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JUDICIAL REFORMS.

Besides the comprehensive letter of Mr. Justice Ramsay, which we were permitted to publish last week, we have received two pamphlets on the same subject. One is by the Hon. R. Laflamme, Q.C., and the other by Mr. Edmond Lareau. In each of these productions the Report of the Commissioner is reviewed at considerable length, and does not gain much by the critical examination to which it is subjected. We shall endeavor, in another issue, to notice more fully some parts of these publications.

REFORMES JUDICIAIRES DANS LA PROVINCE DE QUEBEC.

Si l'attention ne se concentre de suite sur les besoins les plus urgents, nous courons risque de voir plus d'une génération de juges, d'avocats et de plaideurs gémir avant que nous ayons fait un pas. Il nous faut, sans plus tarder :

1o. Une refonte des statuts de la Province de Québec.

2o. Le dégagement des accumulations devant la Cour d'Appel.

Le reste peut attendre sans inconvénient.

La Province d'Ontario a ses statuts refondus depuis plusieurs années. Chez nous, aucun progrès n'est encore connu. Les copies anglaise et française des anciens statuts refondus sont presque épuisées. Il faut sur un grand nombre de questions parcourir quinze volumes, pour être certain de ne pas faire fausse route. Le travail de la refonte devrait être fait en six mois. Quand l'aurons-nous ?

Le seul inconvénient grave des conditions actuelles de la judicature est l'encombrement des causes devant la Cour d'Appel. On est habitué aux autres défectuosités du système et on peut les subir encore quelques années, sans trop souffrir.

Notre organisation judiciaire est trop rigide. Il faut lui donner un peu d'élasticité pour remédier à l'encombrement des appels. En Angleterre les juges peuvent se réunir au nombre de quinze ou vingt pour vider des questions nouvelles ou très importantes et fonder une jurisprudence que tout le royaume accepte.

Il est inutile de songer à augmenter le nombre des juges. Le Parlement fédéral finira par résister à nos demandes réitérées pour avoir de nouveaux juges. Au reste, l'accumulation est due à une cause passagère et elle disparaîtra avec elle. Nous sortons d'une période exceptionnelle, pour le nombre des litiges. La longue dépression qui a existé, dans les affaires de tout genre, a donné lieu à une invasion des tribunaux. Le retour à une condition normale dans l'industrie et les affaires en général ramènera bientôt le calme. Déjà la fièvre des litiges est considérablement apaisée. Que ferions-nous d'une légion de juges, sans causes à leur soumettre ?

Quand on parle du nombre des juges en France, on ignore que là la magistrature est une fonction convoitée pour l'honneur qu'elle procure, plus que pour l'émolument.

Les juges des Cours Supérieures reçoivent de $1,000 à $2,000.

On trouve là trois chambres d'appel de cinq juges chacune, siégeant en même temps, quelquefois on voit neuf à douze juges sur le banc.

Trouverions-nous ici des juges compétents à ce prix ? Ceux qui sont en office, dans les grands centres (Montréal et Québec) se plaignent avec raison de n'être pas suffisamment rétribués.

Un moyen rapide et non couteux de dégager la Cour d'Appel de l'encombrement consisterait à constituer trois chambres à Montréal, de cinq juges chacune,—formées des juges actuels du Banc de la Reine, dont un juge présiderait chaque chambre, le nombre voulu étant formé des juges de la Cour Supérieure, appelés de Québec et d'ailleurs, par le concours des juges en chef et du doyen de la Cour Supérieure à Montréal.

Dans trois ou quatre mois le rôle serait vidé ; et les juges du Banc de la Reine suffiraient à leur besogne pour vingt-cinq ans à venir.

Comme le vent est à la suppression des appels intermédiaires,—la chose est facile à opérer.

