The Legal News.

Vol. IV. JANUARY 8, 1881. No. 2.

CLERICAL INFLUENCE IN ELECTIONS.

The judgment delivered by Mr. Justice Johnson, and concurred in by the two colleagues who sat with him in the Berthier election case, forms no inconsiderable contribution to the law of this country with reference to undue influence in elections. The learned Judge was required to deal with a case where Roman Catholic clergymen, actuated by a strong sense of duty, and possessing the courage of their convictions, warmly espoused the cause of one of the candidates in an election. They sought to influence the votes of their flock, not only by argument and counsel and exhortation, but also, unhappily, by letting it be plainly understood that they would refuse the sacraments of the Church to those who voted for the opposite side. The line is clearly laid down in the judgment between what may, and what may not, be done without producing civil consequences. A clergyman loses none of his rights as a citizen. He may hug the cause of one candidate or the other. He may, if he thinks proper, counsel his flock, privately or even from the pulpit, to vote as he would have them vote. But in taking this part in the election, and supporting the candidature of the man of his choice, he becomes an agent of such candidate within the meaning of the election law, (which is something quite distinct from an agent under the common law); and if he does or says anything which offends against the election law, the candidate cannot be relieved from the civil consequences, though the priest may be acting solely as he believes his religion commands him to act. In the present case the clergymen refused the sacraments to those who were going to vote for the obnoxious candidate. That was an act of intimidation and undue influence within the meaning of the election law, and as these clergymen had been openly working for the cause of the candidate whom they favored, and were therefore legally his agents, he could not escape the consequences of the act of intimidation. The privileges of the Roman Catholic clergy in this country do not affect the decision of such cases at all; for, as the learned judge observed, "supposing any privi-
"lege from the operation of the election law to
"exist in such a case at all, it can only exist
"for the priest individually in the exercise of
"his sacred office; and he cannot give the
"benefit of it to a candidate, so as to shield
"him from the ordinary consequences of the
"acts of that candidate's agents; he cannot
"effectually assert his own individual privilege
"as the privilege of the candidate."

CHIEF JUSTICE MOSS.

Of the old firm of Harrison, Osler & Moss, of Toronto, two members became Chief Justices at a very early age. Mr. R. A. Harrison, when only 42, succeeded Sir William Richards as Chief Justice of Ontario, and Mr. Thomas Moss, at the earlier age of 41, was appointed, on the death of Chief Justice Draper, to the still higher office of Chief Justice of the Court of Appeal, in which Court he had already served two years as a Judge. We regret to add that the career of these two eminent men, alike in rapidity of advancement, is also alike in brevity of judicial service. A cable message was received in Toronto on the 5th instant, stating that Chief Justice Moss had succumbed to the malady which, a short time ago, forced him to visit the south of France in the hope of relief.

Chief Justice Moss was born at Cobourg, Ont., 20th August, 1836. He was educated at the Toronto Academy, Upper Canada College, and at Toronto University, at which he was Gold Medallist in Classics, Mathematics and Modern Languages. He was called to the Bar in 1861; elected a Bencher of the Law Society in 1871, and created a Q.C. in 1872. He represented West Toronto in the House of Commons, from December, 1873, to 8th October, 1875, when he was appointed a Justice of the Court of Error and Appeal. On the 30th November, 1877, he was promoted to be Chief Justice of the Court of Appeal of Ontario. His judgments during his brief judicial career have evinced an intimate knowledge of the law, and have generally been received with great respect. The number of appeals from the Court in which he presided has been small. The Chief Justice was also much beloved for his social qualities, and his premature removal from a position for

which he was admitted on all sides to be admirably qualified, has awakened feelings of no ordinary regret.

THE LATE MR. JUSTICE DUNKIN.

