The Legal News.

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THE INSURANCE CASES.

The case of *North British & Mercantile Fire and Life Ins. Co.* v. *Lambe*, (*ante*, p. 323) has been discontinued in consequence of an arrangement between the parties. The defendant moved before Mr. Justice Rainville to quash the injunction granted by Mr. Justice Jetté. During the argument upon the motion, an understanding was come to between counsel that the forty suits against insurance companies should be consolidated, and that one defence should serve for all. In this way, a single judgment will be obtained common to all. It is expected that the suits against other classes of corporations will be similarly united.

THE COURT HOUSE.

The inconvenience likely to result from the location of the C. P. R. *dépot* near the Court House was a very serious question. Had the Champ de Mars been selected, or even the Gosford Street site, the Court House would soon necessarily have been abandoned, for the administration of justice would become a mockery if the words of the witnesses were inaudible owing to the noises of an extensive *dépot*. We remember Mr. Justice Aylwin sending a polite message to the commanding officer of a regiment drilling on the Champ de Mars, that an important trial then in progress could not proceed unless the parade was discontinued. Fortunately, the evil is likely to be obviated, or, at all events, greatly diminished, by the selection of a site further east.

EFFECT OF MERCANTILE USAGE.

The question as to how far mercantile custom can control positive law was considered in a recent case in England, *Neilson* v. *James*, 46 L. T. Rep. N. S. 791. The plaintiff had employed the defendant, a Bristol stockbroker, to sell certain shares in the West of England Bank, and the latter had accordingly found a purchaser with whom he exchanged bought and sold notes. So far, the transaction appears at first sight to be without a flaw. But in these notes no mention was made of the plaintiff's name; and by Leeman's Act (30 & 31 Vic. c. 29) all agreements for the sale of bank shares are made null and void, unless, under such circumstances as here occurred, the contract shall set forth the name of the registered proprietor. The bank having failed, the purchaser refused, as he was entitled to do, to accept the shares, on the ground of non-compliance with the Act, and the plaintiff found himself saddled with an unlimited liability, for which he now sought to recover damages. The defence was in effect that the broker had acted in accordance with the usages of the Bristol Stock Exchange in ignoring the provisions of Leeman's Act, and that he was therefore not liable. The main question for the Court came accordingly to little more than this: could the alleged custom be allowed to override the express enactment of the legislature? The Court acting upon the established principle that mercantile customs and usages cannot in any way alter or control the law, the question was answered without difficulty, in the negative. "Customs," said Lord Coleridge, "must be lawful in order to be binding; that is, they must be customs which can be incorporated into contracts without violating the law;" and here such a construction could clearly not be adopted. The most obvious lesson to be drawn from the case, says the *Law Times*, "is, perhaps, that the sooner the practice of the Bristol Stock Exchange is altered the better, both for the brokers and for their clients. The latter indeed are entitled to recover from the broker the net value of the shares comprised in the invalid contract, but, as to their liability for future calls on those shares, a further perusal of the case before us would seem to show that it is at least doubtful whether they can enforce any claim to indemnity."

CODIFICATION.

The State of New York has long had before it the project of a Civil Code. There, as in England, codification is regarded with uneasiness and alarm, and has aroused vehement opposition. We, who have had fifteen years' experience of a Code, are well aware that it is not free from difficulty and embarrassment, but we also know that it has supplied a certain rule

on many doubtful questions. Mr. Field's Code, it is expected, will be brought before the legislature again this year, and its enactment in New York may lead to its adoption in other States. One of the firm opponents of codification in New York is Mr. J. B. Miller, who has just issued a pamphlet in German and also in English with the title "Destruction of our natural law by codification." We append his remarks upon codification generally:—

"The most important event in the science of jurisprudence, in this century, has been the recognition of the fact that law is the result of the history and peculiar characteristics of a nation, like its art and language, and that it is not an artificial thing, due to the arbitrary whim of a legislator. There may be any number of laws upon the statute book, but if they are not in accordance with the spirit of the times and the will of the people, they are but dead letters, although they may serve to hinder the natural and proper development of the law, by forcing the people to resort to fictions.