La Cour Suprême est constituée et elle résistera aux assauts dans l'avenir comme elle l'a fait dans le passé. Elle est un fait. Nous n'y allons qu'après avoir passé par la Cour du Banc de la Reine, et souvent après avoir tra-

versé la révision et l'appel, dans les causes qui excèdent $2,000. Pourquoi ne pas aller là tout droit dans toutes les causes au-dessus de ce montant?

Si nous enlevons ces causes au Banc de la Reine, la révision peut être supprimée tout à fait. Nous n'aurions donc plus qu'un appel, dans toutes les causes, au Banc de la Reine, jusqu'à $2,000,—à la Cour Suprême au dessus.

Il est évident que tant que le Canada sera une dépendance de l'Angleterre, l'appel au Conseil Privé subsistera, que nous le voulions ou non. Les objections faites à la constitution de la Cour Suprême sont loin d'être aussi graves que celles qui peuvent être faites à celle du Conseil Privé.

Les juges et les avocats d'Ontario, de la Nouvelle-Ecosse et du Nouveau-Brunswick, sachant qu'ils peuvent être appelés à siéger à la Cour Suprême, se prépareront par la lecture de nos rapports judiciaires à comprendre notre système de lois. En Angleterre, les juges ou les avocats susceptibles d'être appelés au Conseil Privé, ne songeront jamais à savoir d'avance quelque chose du régime légal de la Province de Québec.

Si donc l'on apporte dans l'appréciation de ces choses le plus vulgaire sens commun, on se reconciliera d'abord avec le fait que la Cour Suprême n'est pas à constituer; mais qu'elle est faite,—ensuite qu'elle présente des garanties supérieures à celles du Conseil Privé,—enfin qu'une Cour étrangère aux préjugés et aux influences de province, est préférable, pour une Cour de dernier ressort, à une Cour locale. Quand ensuite on réfléchira que l'un des plaideurs peut aujourd'hui traîner sa partie adverse devant la Cour Suprême, après avoir épuisé la Révision et le Banc de la Reine,—ne vaudra-t-il pas mieux les y envoyer de suite et épargner les frais de deux appels intermédiaires?

C'est calomnier le système de lois de notre Province, que d'insister pour faire croire que des juges qui ont blanchi, dans l'étude de toutes les questions imaginables, dans Ontario ou ailleurs, ne peuvent pas comprendre nos lois et les appliquer, après une plaidoierie approfondie.

Au reste le renvoi de tous les appels au dessus de $2,000 à la Cour Suprême, est encore une question qui n'est pas urgente. Ayons le plus-tôt possible une refonte des statuts et le dégagement de la Cour d'Appel.

D.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Sept. 7, 1882.

Before TASCHEREAU, J.

FENWICK v. ANSELL.

Stock Speculation—Gambling Contract—Illegal consideration.

Where a person had transactions with a stock-broker, for the purchase and sale of stocks on his account, and it was perfectly understood between the parties that the operations were fictitious, and that there would be no delivery of the stocks, but merely a settlement of the differences of prices, held, that this was a gambling transaction, and that the consideration of a cheque given to the broker in the course of such transactions was illegal, and an action would not lie to recover the amount thereof.

The Court in rendering judgment referred to the case of *Shaw* v. *Carter*, reported in 26 L. C. Jurist, p. 151, and concurred in the law as laid down by Mr. Justice Rainville. The Court had a discretion as to costs, and under the circumstances, would not allow the defendant costs.

The written judgment fully explains the decision:

"La Cour, etc...