The Bench has sustained another loss, almost simultaneously, in the Province of Quebec. Mr. Justice Dunkin, of the Superior Court, who long took an active part in public affairs, died at his residence, Knowlton, P.Q., on the night of the 6th instant. Judge Dunkin was born in England in 1812. He was educated at the University of London, and at those of Glasgow and Harvard. He was appointed Secretary of the Education Commission under Lord Durham, and held other offices in the Civil Service. Subsequently he was admitted to the Bar in 1846, and was a member of the eminent firms of Meredith, Bethune & Dunkin, and Bethune & Dunkin. He represented Drummond and Arthabaska from the general election in 1857 to the general election in 1861, and subsequently Brome from January, 1862, until the Union, when he was returned to the Commons and the local House by acclamation. He was Treasurer of Quebec Province from July, 1867, until November, 1869, when he became Minister of Agriculture of the Dominion. In October, 1871, he was appointed a judge of the Superior Court, an office which he retained until his death. Mr. Dunkin was the author of the celebrated temperance measure known as the Dunkin Act. He was a sound lawyer, a good speaker, and a careful Judge.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Nov. 30, 1880.

MASSÉ et al., Petitioners, and ROBILLARD, Respondent.

[Continued from p. 8.]

Clerical influence in Elections.

JOHNSON, J., continued:—

Let me now, before entering more particularly on any specific charge, refer to the law as settled by the highest authorities, as to what is, and what is not "undue influence." In the Longford case, Mr. Justice Fitzgerald, in his judgment, declared the election void on the ground of corrupt treating. As to undue influence on the part of the clergy, he said: "The utmost care has been taken by the Legislature for the purpose of defining what undue influence is, and of repressing it. It is defined with a view to embrace almost every case of improper influence, whether by physical intimidation or otherwise; and if we were now applying to the Legislature to amend the law so as to include any case that might have been omitted, it would be difficult to invent language more comprehensive." And subsequently: "In considering what I call here undue clerical influence, it is not my intention to detract from the proper influence which a clergyman has, or, by a single word, to lessen its legitimate exercise. We cannot forget its wholesome operation, and how often, even recently, it has been the great bulwark of the community against insurrection and fruitless attempts at revolution. The Catholic Priest has, and he ought to have, great influence. His position, his sacred character, his superior education, and the identity of his interests with his flock insure it to him; and that influence receives tenfold force from the conviction of his people that it is generally exercised for their benefit. In the proper exercise of that influence on electors, the priest may counsel, advise, recommend, entreat and point out the true line of moral duty, and explain why one candidate should be preferred to another, and may, if he thinks fit, throw the whole weight of his character into the scale; but he may not appeal to the fears or terrors or superstition of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage or punishment hereafter. He must not, for instance, threaten to excommunicate, or to withhold the sacraments, or to expose the party to any other religious disability. If he does so with a view to influence a voter, or affect an election, the law considers him guilty of undue influence."

As to the influence of the clergy when not undue, alluding to a meeting of the clergy that had been relied on to some extent in that case, the same judge said:

"I allude to this meeting because it has been made the subject of much commentary, and upon the face of the petition, as well as in the evidence given for the Petitioners, it has been made the foundation of many of the charges which have been put forward. It is

not my duty to pronounce upon the policy or expediency of that step so taken by the clergy —that is the holding, in the first instance, a meeting confined to the clergy of the county, and their selecting a candidate whose interest they agreed to promote with all their power. All I have to do is to pronounce upon the legality of it, and I am obliged to say that however objectionable it may have been, it was a lawful proceeding. It was quite as open to the clergy, as electors of the county, as it would have been to any other body of electors in the county, to separate themselves from the general mass of the electors, select a candidate, and agree to support that candidate. When we recollect the very great interest which the clergy had in the then pending election, and the crisis which they no doubt considered was imminent, probably, it is a course which one would have expected they would take upon the occasion. The objections to it are that it separates the clergy from the laity; it exposes the former to the imputation of what is called 'clerical dictation.' It creates jealousy and uneasiness, and lays the foundation for the charge of undue influence; and there is this quite certain, that it calls upon the judge who may have to determine the validity of the election, to view with suspicion and criticise with vigilance the course which the clergy may take in the contest."

In the County Tipperary case, Mr. Baron Hughes, in his judgment, declared the respondent duly elected. As to the influence of Roman Catholic priests, he said:—

"A priest's true influence ought to be like a landlord's true influence—springing from the same sources, mutual respect and regard, sympathy for troubles or losses, sound advice, generous assistance, and kind remonstrance—and where these exist, a priest can exercise his just influence without denunciation, and the landlord can use his just influence, without threat or violence. A priest is entitled, as well as any other subject, to have his political opinions, and to exercise his legitimate influence legitimately. It is a mistake to suppose that on a man taking holy orders he ceases to be a citizen, or ceases to be clothed with all the privileges and rights of a citizen. But a priest has no privilege to violate or abuse the law. He has no right to interfere with the rights and privileges of other subjects. He may exercise his own privileges, but he must forbear in respect of others. It is also a mistake to suppose that every act of a priest is a spiritual one. An assault by a priest is simply an assault, and not priestly intimidation; and the assault of a priest can and ought to be resented, and prosecuted and punished like any other individual."