"Our English Common Law has this immense advantage over all the other European systems, that it is the natural product of its own people, and has never been dwarfed and distorted by the introduction of a foreign law, from the days when the English people first emerged from barbarism under their Anglo-Saxon kings, down to the present time, when its principles extend over the most important part of the world's surface.

"In the middle ages, on the European Continent the Roman Law was introduced, at a time when a blind worship of all classical productions existed, and the native Celtic and Germanic laws were at that time so little developed as to be unable to resist or assimilate this foreign element; they were therefore pushed aside and recognized only in the lower courts and unimportant institutions. But the new Roman Law, however complete and perfect it might be theoretically, was the law of a foreign nation and therefore not suited to these nations, so that the practical administration of justice became worse after the so-called "reception."—It was to escape from this foreign, artificial law that the European nations took refuge in their modern Codes, which contained at least some remnants of their national laws, and all the efforts of their best jurists are now directed to resurrecting what they can discover of their old, natural legal institutions.

"In England, on the other hand, from various political circumstances, the people were able to retain their Germanic Anglo-Saxon legal principles, although the Roman law had a great indirect influence as a model to the English law in its development. But the characteristic and essential features of our system were not latinized.

"The English and the Roman Laws in fact stand to each other in very much the same relation as their languages; both are the products of related, and therefore similar nations, descended from a common Aryan stock. Our English Common Law has the proud distinction of being the only law of an Aryan nation, beside that of Rome, which has had a natural, independent development; and the result is, that to-day our law is better suited to our people than the system of any European nation is to its people; and our administration of justice has more resemblance to that of Rome, in its best period, than any of the labored, artificial, would-be imitations of Roman Codes yet evolved by European codifiers.

"This unique inheritance of the only modern, natural Aryan Law is of especial value here in America, where the reunion of the great Aryan races, after centuries of separation, is taking place. So soon as these Germanic or Latin cousins of ours become accustomed to the form of our law, they will find it more suited to their wants than the artificial codes of the countries they have left.—It should therefore be with the greatest caution that attempts are made to alter our Common Law, lest in our haste and ignorance we mar the grandeur and symmetry of its proportions, or actually conceal it under our well meant "restorations."

"With all due respect to the great merits of our present jurists, to which I will later refer, it does not seem to me that we yet possess the theoretical and historical learning, necessary for such an important undertaking.

"The German jurists during this century have acquired a great knowledge of the history of the Germanic and Roman sources of their law; and any one who will read one of their standard treatises, must recognize the fact, not only that we have no corresponding knowledge of the history and theory of our law, but that

our jurisprudence is unacquainted with a great number of fundamental principles, which lie at the foundation of all law, and with much historical knowledge, which is of the utmost practical importance to our Anglo-Saxon common law, as the only pure Germanic law in existence.

"The fact that Mr. Field has not profited by these works is apparent, without an inspection of the Code, from the fact that he has not considered it necessary to make in it any material alterations, in the last twenty years, during which time most important advances have been made in the knowledge of law; and a slight inspection of the work shows mistakes which no recent graduate of a German university could make.—But this was inevitable, because the Commissioners undertook a task, which no one can at present expect to perform properly.

"We have no standard work, since the days of Kent, which attempts to give a systematic view of our whole law; we have no history of the English Law since that of Reeves, published in the early part of this century, and whose latest edition by Finlasson gives the idea that our Common Law is derived from that of Rome; we have single treatises on different legal institutions, but they are uncertain in their terminology, inharmonious in their systems, contradictory in their definitions and theories.

"In the science of jurisprudence, we are as far behind the Germans as we were in philology and history before we knew of the works of the brothers Grimm, and of Niebuhr and Momsen; but we have begun to profit by their labors, and the works of Sir Henry Maine and Sheldon Amos, in England, and of O. W. Holmes, Jr., Mr. Bigelow, and of the authors of Essays on Anglo-Saxon Law, and others in this country, give promise of a great race of scientific jurists.