"Attendu que le demandeur réclame le montant ($170) d'un chèque fait et signé par le défendeur, à Montréal, le 5 juin 1877, payable par la Banque de Montréal au porteur, délivré au demandeur par le défendeur, et dont la dite Banque de Montréal aurait refusé le paiement; et que le défendeur, par ses défenses, allègue que le dit chèque n'a pas de considération légale, et a pour cause une considération illégale et illicite qui ne peut servir de base à aucun recours en loi;

"Considérant qu'il appert de la preuve faite que le dit chèque avait été donné par le défendeur au demandeur à raison et dans le cours de certaines opérations fictives intervenues entre eux; que ces opérations n'étaient que des *jeux de bourse*, ou des paris sur la hausse et la baisse de certains effets (*stocks*), et devaient se borner dans leur exécution au paiement de différences (*margin*) que la variation dans la valeur des dits effets mettrait à la charge de l'une ou de l'autre des parties contractantes; que le dit demandeur n'a, comme courtier ou agent de change, vendu

ou acheté, au nom du défendeur, aucun des effets sur lesquels portaient les dites opérations; que le dit défendeur n'en a livré ou reçu aucun, et qu'il y avait entre eux entente parfaite que le paiement des différences serait le seul résultat de leurs dites opérations;

"Considérant que la loi dénie toute action pour le recouvrement de deniers ou autres choses réclamées en vertu d'un contrat de jeu ou de pari; que les dites opérations intervenues entre les parties sont de véritables jeux de bourse et des paris sur la hausse et la baisse;

"Considérant que le chèque en question n'a pas été un paiement réel fait à compte des dites opérations, et n'a créé aucune novation; qu'il n'est que la preuve de la promesse faite par le défendeur de payer des deniers pour le recouvrement desquels l'art 1927 du Code Civil refuse d'accorder une action;

"Maintient les défenses et renvoie l'action, mais sans frais."

W. S. Walker, for plaintiff.

Greenshields & Busteed, for defendant.

SUPERIOR COURT.

MONTREAL, January 31, 1882.

Before JOHNSON, J.

MCDONALD v. RYLAND.

Slander—Action by servant against master—Evidence.

PER CURIAM. The plaintiff was a domestic servant in the defendant's employ, and she sues her old master for damages for slander, in falsely stating that she had stolen effects belonging to him, and carried them away with her when she left. She also alleges that he employed detectives, and searched her trunks, and subsequently, when she had obtained another situation, repeated the slanders, and made her lose it.

There was a plea of prescription; but under the amendment made to the declaration, it does not apply. The other plea is equivalent to the general issue.

The proof is deficient. The defendant admits he suspected the woman, and spoke to herself no one else being present. That could not be slander. Then, when she had got another place at Mr. Perkins', she lost it because the agent of the *Star* agency office, who had recommended her, withdrew his recommendation, upon information which he said he had got from Mr. Ryland; but we have not the evidence of the agent himself, only that of Mr. Perkins, who relates what he said, which of course is not evidence. Even if it were, it would be pressing very hard on the privilege of a master to say that, as between him and the domestic servant agency through whom he got a servant, he might not, even without being asked, communicate confidentially the true character of the person he suspected of robbing him. Again, there is the evidence of Bridget Meagher, a friend of the plaintiff, at whose house she sometimes lodged when out of place. This woman says a detective came there to look after the plaintiff, and enquired for her trunks, wishing to search for ladies' and children's clothing that had been stolen. This cannot be slander by Mr. Ryland. Why was not the detective himself brought here to say what Mr. Ryland told him, and then we might have seen if there was anything beyond a privileged communication? But no; not a word from the man himself, but only what Mrs. Meagher says he said. After this, there is the evidence of Mr. Alexander Perkins and Mr. Warwick Ryland, both of them relating to strictly privileged communications respecting the character of this servant, which was being enquired of by Mr. Perkins.

Now, this is the whole case. Mr. Ryland admits he spoke to the agent, and to the detective; but he admits no slander; he says he told them he suspected her, but declined to arrest her. There can be no reasonable doubt about the disappearance of the things; about her departure at break of day, before the servants were up, and her taking away a heavy box, requiring two men to handle it, while she had only brought a very light one. I say there can be no reasonable doubt, because though it was argued that these facts were proved partly by the defendant himself in his own favor, and partly by Mr. Warwick Ryland, who was not up early enough to see her actually leave,—such a fact is in the nature of things known to the whole household,—I do not admit that when a plaintiff calls the defendant as a witness, his evidence can be mutilated to suit the plaintiff. He cannot make evidence in his own favor, but what he says here certainly does not make evidence for the plaintiff. The plaintiff had to

make out slander—wrong. There is nothing in this case from which wrong or wickedness reparable by damages can be reasonably inferred. The relation of the parties must be considered, and if the defendant can be shown to have said anything unfair or untrue, to any one not interested in the plaintiff's character, he should be condemned. But I see nothing of that sort. In fact, no ground of action whatever.