In the Borough of Galway case, p. 200, Mr. Justice Lawson declared the election void on account of intimidation by the respondent and his agents. As to spiritual undue influence, he said:—"Undue influence, like other frauds of which it is only a species, must be established by evidence, and cannot be arrived at by conjecture. I need not refer to authorities to establish what, in point of law, constitutes undue spiritual influence. The judgments of Mr. Justice Keogh in the Galway cases, and that of Mr. Justice Fitzgerald in the Longford case *leave nothing to be said as to the law of the matter*."

Having now referred, I hope not at too great length, to the settled law as to what is undue influence, and what is not, I may just refer again in a general way to these charges taken altogether as completely justifying the language I used in describing them, when I said that a very great part of them charge things which undoubtedly could not constitute "undue influence" in the sense of the law. It was undoubtedly the right not only of the rev. gentlemen here impugned, but of every elector in the county, and the law makes no distinction between the cloth, and the rest of the electors, to take any political side they chose: to denounce one party as the good one, and another as the bad one. It was their right to be earnest and vehement in the assertion of their opinions: to meet among themselves (as was done in the Longford case), and to agree as to what candidate they would support, and to support him by all the lawful means in their power. Up to the point at which we have arrived, I see nothing whatever to blame in the conduct of these gentlemen, and I know of no law even to prevent their alluding to the subject of a public election from their pulpits, if they see fit to do so. Mr. Loranger had a perfect right to send the letter, Mr. Robillard had a perfect right to carry it, and Mr. Champeau to receive and act on it; but we

now come to the question: How did he act on it? He was within the law in supporting his favorite candidate; but he could only do so by becoming his agent for that election, under the law, as it has been laid down. But the point is: What did he do as such agent? Did he do something that the law characterizes as "undue influence?" or did he merely act within the law? What he did can be stated in few words. It is distinctly proved by evidence that is unimpeached; and it was this: Maxime Henault, of Berthier, aged 54, swears to it. I take it word for word, question and answer, from his deposition:—

Je ne suis point intéressé dans l'événement de ce procès.

Q.—Pendant l'élection dont il est question en cette cause, tenue en avril et en mai 1878, avez-vous eu occasion d'aller au presbytère de la paroisse de Berthier et de parler avec le Révd. Messire Champeau, curé de cette paroisse, de la politique ou de cette élection en rapport avec la religion, et racontez-nous ce qui s'est passé entre vous et lui à ce sujet?

R.—Je suis allé au presbytère demander à M. le curé pour pouvoir m'approcher des sacrements, faire mes Pâques.

Q.—Qu'est-ce qu'il vous a demandé, d'abord, en vous disant bonjour?

R.—Je suis entré; j'ai dit: bonjour monsieur le curé, il dit: bonjour M. Hénault. Il m'a demandé: Comment vont les rouges? J'ai dit: "ils vont assez bien, dans ce temps-ici, mais ils ont des difficultés pour faire leurs Pâques, et je voudrais bien faire mes Pâques comme je les ai toujours faites depuis ma première communion." Il me dit là, dans cette occasion-là: pour quel parti avez-vous voté? J'ai dit: j'ai toujours voté pour monsieur Sylvestre. Il m'a dit: voilà une élection qui se présente, voterez-vous dans le même sens? J'ai dit: oui. Il m'a dit: "eh bien! pas de Pâques." J'ai dit: c'est bien! je vous ai demandé à faire mes Pâques, j'irai plutôt à confesse ailleurs et je ferai mes Pâques.