"No country will derive so much benefit from these studies as one enjoying the common law, because, as above stated, these are the only countries at present which have a natural law; when once this law is properly studied and understood, the statement of the great body of its principles, in comprehensive statutes, will become a matter of course and can easily be done.—But if we undertake to do it now, if we have not sufficient patience to make the necessary preparation, we only follow the example of the ancient Egyptians, who, while their painting was in its infancy, fixed by law the rules of color and perspective, and thereby checked all further growth of the art.—It would be even more inexcusable in us, because we have just beyond our borders a race of more learned jurists, whose works need only to be inspected to be appreciated.—This superiority of German jurisprudence in matters of theory casts no slur upon our own jurists, because the immense growth of our material interests has demanded the attention of all our lawyers to purely practical matters, in extending the application of old principles to the continually increasing number of new forms of business.

"If we compare the development of our law with that of Rome, we find that the two systems have grown in a similar manner. During the republic, and under the first emperors, and while the nation was still expanding, all the energies of the Roman lawyers were directed to practical questions, and the law was built up by decisions of particular cases, in the same way as the Common Law has grown hitherto. When their civilisation had reached its full development, then arose the great race of theoretical jurists, who reduced to order and explained the great mass of case law; and it was only after these had done their work that the legislator stepped in and enacted the principles, which the jurists had discovered and stated.

"If Augustus, or one of the early emperors, had codified their law, Roman Law would not have deserved, and would not have received, the attention of posterity; the great merit of the Roman Law being, that it is a natural product of one people, with which no legislator interfered before its perfection.

"The analogy of the Roman Law is therefore directly against a codification of our law at present; the absence of theoretical jurists, together with many analogies in the development of various branches of the two legal systems, such as the recent union of strict law and equity, point to the fact that we are now at about the same stage as were the Romans towards the end of the Republic. The scientific treatment of our law may, however, be expected to be more rapid than that of Rome, because we can use their law as an example, and because the German jurists have already done so much of the work for us.

"In jurisprudence, as in art or any human science, every age is not capable of producing

great work; good jurisprudence is a thing of slow growth, and we must be content to see one race of lawyers advancing but a little beyond its predecessors, until at last a thorough understanding of our law is reached.—Legislation on single branches of our commercial and real estate law, which we understand, is certainly advisable, especially to regulate new forms of business, like insurance etc.; but this is very different from attempting to lay anew the foundations of our jurisprudence upon the ruins of our present system.

"Where is the text writer to-day who would undertake to write a book embracing the whole of our law? The Romans complained often enough of the burden of their case law; but the whole people took such an interest and pride in their legal proceedings that they recognized the fact that too early codification would be only a change for the worse; let us imitate their patience and wisdom, and not keep pulling up our institutions by the roots, in order to hasten their growth, but in every way seek to encourage the necessary theoretical and historical study of our law.

"The Continental Codes offer as little encouragement for attempting to codify our law, as does that of Rome. As before stated, those nations had no national law at the time those codes were adopted; they were adopted as the only possible refuge from a state of things which a Code would deliberately introduce among us.—A greater evil than the destruction of the natural law of a people cannot be imagined. In the middle ages, the introduction of the foreign Roman law was followed everywhere by great oppression of the poor and ignorant classes; and one of the great cries of the revolted peasants was: "Give us back our old law."—We have seen in California, the only important state which has adopted the proposed Code, that the enormous growth of the power of grasping corporations under this Code, drove the people to Kearneyism and a half communistic Constitution. And now that many of its best citizens have fled to us, should we enact this same Code and drive them on again?

"This Code in its material parts appears to be a copy of the Code Napoleon; it certainly is the result of the same conceit, which characterized the period of the French Revolution, that the human mind was equal to any undertaking, that it could construct systems of state, religion and law by itself, without regard to the historical development of the particular people. What utter failures their theoretical states and religions were, is universally acknowledged; and the best jurists of all countries,—except perhaps in France,—are coming to the same opinion as regards their legal systems.