Action dismissed with costs.

Lafleur & Co. for the plaintiff.
Doutre & Joseph for the defendant.

COURT OF REVIEW.

MONTREAL, June 30, 1882.

JOHNSON, JETTE, and GILL, J J.

[From S. C., Montreal.

LUREAU v. DE BEAUFORT.

Pleading—Chose Jugée.

The allegation in a pleading that a judgment has become executory and has the force of chose jugée, is sufficient in law, though the delay for appeal from such judgment has not expired at the time of so pleading.

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

JOHNSON, J. The judgment which is inscribed for review dismissed an answer in law to the incidental or supplementary demand put in by plaintiff. The incidental demand alleged as a fact a judgment that had the effect of *chose jugée*, that is to say, it alleged a judgment of the same point between the same parties by a competent court, and it drew the conclusion of law that it operated a *rem judicatam*. The defendant answered in law, and he alleged three grounds: "First, he said the facts alleged would only justify a demand for permission to make additional answers. There is nothing in that ground. The 3rd number of art. 149 C. P. allows the incidental demand (*eo nomine*) in such a case as this. It is in effect the same thing as an additional answer: there is only the difference of the name. The second ground was more important, and was in fact the only question or semblance of question in the case. It was this: that the judgment invoked by plaintiff as a conclusive *res judicata* had not the force and effect of *res judicata*, because the delay to appeal had not expired. This ground of the answer was maintained by the Court, and it is the point now before us.

The incidental demand, after setting out that the issue in the previous case between the parties was the same as in the present case, with one exception which is unimportant at present to notice, alleges that since the issue was joined in this present case a judgment has been rendered by this Court which has become executory, and has acquired the force of *chose jugée*, and that this judgment disposed, adversely to the defendant, of his present pretensions.

The case of *Bourgouin* v. *O. & O. R. R.*, 28th Dec., 1877, is relied on to support the judgment of the Court below; but we are of opinion that that case does not support the present one. It decided merely that a judgment susceptible of appeal did not constitute *chose jugée*. We say that too; but the judgment invoked here is alleged to be executory and to have the force of *chose jugée*. The Ordinance of 1667 says that judgments which can be pleaded as *choses jugées* are those not susceptible of appeal, whether the appeal has been lost, and whether there has been acquiescence. Therefore, it appears to us that when it is alleged that the judgment is executory, and has the force and effect of *chose jugée*, it is put forward as a matter of fact and of law that there has been acquiescence, and that there is no longer an appeal; and that the party putting this forward ought to have had an opportunity of proving his allegation.

The judgment is as follows:—

"The Superior Court, now sitting in Montreal as a Court of Revision, etc.

"Considering that there is error in the said judgment:

"Considering that the allegation in the plaintiff's incidental demand, that the judgment therein set forth was executory and had the effect and force of *chose jugée* between the present parties in this cause, and that therefore the party so alleging the effect of the said judgment had a right to prove that there was no appeal from it by reason of all or any of the matters and things which constitute *chose jugée*, and amongst them the acquiescence of the defendant in the said judgment;

"Doth reverse the said judgment of the 30th

day of March, 1882, and doth dismiss the said defendant's answer-in-law to the plaintiff's incidental demand, with costs," etc.

Judgment reversed.

Barnard, Beauchamp & Creighton for plaintiff.
A. Mathieu for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, November 22, 1881.