Here, then, we have one case presented, about which, if the law I have cited is to prevail, there ought to be no difficulty whatever. I do not now say that that law, as I have cited it, is to prevail, because before I can say so properly, I must consider what is said on the other side, and which is of very great interest and importance indeed. I do not say that considered as a legal proposition those pretensions present any great difficulty; but I do say that we have felt a very deep interest, notwithstanding previous well-known decisions, in hearing those pretensions discussed as ably as they have been discussed by the learned counsel on both sides. The answer that is made, is not now made for the first time. It is expressed to a great extent by the words "clerical immunity," and it maintains that the acts of the clergy are cognizable only by their ecclesiastical superiors. The privileges of the Roman Catholic clergy and religion, it is said, were guaranteed by the capitulation and the treaty, and therefore this freedom to exercise their religion is above the provisions of the election law, which is the law of the Parliament of this country, and which says that certain things on certain occasions are corrupt and illegal practices, and may have the effect of avoiding an election. I may say at once that we should not be averse to discussing once more a question that has been already pretty well discussed, and as far as the facts of the present case would go, completely decided; but in whatever way that question might be looked at, I say without hesitation that it is no answer at all to the present charge. Either these acts, or rather this specific act which we are now upon in the instance of Mr. Champeau, was committed, as it is alleged to have been committed, or it was not. It is alleged to have been committed by an agent of a candidate at an election. That is either true, or it is not. If it is not true; if there is no agency, then, of course, there is an end of the case at once; but if there is in this instance proved agency (and we hold that there is), the act that would appear to be proved would not be the act of a priest, *quâ* priest, but the act of an election agent who happened to be a priest. It is the act of the candidate done through the agency of another that is made the ground for asking that this election be set aside; and if the agent can shield the candidate by saying that besides his agency for him he had other and distinct privileges of his own, besides the rights of the candidate, then obviously there would be an end of all freedom of election whatever; for the candidate would in such a case only have to select clerical agents, and there would be an end of the matter. It is not for the acts of those who were acting independently of the candidate, but for the acts of those who are held by the law to have been his agents, that it is asked to set aside this election. Whether there be agency or not, then, this asserted privilege extraneous to the agency is quite immaterial, for if it exists extraneously to the agency, it cannot reach back to the candidate whose

acts are in reality now in question on the principle *qui facit per alium facit per se*. What the priest may do when acting entirely on his own behalf, and not as agent of a candidate in an election, is not now the question before the Court; but supposing any privilege from the operation of the election law to exist in such a case at all, it can only exist for the priest individually in the exercise of his sacred office, and he cannot give the benefit of it to a candidate so as to shield him from the ordinary consequences of the acts of that candidate's agents. He cannot effectually assert his own individual privilege as the privilege of the candidate. Therefore, I should feel disposed to regard this question as quite immaterial, on the plainest logical grounds; but if I did not so regard it, I should still be of opinion that it is founded on an entire misapprehension of the facts of history, and an entire disregard of the authority of law as founded on the most explicit decisions. This is a question of law, and purely of law, apart from all other considerations. Speculatively or philosophically, there might perhaps be difficulty in saying that of two co-existing but different obligations—the one of religious, and the other merely of legal force—the latter were to be preferred. As a question of law in a Court of Justice, however, there can be no question about it. The privileges of clergymen, of whatever denomination they may be, are subordinated to the law of the land; allowing their freedom to any extent that they may be pleased to assert it, the question is not whether they have it, but what effect under a certain Statute the exercise of it is to have on an election. What is the limit, in all cases or in any case, of human law I decline to discuss. Its limit for us is the limit of its plain expression. We are its sworn officers: what it says plainly we must say that it says. I called upon the learned counsel for the defendant to say, as it is my habit to do, all that could be said on this subject, *i.e.*, the perfect freedom of the Roman Catholic clergyman to profess and to practice his religion, and I heard with very great pleasure all that could be said on the subject by one of the ablest men in the profession; and I did so because I am persuaded such a habit is good and conducive to justice, as tending to extract all that can be said, and best said, by those most qualified to put it forcibly; and I did so, also, because this particular subject had made a deep impression on my mind, and I did not wish to dispose of it without, as it were, holding it in my hand, and looking at it on all sides, and finding out what stuff it is made of; and I find out at last, that it is made of very good stuff indeed in itself, and for its own purposes; but very flimsy stuff indeed when applied to influence, or to carry elections, and to make them proper, free and valid proceedings under the human law that I administer. I do not deny, and indeed I put such a case to the respondent's counsel, that there may be instances in which, apart from the strict lines of law and logic within which this Court should act, it would be difficult to say that either priest or layman was using "undue influence," at least in an ordinary sense, merely because he should do some of the things which have been held, by the decisions in election cases, to constitute that offence. Take the case I put to the learned counsel—the extreme and improbable case if you will—of a candidate pledged to bring in a bill to repeal the laws against theft or murder founded on the decalogue. It would surely not be thought by ordinary men that there was any "undue influence" in saying of such a candidate and his supporters, that both alike were risking their salvation. Yet, when it came to be looked at in the light of the statute, it might possibly be seen that it was legally "undue influence," because voting is an exercise of a political right protected by the Statute, and considered simply as a political right to be protected in his person, the voter has the power to vote as he pleases. The agent, therefore, might be quite right in his opinion, and quite wrong in asserting it at such a time and for such a purpose, because the law has said that at such a time the elector is to be left free to exercise his choice, and that there is a species of influence which it calls undue, and which does not appeal to the reason and judgment only, but to the most tremendous subjects of which the human mind is capable of receiving impressions. I agree, then, with the defendant's counsel in every word that has been said as to the granting of this religious liberty; but I do not agree as to the effect of the grant. Those to whom it was granted were not put above the law, nor above the rest of their fellow-countrymen. It was a great and a