"The proposed Civil Code shows no regard to the historical development of our law. Our family law, for example concerning legitimacy, is to be reconstructed; our modes of acquiring property and making contracts are to be changed; and, in general, a lawyer brought up under the Code Napoleon will find himself more familiar with the system and terminology than a practitioner under the Common Law.

"Finally, the Code will build up a Chinese wall around the State of New York; the only important State with a Code is distant California; none of the Eastern States have followed its example; why should they follow that of New York?—Their legislatures take time to consider before they pass such important acts. —It will certainly be a great detriment to New York's commerce, if outside merchants know that in their dealings with us they may have to be governed by a strange system of law. It was particularly to escape this diversity of legal systems in the same country, and the consequent centrifugal force, that the European Codes were adopted; one strong band of union between the States would disappear with the system of the Common Law.

"This diversity of law is alone a sufficient argument against the adoption of the Code, unless we have assurance that the other states will follow.

"*Nolluimus leges Angliae mutare.*"

The remainder of Mr. Miller's pamphlet is devoted to an examination of Mr. Field's Code, with which we are not particularly concerned. If Mr. Miller cares to have our experience of a Code, it may be given in two words,—that in spite of all the dissatisfaction and complaint which its defects and errors have excited, and reference to which may be found scattered through many judicial decisions, we have, nevertheless, found it useful; we cling to it, and would not willingly be without it.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Oct. 21, 1882.

Before TASCHEREAU, J.

POULIN, Petitioner for writ of *certiorari*, & DELIMA MARCIL et ux., Respondents.

Vagrancy—Using insulting language from a window.

The Act 32-33 *Vict. Cap.* 28, (*Can.*) *providing for the punishment of vagrants, does not apply to the case of a person using insulting language to a passer-by, from the window of his residence.*

The petitioner complained of a conviction before the Recorder of the city of Montreal under the Vagrancy Act. The judgment, which is as follows, explains the question decided:—

"La cour, etc.,

"Considérant que la conviction prononcée par le Recorder de la cité de Montréal le 11 Août 1882, contre le Requérant, l'a été sous l'autorité prétendue de l'acte 32-33 Vict. ch. 28; que le dit acte ne donne juridiction au Recorder ou autres magistrats y indiqués de prononcer telle conviction dans le cas d'une personne gênant les piétons, ou se servant d'un langage insultant à leur égard, que si telle personne est trouvée rôdant dans les rues ou grands chemins, et nullement dans le cas où telle personne (comme dans le cas du Requérant) se trouve être dans sa propre maison lors de la commission de l'acte dont on l'accuse;—que partant le Recorder n'avait pas juridiction pour prononcer telle conviction sous les dispositions du susdit statut, et qu'il appert qu'aucune offense punissable par le dit Recorder n'a été commise par le Requérant;

"Maintient et accorde la motion du Requérant, maintient le dit bref de *certiorari*, et casse et annule la conviction susdite avec dépens contre les intimés, distraits," etc.

St. Pierre & Scallon for Petitioner.

R. Roy, Q. C., for Recorder.

R. Goyet for Respondents.

SUPERIOR COURT.

MONTREAL, Oct. 21, 1882.

Before TASCHEREAU, J.

DONOGHOE V. HERVEY.

Slander—Privileged Communication.

A statement made by the honorary lady president of a benevolent institution to the managing Committee, respecting an employee of the institution, is privileged, and cannot serve as the basis of an action for defamation of character.

The action was in damages against Miss Hervey by the former caretaker of the Hervey Institute building, for defamation of character. The plaintiff complained that while he was employed as caretaker, there had been an investigation by the Committee of Ladies into the management of the Institute, and Miss Hervey had, in the presence of several of the ladies of the committee, charged him with having stolen articles from the building. He said that his character had been affected by these charges, and that he had lost his situation. He claimed the sum of $399 damages. The Court was of opinion that the action could not be maintained. If Miss Hervey made the charges complained of, she did so as the Honorary President of the Institution, and her communications to the ladies of the committee were privileged, and could not be made the basis of an action for defamation of character. The judgment of the court is as follows:—

"La cour, etc.