DORION, C. J., RAMSAY, TESSIER, CROSS, and BABY, JJ.

Ex parte WILLIAM POLLOCK, Petitioner for *Habeas Corpus.*

Jurisdiction—Judgments of the Superior Court.

The Court of Queen's Bench has no revisory power, except by way of appeal, over the proceedings of the Superior Court, and it cannot, on an application for habeas corpus, examine into proceedings of the Superior Court in order to see whether a warrant committing a person to jail for rebellion à justice in a civil suit, requires him to pay, in order to get his discharge, a sum greater than he was condemned to pay by a judgment of the Superior Court.

RAMSAY, J. The petitioner has been sent to jail for *rebellion à justice* in a civil suit. He now comes before this court as a petitioner for a writ of *habeas corpus* in civil matters. In another case I have drawn attention to the fact that a *habeas corpus* in civil matters means in matters not criminal, that is to say "in cases of confinement not for criminal or supposed criminal matter." Now, no one pretends that a commitment for *rebellion* in a civil suit is a civil matter. I mention this simply to avoid confusion of ideas, for it has really no bearing on the merits of this application. The ground urged by petitioner for his discharge, is that there is no judgment of the Superior Court to support the warrant on which he was arrested; but that the warrant for his arrest requires him to pay, in order to obtain his discharge, a greater sum than the judgment of the Superior Court has condemned him to pay, so that he cannot get his release without paying the gaoler more than he owes. This question was fully examined in the case of *McCaffrey*, but as the reasoning in that case appears not to be fully understood, it becomes necessary to enter more at large into the principles involved in that and the present decision. The petitioner has evidently in head the liberation of persons illegally detained on summary convictions by magistrates, or by courts of limited jurisdiction. In these cases, if a person is illegally deprived of his liberty, it is by an excess of jurisdiction; and the prisoner procures a writ of *habeas corpus* from one of the Superior Courts of law or from one of the judges, to examine whether there is a good cause of detainer. But what is asked of us now, is to examine on a writ of *habeas corpus* into the proceedings of the Superior Court. It seems to be necessary once more to say that not only we have no revisory power, except by way of appeal, in appealable matters, over the Superior Court, but that the Superior Court, as the great court of original jurisdiction of this Province, has primarily and to the exclusion of this court, revisory power over every tribunal of this Province, except over this court. The title of this court is a little misleading, nevertheless the whole general powers possessed by the Court of Queen's Bench (except its jurisdiction as a criminal court), by the Common Pleas, (in so far as they survive) and of the *Conseil Supérieur* (except its quasi-legislative powers) have generally and where not specially curtailed, devolved on the Superior Court; and hence the name of the Court. Out of deference to the English population and to that portion of the law introduced into this country from England, the Court of Appeals was styled "The Court of Queen's Bench," and to it was given original criminal jurisdiction. We can, therefore, no more examine what the Superior Court does within its civil attributions, unless it be on writ of appeal, than they can examine into what we do. What should we say if we committed a person on this side, and the Superior Court, or a single judge, on *habeas corpus*, delivered him? And what would be the astonishment of the Superior Court if, carrying on its proceedings by record, it found itself suddenly stopped by the fact that a judge of this Court had set a prisoner at large on the ground that the proceedings of the Superior Court were not as regular as they might be? It will be observed that the application here for a *habeas corpus* is not an appeal; it is precisely similar to the application to a single judge in chambers *out of term*.

It has been said, that there is no judgment to support this commitment. How do we know that? By what means can we procure the

judgment of the court below? If we sent a *certiorari* to the prothonotary, except in appeal, it would be his duty to refuse to deliver up his record, and he would be properly punished by the Superior Court if he dispossessed himself of it. Were we to come to any other decision than this, the most extreme confusion would be the result, and the great judicial proceedings of the country would be considerably embarrassed. Nor can the petitioner suffer by this decision, for he is not deprived of his recourse to his regular judges, and from them to us by appeal, if they do him wrong. 792, C. C. P.