just act of State placing those who received the benefit on the same footing with respect to their religion as the other inhabitants of the country might occupy with respect to their's. But religious freedom and equality are one thing; to establish the superiority of one order over another—an *imperium in imperio*—would have been quite another. And after the series of cases on this subject, which it would now be mere pedantry to parade, with every desire and readiness to hear whatever could be said on either side, we might well have declined to reconsider the question whether the authority of the Sovereign of England can be exerted in her Courts over all her subjects in this country, without distinction, or whether there are some of them who can violate the Statute law of the land, and at the same time decline the jurisdiction of the ordinary tribunals.

Called upon, then, to determine this election petition, we decide the case on this one single act—the first one we take up—of one of the gentlemen impugned, the Rev. Mr. Champeau. It is sufficient to determine the case as far as the validity of the election is concerned; and our duty calls upon us to go no further than that one case for that purpose. I have said it is sufficient. Under the decisions in the English cases cited, the matter is beyond doubt; under the decisions here in our own country, the case has been declared with equal plainness on the point as to whether the act in question constitutes an undue influence. The cases were cited at the bar; they are well known, and of course are binding on us as precedents. There is only one which was not, I think, cited—at all events that part of it which I will now refer to. It is the Charlevoix case, in which the well-known and extremely able judgment of Mr. Justice Routhier was rendered. That learned judge held that he had no jurisdiction—a point on which the Supreme Court held a different opinion; but as to undue influence and what will constitute it, the learned judge held precisely what we are now holding, and his language is so clear that I will permit myself to cite it: "En effet," says the learned judge (p. 369 of the report), "pour qu'il y ait intimida-
"tion, il faut que celui qui commet cette
"offense prive, ou menace de priver l'électeur
"d'un bien dont il dispose. Or les sacrements
"sont des biens spirituels dont le prêtre dispose
"suivant certaines règles que l'église lui a
"tracées. Quand le prêtre refuse les sacrements
"à un électeur à cause de son vote, je com-
"prends donc qu'un juge qui se croit compétent
"en matière spirituelle puisse dire qu'il y a
"intimidation." The learned judge's doubt was about the power of the lay tribunal, not about the legal character of the act which is proved in this case. Since the judgment of the Supreme Court in that same case, we do not feel the difficulty which Mr. Justice Routhier felt about the jurisdiction, and we have no misgiving as to the law and the reason of his description of the act. Now, as regards the other cases, though we are not called upon to pronounce upon them as regards the validity of the election, we have been obliged to look at them (and a very heavy labour it has been), with a view to satisfy ourselves not only of their real character in themselves, but also of the personal complicity of the respondent. We might, of course, proceed to apply these principles to the other cases, and to consider the evidence appropriate to each of them; but we purposely abstain from doing so. Though we have been obliged to examine and consider all these charges, and all the evidence, we think we are not called upon to discuss them at length. We merely say that, with the exception of the Rev. Mr. Loranger, we consider undue influence and intimidation to be clearly proved in all the cases; and, of course, for the purpose of applying the law to this case, one single case is as good as a thousand. In declining, then, to go further into these charges as unnecessary for the determination of the case before us, we will merely say that in none of them, including the charge already disposed of, do we see any sufficient or convincing evidence of the respondent's personal complicity with any of those acts. For the same reasons, it becomes quite unnecessary to consider the motion to reject evidence. The case is disposed of without reference to the evidence that was objected to by the respondent; therefore, the petitioners have no interest in having the evidence allowed, nor the respondent in getting it rejected. It only remains to say that we avoid the election on the ground of undue influence and intimidation practised by agents.

