginning the 1st May last, at the rate of $12 per month, the lessor undertaking to make certain reparations, and to keep the drains in good condition in the cellar and yard, so as to make the premises habitable. That the defendant had always failed in her undertakings, by which the plaintiff had suffered damages; that the drains were in a very bad state and sent forth in the house an infectious odor altogether prejudicial to the health of the plaintiff and his family, cousisting of a wife and young children whom he had been in consequence obliged to send to the country; that Doctors Durocher, Larocque and others had visited the house, and all had declared it to be uninhabitable, and fit to cause grave prejudice to the health of the plaintiff and his family, and advised him to leave the premises in order to escape nauseous and infectious odours arising from the state of the drains. That defendant had always neglected and refused to make the necessary repairs to the drains. That the Board of Health had also declared the house unhealthy and uninhabitable, and notified defendant to make repairs without delay. That plaintiff, on the 16th June, served a protest upon the defendant, requiring her to make the necessary repairs, without result, whereby plaintiff suffered damages which he reduced to $50. The prayer of the plaintiff was that the lease in question be declared annulled from this day (20th June), and the parties be replaced in the same condition in which they were before the lease, without prejudice to the damages mentioned above, which plaintiff submits to the discretion of the Court.

The defendant pleaded that she had made all the reparations promised, and as to the drain, plaintiff did not complain until three or four days before the action, and by the protest of the 16th of June. That defendant requested Joseph Brunet to make a new drain, which he did with all despatch, to the satisfaction of the Inspector of the city. That, therefore, plaintiff had no reason to complain of the state of the premises, nor of the diligence used by defendant to make the repairs.

TORRANCE, J. This cause has been tried before me, and I have had the advantage of hearing the witnesses. The evidence shows that Dr. Durocher visited the premises on the 12th of June, and he says:—"J'ai conseillé à la famille de laisser la maison pour le moment, parce qu'elle n'était pas habitable, et j'ai dit de laisser la maison où des réparations soient faites." Dr. Larocque, the Health Officer of the city, visited it on the 14th, and says it was not then habitable in the state in which he saw it. On the 3rd July Dr. Lachapelle says it was quite habitable. The repairs had been made. The protest summoned the defendant to make the repairs in three days. This protest was on the 16th June, and on the fourth day afterwards, namely the 20th, the action was taken out, and served on the following day, the 21st. Mr. Huot, the husband of the defendant, called on his contractor, Joseph Brunet, on the 18th, and did not see him till the 19th, and then gave the necessary orders. Brunet said he would find the level of the drain from the corporation, and give him an answer the following day (Friday). Brunet then said there was no use beginning at the end of the week, but he began on the Monday following, namely, on the 23rd, and the work was

prosecuted with apparent vigor and well done by the 30th. The demand for resiliation absolutely, and without alternative, is severe and often harsh. It is unusual, and can only be accorded if the strongest case is made out, and the plaintiff must appear to be free from blame. Whose fault was it that the house was not habitable on the 12th when Dr. Durocher visited it, and why was the protest not served till the 16th in a matter requiring the utmost despatch? Did the plaintiff desire to present to the doctors a strong case by which his abandonment of the premises might be justified? It does not appear. He knew the premises well, having occupied them for years. The law in these matters is well understood. C. C. 1641 says, "the lessee has a right of action to compel the lessor to make the repairs and ameliorations stipulated in the lease, or to which he is obliged by law; or to obtain authority to make the same at the expense of such lessor; or, if the lessee so declare his option, to obtain the rescision of the lease in default of such repairs or ameliorations being made." Pothier, Louage, No. 325, says: "Le locataire peut demander la résolution du bail, lorsque la maison devient inhabitable, faute de réparations, et que le locateur a été mis en demeure de les faire faire." The usual course always has been, as indicated by Pothier, to put the lessor *en demeure* to make the necessary repairs, in default of which resiliation might follow; but the plaintiff should first have proceeded against the defendant for an order for repairs, which might have been done much earlier than the 16th of June, but for reasons of his own he preferred a resiliation. The article of the Code just read, 1641, indicates precisely the course which is usually taken in these cases. Ever since the case of *Boulanget* v. *Doutre*, 1 L. C. R. 283, the jurisprudence has been generally regarded as settled. I do not think that the facts of this case or the jurisprudence would justify the conclusions taken by the plaintiff. The defendant met the demand for repairs with reasonable despatch. I cannot say that she has acted unfairly, or that the plaintiff is free from blame in his pretensions. The order cannot go to annull the lease, or to award damages.

Ethier & Co., for the plaintiff.
T. Bertrand, for the defendants.

THYMENS v. BEAUTRONC dit MAJOR.

Use and Occupation—Notice of termination of Occupancy—Compensation—Notice of suit, C.C. 1152.

The plaintiff demanded from the defendant $120, for two years' occupation of a house, ending the 1st May, 1879, and concluded in ejectment.

The defendant pleaded that he had settled with plaintiff for the rent for the year ending 1st May, 1878, and as to the second year, the occupation was not worth more than $2 per month, or, $24 per annum. Moreover, plaintiff was his debtor for $500, bearing interest at six per centum, from the 13th November, 1876, and he prayed that if any sum be found due by defendant to plaintiff, it be declared compensated by reason of said sum of $500.

The plaintiff answered that the compensation invoked by the defendant could not be legal, operating *pleno jure*, but facultative; that plaintiff's claim was in fact not *liquide*; that defendant had sued plaintiff for the entire amount of the sum of $500, and the said action was still pending, and there was litispendence as to this sum. Moreover, the principal aim of plaintiff was to get possession of his house, which defendant had by the simple tolerance of the plaintiff.

TORRANCE, J. It is proved by the receipt produced by the defendant that the claim for rent was settled up to the 1st of May, 1878. I also find it proved that the occupation of the rooms in question was not worth more than $2 per month. It is also proved that plaintiff owes defendant $500, amount of a notarial obligation, and I do not see any reason why the defendant should not plead compensation if he please. With respect to the demand of the plaintiff for his house, it appears that the defendant occupied it for two years, and the termination of the second year did not justify the plaintiff in demanding from defendant possession unless he had given three months' previous notice of his intention to re-enter into possession. I would further remark that plaintiff admits in his testimony that this action was brought against the defendant without any previous notice or demand, contrary to C. C. 1152. My conclusion is to declare compensation to the extent of $24 from date of the action, and the action is dismissed.

Longpré & Co., for the plaintiff.
Hutchinson & Walker for the defendant.