I have only to add that doubtless there are cases where a prisoner might be released where it was clear that, although the proceedings purported to be in the Superior Court, they were clearly *coram non judice;* but there is no pretence that such is the case here.

We are therefore of opinion that the writ must be refused.

DORION, C. J., differed, mainly on the ground, that here it appeared that the petitioner could not get his release without paying some $39 more than he owed. His honor was therefore of opinion that the writ should issue.

Petition rejected.

J. Palliser, for Petitioner.

E. Lef. de Bellefeuille, contra.

COURT OF QUEEN'S BENCH.

MONTREAL, January 19, 1882.

DORION C. J., RAMSAY, TESSIER, CROSS & BABY, JJ.

ARCHAMBAULT et al. (defts. below), Appellants, & LAMERE et al. (plffs. below), Respondents.

Fire Insurance—Hypothecary Creditor.

A creditor who has insured the property hypothecated for the security of his debt, and who is partly paid by the insurance company, cannot recover from his debtor more than the balance due, together with the premiums paid by him and interest thereon.

RAMSAY, J. Two questions of law arise on this appeal. The first is whether a creditor who insures the property hypothecated for his debt, and who is paid by the insurance company, can still recover from his debtor. I understand that under the English law he can, that the insurance is considered as a contract between the insurer and the insured, with which the debtor has no concern. Under the principles of our law, it would be impossible to arrive at such a conclusion. We start from a rule of the civil law to which I know of no exception: "*Bona fides non patitur ut bis idem exigatur.*" Now this clearly does not simply mean that the creditor cannot ask his debtor to pay him twice. Such a rule would be trivial. What is intended is, that by no arrangement can a creditor in effect be allowed to recover twice. If A lend money to B, and C pays the debt, A cannot recover from B. This rule stands entirely independent of any question of subrogation. The insurance company, which pays, is precisely in the position of C, and it does not alter the rule of law that A has paid for this security conditionally. The English rule may perhaps be due to their idea of privity of contract; but we have no such term in our law. Of course, we have the idea. It must be common to all systems; but, I am inclined to think that its application in England materially differs from ours. "Lien" (*vinculum juris*) and "consent" express our idea. In obligations proceeding from contracts there may be "lien" or a legal relation created between the contracting parties and others not parties to the contract. There are examples of this. Our old law furnishes little authority directly as to insurance, but the principles are unquestionable, and the modern writers and jurisprudence have not hesitated to decide that the creditor paid by means of an insurance, made by him for his own convenience, cannot recover afterwards from his debtor.

But, it is said, Pratt has not been paid, and so his estate may recover. That is unquestionable as a general proposition. The payment to Galarneau is not necessarily a payment to Pratt. But it appears by the evidence that Galarneau was the general agent of Pratt in his lifetime, with regard to this transaction, and his executor after Pratt's death. He got the insurance, and it was his duty forthwith to have paid Pratt or his estate. If he did not do so, Pratt either permitted him to keep the money in order to charge the appellant, or Galarneau was unfaithful to his principal. In either case it is for Pratt to bear the loss, or to recover from Galarneau. It would be an intolerable injustice to allow Galarneau, who had prevented his

principal from getting his due, if that be the state of matters, as is pretended, to set in motion a suit of this kind by which he would evidently be twice paid his debt. I am therefore of opinion to reverse.

The judgment is as follows:—

"The Court, etc.