"Considérant que les propos attribués à la défenderesse par les témoins de la demande, et relatifs au caractère et à la réputation du demandeur, ont été tenus par la défenderesse en sa qualité de Présidente Honoraire de l'Institution connue sous le nom de "Hervey Institute," et n'étaient adressés qu'aux Dames qui formaient la comité d'administration de la dite institution; que ces propos étaient d'une nature confidentielle et privilégiée, et ne peuvent faire l'objet d'une action en diffamation de caractère;

"Maintient la défense, et renvoie l'action avec dépens," etc.

Action dismissed.

St. Pierre & Scallon for plaintiff.

Kerr, Carter & McGibbon for defendant.

COURT OF REVIEW.

MONTREAL, Sept. 30, 1882.

MACKAY, RAINVILLE, JETTÉ, JJ.

[From S. C., Montreal.

THE CORPORATION OF THE VILLAGE OF HOCHELAGA v. HOGAN et al.

Municipal Taxes—Prescription—Interruption.

The plaintiff inscribed in Review of a judgment of the Superior Court, Montreal, Torrance, J., May 9, 1882. (See 5 Legal News, p. 154, for judgment in the Court below).

MACKAY, J. The defendants in 1875-6-7 were large proprietors of lands in the village of Hochelaga; in September, 1881, they were sued in this action for $1,050, being the taxes due to the village for 1875, according to the evaluation roll of 1875, with interest on them from what is called the original demand, say October, 1875. The actual tax without this interest is $780. In 1878 the Corporation was proceeding to sell the defendants" lands for these taxes and those of 1876 and 1877, and had gone through the formality of advertising them for sale according to the Municipal Code; but just before the day fixed for the sale, the defendants obtained a writ of prohibition to stop the sale, the proceedings upon which did not terminate until June 1881, date of final judgment by the Supreme Court, in the matter. *Parva res crescit*, sometimes.

The plaintiffs say that the writ of prohibition compelled them to suspend proceedings for the collection of the taxes of 1875. This requires verification, considering that the plea against the suit, for those taxes of 1875, is prescription, and that this plea has been maintained by the judgment under review, which expressly finds the contrary of what is said by plaintiffs upon this part of the case. It finds that the writ of prohibition did not aim against the roll of 1875 or the taxes for that year. Taking up that writ and looking at so much of the proceedings upon it as we have had access to, we all fail to see that the defendants attacked the roll of 1875, or asked to stay proceedings in respect of the collection of the taxes for 1875. If the annulation of that roll was asked by the petitioners for the prohibition, it would be easily discoverable. One of the first allegations of the petitioners is that in July, 1876, there existed a *Roll d'Evaluation* made, according to law, in 1875. Then they went on to say that a roll made in 1876 was null and void; they repeat that the formalities required by law for the *confection* of such a law were not observed in the making of the roll of 1876; then they complain that they have been taxed for 1876 and 1877 much more highly than they could have been under the previous roll, *i e*, of 1875, in force, and that the proceedings of the Corporation under pretext of the roll of 1876 are null and void. The conclusions are that the Corporation be prohibited from proceeding under the roll of 1876, or to collect under it. It is true that it is asked that the Corporation be stopped from selling *tel qu'annoncé*.

Upon this it is contended before us that the sale had been announced for the taxes of 1375, mixedly with the others. But reading the whole text we see that opposition to the roll of 1875, or to payment under it, was *not* made. If the prohibition looked unclear or ambiguous at the time it was made, the Corporation could easily have gotten an explanation of it at the time. As we regard it, the Corporation was not prevented by the prohibition from collecting the taxes for 1875 by the extraordinary, or summary, course they were pursuing towards a sale (that of mere publication of advertisement), or it might then have proceeded by a suit with summons, such as the present suit, for the taxes.

Another question upon the present appeal is as to whether or not the prescription claimed by the defendants has been interrupted by a settlement made by them for the school taxes with the Commissioners in the year 1879.

We think that this settlement does not work interruption of the prescription as against the village assessments demand. In the present suit school rates are not sued for; those school rates were and are separate from the taxes on the values of real property for the purposes of revenue for the Village Corporation. This Village Corporation never had any beneficial interest in those rates.