"Considering that the obligation with *hypothèque* for $800, consented to by the appellants in favor of the commercial partnership firm of Galarneau & Roy, whereof Paul Médard Galarneau, one of the now Respondents, was a member, by *acte* executed before Blanchard notary on the 23rd day of February, 1856, and extended as regards the terms of payment by *acte* executed before Blanchard notary on the 21st day of November, 1859, was, by act, before Lamontagne, notary, bearing date the 5th December, 1859, duly transferred to the late John Pratt, whose estate is now represented by the respondents as his executors, which transfer was also signified upon and accepted by the appellants, the same being made by the said Paul Médard Galarneau, as being then invested with the rights of the said firm of Galarneau & Roy which had been dissolved, and that said transfer was made as collateral security for the payment of certain *bons* of the said firm of Galarneau & Roy, then in the possession of the said John Pratt, which *bons* were afterwards paid by the said John Pratt, partly by the said appellants and partly by the said Paul Médard Galarneau himself, but the said transfer remained unrevoked;

"Considering that notwithstanding the existence of the said transfer, the said Paul Médard Galarneau, with the sanction, approval and authority of the said John Pratt, continued to act, as well in the interest, and for the behalf of the said John Pratt, as of himself, in collecting from the appellants sums of money on account of said obligation and *hypothèque*, of date the 23rd February 1856, for all which credit has been given by the respondents in bringing the present action, reducing the balance claimed on said obligation and *hypothèque* to the sum of $882;

"Considering that in or about the month of September, 1876, the said Paul M. Galarneau received from the Royal Insurance Company of England, with whom the buildings upon the property hypothecated by said obligation had been insured, the sum of $800 for a loss by fire on said buildings, for no part of which has any credit been given to the appellants;

"Considering that the appellants were entitled to be credited the net proceeds of said insurance, and that such net proceeds, to wit, the proceeds of said insurance, after deduction of the amount of premiums paid for the same by the said Paul M. Galarneau, and interest on said premiums computed to the time of the institution of the present action, would amount to $499.12, which, being deducted from the amount claimed, leaves a balance of only $382.88, which the respondents are entitled to recover from the appellants on the present action;

"Considering that in the judgment rendered in this cause by the Superior Court at Montreal, on the 31st day of January, 1880, there is error;

"This Court doth reform the said judgment of the 31st of January, 1880;

"And proceeding to render the judgment which the said Superior Court should have rendered, doth condemn the appellants, defendants in the court below, jointly and severally to pay and satisfy to the respondents es qualité, plaintiffs in the Court below, the said sum of $382.88, with interest thereon from the 26th of October, 1878, date of the action in this cause, and the costs incurred by the said respondents, plaintiffs below, in said Superior Court; And this Court doth condemn the said respondents to pay to the said appellants the costs by them incurred in this Court."

Judgment reversed.

N. Archambault for appellants.

Lacoste, Globensky & Bisaillon for respondents.

THE LATE MR. T. W. RITCHIE, Q.C.

The bar has sustained a serious loss in the death of Mr. Ritchie, Q.C., which occurred quite suddenly on the 4th instant, while returning to Montreal from his residence in the country. The deceased has been so long and intimately known to the majority of our readers that it is unnecessary to speak at any length of his high attainments and excellent qualities. Mr. Ritchie was profoundly versed in commercial law, and for some time before his death was counsel for the Bank of Montreal as well as several other financial institutions. But he possessed also a comprehensive knowledge of the other branches of the law, and such a

clear perception that he seldom failed to make the most involved case plain to his hearers. For several years he conducted the Crown prosecutions in Montreal with much credit to himself. While firm and unyielding in the defence of his clients' interests, he was at the same time a gentleman of remarkable courtesy and affability. His death occurred at the comparatively early age of 54, when, to all appearance, he had still a long career before him. Yet many years before his sudden demise he had attained the foremost rank of the profession.

COMMUNICATIONS.

GRANT v. *BEAUDRY.*

To the Editor of the Legal News:

SIR, Permit me to state, that I was not counsel for the appellant in Grant v. Beaudry, as incorrectly reported in vol. 2 of Mr. Dorion's Q. B. Reports at p. 215, and that I was not counsel in the case on either side. So far from giving counsel to the appellant, I was one of the four counsel who advised Mayor Beaudry that the Orange Body was an illegal association.

STRACHAN BETHUNE, Q. C.