Judgment confirmed.

Mousseau & Co. for plaintiff.

Girouard & Co. for defendant.

COURT OF REVIEW.

MONTREAL, September 30, 1882.

MACKAY, TORRANCE, JETTE, JJ.

[From S.C., Montreal.

MARCOTTE v. MOODY.

Capias—Intent to defraud.

The case was inscribed by the plaintiff, on a judgment of the Superior Court, Montreal, Mathieu, J., May 30, 1882.

MACKAY, J. The defendant, who resides in Winnipeg, was capiased here in March last upon affidavit of Mr. Thibaudeau, charging him with intention to flee from Quebec province with intent to defraud his creditors.

The judgment inscribed against has freed the defendant, as meditation of fight with intent by defendant to defraud was not seen by the Court or Judge.

The facts are that a great quantity of goods had been, we will say, *sent* by Marcotte from Montreal to Moody in Winnipeg. There is debate as to whether these were sold by Marcotte, or merely sent to Moody to be sold for Marcotte. The first is the contention of Thibaudeau, but Moody insists that he only got the goods on consignment. There is much to support Thibaudeau, and a great deal to support Moody.

Thibaudeau has made strong proofs towards maintaining his view as to sales, but by Barsalou and others Moody has made proofs to the contrary, and proved Marcotte's own statements, by parol, to the effect that the goods at Winnipeg were his. But we have not so much to do with this vexed question, as with the other, which is this: In March last, was Moody fleeing from here with intent to defraud his creditors? The Court has found in the negative. Winnipeg was his place of residence. He had come down from there on a telegram from Marcotte's creditors here, and after arrival here went back to Winnipeg at their request and returned. He tried to settle with them. Thibaudeau's proofs go to prove that Moody was trifling with the creditors of Marcotte, and pursuing a system of procrastination, such as the Grand Turk's, not really meaning to settle, except upon his own, unfair, terms, with mischievous threats against Marcotte's creditors. But against these proofs are those by Moody, who proves that he really did all he could to effect a settlement, that he did not seem to be intending or proposing anything fraudulent. (See Joseph Barsalou's evidence.) Defendant had been here a month before he was capiased; he had to go back home, we may suppose. He openly said he was going, but because he said he was going to New York the case is said to be bad against him. Thibaudeau would have it that defendant was not to leave Montreal without settling with him; but this is going far. We all know that on the 7th of March there was no way to go to Winnipeg but by the United States. If it be fraudulent to go by New York, why is it not to go by Chicago? The judgment complained against has found that Moody was merely going home without fraud, and so we find.

Judgment confirmed.

Mercier & Co. for plaintiff.

Greenshields & Co. for defendant.

COURT OF REVIEW.

MONTREAL, Sept. 30, 1882.

MACKAY, TORRANCE, PAPINEAU, JJ.

[From S. C., Montreal.

PAQUET v. POIRIER, & DANSEREAU, opposant.

Review—Questions of costs.

The case was inscribed by the plaintiff contesting the opposition, on a judgment of the Superior Court, Montreal, Mathieu, J., June 9, 1882.

MACKAY, J. Plaintiff was proceeding to sell defendant's goods and chattels, when an opposition was filed in the name of Dansereau, (who had, some time ago, been named assignee in bankruptcy to Poirier). Plaintiff's attorney was told by Dansereau that he, Dansereau, had not opposed, so the plaintiff contested the opposition. In contesting he denies that the opposant ever took or had any possession of the goods and chattels seized. He also says that the opposition was not really filed by Dansereau.

Dansereau, answering contestation, insists upon its being overruled, inasmuch as he now declares to adopt the opposition filed in his name. His right to his opposition has been maintained and with costs in the Superior Court, against plaintiff.

The judgment finds that defendant did become bankrupt in 1879, and that Dansereau as his assignee became vested with the goods and chattels seized by plaintiff *super* the defendant, and that his opposition must be maintained, and it dismisses the contestation.

Appeal is to us by plaintiff, and at the argument his chief grievance was that he had been condemned in costs, seeing that he might not have opposed but for Dansereau's speech to his (plaintiff's) lawyer before the contestation; which speech is admitted substantially, and repeated in opposant's deposition, but with addition by opposant, that although Dupuis, his partner, officiously got the opposition put in, he (Dansereau) does not disapprove it, but the contrary, and that he claims the goods for the defendant's creditors and towards the costs in bankruptcy. But we do not see that the judgment complained of is illegal or erroneous. Condemnations in costs such as the one complained of, parties are not easily relieved from in Revision. The rule is not to disturb judgments upon mere question of costs. The Judge *a quo* might allow, or not allow, costs, in his discretion. We do not see that the plaintiff contesting made out a right to have costs, or to freed from costs. He had not contested upon one ground alone, as, for instance, owing to Dansereau's speech to his lawyer, before referred to, but he went into other contestation, denying Dansereau's rights *in toto*. So the judgment *a quo* is confirmed with costs.

Judgment confirmed.

Lareau & Co. for opposant.

Duhamel & Co. for plaintiff contesting.

COURT OF REVIEW.

MONTREAL, Sept. 30, 1882.

MACKAY, TORRANCE, RAINVILLE, JJ.

[From C. C., Iberville.

NOISEUX v. LA BANQUE ST. JEAN.

Evidence—Payment.

The inscription was by the plaintiff, from a judgment of the Circuit Court, District of Iberville, Chagnon, J., Oct. 21, 1881.

MACKAY, J. This case comes from Iberville. The Court there has given judgment for the defendant.

The plaintiff sued for $144.37 as in deposit to his credit in defendant's bank. The defendants tender $6.50 as all that is due.

It appears that in 1877 the plaintiff endorsed a note of one Brodeur to defendants for $200. The defendants charge it against plaintiff, as Brodeur (they say) has never paid it. The plaintiff says that Brodeur paid $100 on account of it. No receipt for it is seen, but plaintiff founds upon a pencil memorandum, almost invisible, on the note: "*Cent piastres couvert par hyp.*"

The Court at Iberville has dismissed the plaintiff's action, save to the extent of the Bank's tender.

The only question is this: Was and is plaintiff entitled to credit for $100 more than the Bank has been condemned to pay? The plaintiff does not prove to us, any more than he did to the Court at Iberville, that the Bank ever received the $100 from Brodeur; while the Bank has disproved that clearly. It is proved that the Bank has never really touched, from any source, $100 for which plaintiff ought to get credit.

The pencil memorandum is explained by the Bank's witness, its cashier, who says that the pencilling was a mere memorandum never communicated to plaintiff. The plaintiff asserts the contrary; but produces nothing. The cashier says that if a certain mortgage given by Brodeur had been profitable, plaintiff might have become entitled to credit. But Brodeur went into bankruptcy and this mortgage was vacated.

Judgment confirmed.

A. D. Girard for plaintiff.

Lacoste & Co. for defendant.

Mr. Justice Patteson related the following story of my father's dexterity in the conduct of a cause; the ends of justice being attained by a theatrical display of incredulity which deceived both Brougham and Parke, the counsel on the other side. My father, with Patteson as junior counsel, was for the defendant. He told Patteson that he would manage to make Brougham produce in evidence a written instrument the withholding of which, on account of the insufficiency of the stamp, was essential for the success of his case. That on Patteson observing that, even if he could throw Brougham off his guard, he would not be so successful with Parke, my father answered that he would try. And he then conducted the case with such consummate dexterity, pretending to disbelieve the existence of the document referred to, that Brougham and Parke resolved to produce it, not being aware that my father had any suspicion of its invalidity. Patteson described the air of extreme surprise and mortification of my father on its production by Brougham, with a flourish of trumpets about the document, the non-existence of which his learned friend had reckoned on so confidently. Patteson went on to say that the way in which my father asked to look at the instrument, and his assumed astonishment at the discovery of the insufficiency of the stamp, were a masterpiece of acting.—*Life of Lord Abinger.*