Montreal, 31 Aug. 1882.

GENERAL NOTES.

At the annual conference of the Association for the Reform and Codification of the Law of Nations, held last month in Liverpool, several Americans participated in the debate on the form of a bill of lading. Judge Warren, of New York, moved that the words "Act of God" be struck out on the ground that the phrase was irreverent and entirely superfluous. Judge Peabody seconded the motion, because he did not like to have the misfortunes and accidents of the sea attributed to the Supreme Being. Mr. Westgarth considered that it would be tantamount to a revolution to leave out of the bill of lading the old phrase "the act of God." Mr. Atkinson denied that the words were any more irreverent than the shibboleth "So help me God," which was used when they went into Court to give evidence. Mr. Gray Hill said the words had received a judicial interpretation for a long series of years, but "super-human cause" would cover "act of God." Judge Warren withdrew his motion, moving that the words "lightning and other causes" be inserted. Mr. E. R. Condert, of New York, was in favor of the retention of the phrase, because it was a reverent expression, and because there was a tendency among Continental nations to strike it out. Eventually, the motion for the omission of the words from the bill of lading was lost by 27 to 12.—*Albany Law Journal.*

The appointment of Mr. Thos. Hughes to a County Court judgeship may perhaps do something to weaken the prejudice that literature is incompatible with law. It was proof against the practical test of a man of letters becoming Lord Chancellor, which produced the sarcasm that Lord Brougham would know a little of everything if he knew a little law. When Samuel Warren brought out his "Ten Thousand a Year" his friends professed to be anxious to know who wrote the law in it. Yet Brougham was a good, though not a great lawyer; and Warren, at least, made an efficient master in lunacy. Probably Sir Walter Scott, who never rose in the law beyond a subordinate post in the Court of Session, suffered through his fame as a writer. The County Court bench has hitherto been free from the suspicion of letters, but the author of "Tom Brown" may find a precedent in the case of the author of "Tom Jones." Fielding was an admirable police magistrate, and his novels gained from his experience in Court, while his law was probably not the worse for his having an imagination.—*Law Journal.*

PUBLIC RELATIONS OF LAWYERS.—The Hon. D. B. Eaton, in an address before the Yale Law School, upon the public relations and duties of the legal profession, remarked:—"Lawyers are the great office-holding class, who, for that reason, also know more than every other class combined, concerning the grave administrative abuses which now threaten and alarm the nation, of their causes, and the fit means for their removal. We may indeed almost say that we have a government of lawyers,—a privileged class of professional office-holders. Twenty four out of the fifty-six signers of the Declaration of Independence, and thirty out of the fifty-five members of the convention that framed the Federal Constitution, were of the legal profession. Of the nineteen presidents, all but three, who were generals, have been lawyers; and so have a great majority—perhaps five-sixths—of all the members of the cabinet. At this moment every cabinet officer is a lawyer. The greater number of the Governors and of their advisers, if not of the mayors of cities, have at all times been of that profession. In the cases in which its members have not been in majority in legislatures, it is pretty certain that they have been the most influential members, with a controlling voice in framing the laws. There has hardly been a congress in which the numbers and influence of the lawyers have not been overwhelming. In the last Congress the lawyers of New England furnished seven of her twelve senators, and eighteen of her twenty-eight representatives, or nearly three times as many as all other classes combined. From Pennsylvania, one of her senators and seventeen of her twenty-seven representatives were of the legal profession. From Ohio, both senators and all but three of her twenty representatives were lawyers. Of the nine senators and representatives from Georgia, all but two were lawyers: and so were all but two of those from Virginia. Only a solitary person not a lawyer represented Tennessee or North Carolina, and not one, so far as the record shows, who was not a lawyer, reached Washington from Texas. Of the whole of that Congress more than three-fourths were lawyers. Of the seventy-six members of the present Senate, fifty-nine are lawyers, and only seventeen belong to all other classes of the people."