Election annulled.

Germain & Co., for petitioners.
M. Mathieu for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 21, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, CROSS, BABY, JJ.

KANE (plff. below), Appellant, and WRIGHT et al. (defts. below), Respondents.

Contract—Partnership interest.

The appeal was from the judgment of the Superior Court, Montreal, Johnson, J., Sept. 30, 1878, dismissing the appellant's action. See 1 Legal News, p. 482, for the judgment of the Superior Court.

RAMSAY, J. I hope this case is a peculiar one. It is certainly interesting in a sense, for it has all the machinery of a sensational novel—plot and counterplot. The Harbor Commissioners of Quebec, having extensive works to do, advertised for tenders. With official precision, the full details were set forth in the advertisement; the day and very hour in which the sealed tenders should be sent in were specified. Nothing could look more fair and above board, but at the very moment that all this was going on, it was perfectly known in certain circles in Quebec that Mr. Peters was to get the work. Among those who were aware of this were the respondents in this case, and in the afternoon of the day on which the tenders were lodged, that is on the first of February, 1877, they divulged to Mr. Peters the rate they had charged for dredging. This, of course, is denied, but there is no escape from the conclusion as to what must have taken place by the result. First, it is admitted that prices were given. Secondly, immediately afterwards the Harbor Commissioners asked for supplementary tenders. Peters tendered anew; Moore, Wright & Co. tendered anew; and the contract which was really executed was in favor of Peters, Moore and Wright. We are now asked to believe that there was no connivance between the Harbor Commission and Peters; that Moore & Wright, not being able to obtain the whole contract for Moore, Wright & Co., were perfectly entitled to take a sub-contract from Peters, and that that was all they had done, and that the contract had really been accorded to Peters, and that their names had been inserted afterward, when the formal document had been drawn up, as a matter of convenience, and that, in effect, they had only to do with a portion of the contract.

If this extraordinary and improbable story were true, it seems to me that it would not mend the matter, so far as the respondents are concerned. They evidently were the agents in this transaction of their co-partners, and they couldn't make a contract as to any portion of these works behind their partners' backs, and therefore they are obliged to render an account of their gains on this contract for one share to the appellant.

They might have been coerced to this by one action to account after the whole work was done, or by periodical actions during the progress of the work. The appellant has taken the least advantageous course for himself, probably because he did not wish to be involved in tedious litigation, and so he has rendered the proof of his case rather difficult. The Court has assessed his damages at $2,500. In this judgment I concur, as I think there is some evidence to show that the appellant's share of the gain would have been at least as great as this. I may add, on the question of Moore & Wright's liability, that during the whole period of the negotiations with Peters they were entertaining Kane & Macdonald with the idea that they were acting for them. When the new tenders were called for, they called it a fraud, said it was "too thin to wash," and that they would "warm" some one, probably "that engineer" at Quebec. In reality, they had provided a warm place for themselves, by getting two thirds of the contract with Peters, instead of one-half with Kane & Macdonald. After the bargain with Peters was complete, they went through the farce of tendering Kane & Macdonald a share in their contract; and when they wrote to accept, they answered they had made other arrangements. What these other arrangements were has never been disclosed, and it is not of much matter to anybody what they say on the subject. Their conduct shows the grossest bad faith, and I only regret there is not sufficient evidence to enable the Court to make them pay more sharply than they will have to do under this judgment.

The judgment is as follows:—

"Considering that it is proved that the appellant, the respondents, and Angus P. McDon-

ald mentioned in the plaintiff's declaration, associated themselves together at Montreal in January, 1877, for the purpose of tendering for the execution of certain public works at the mouth of the St. Charles River, in the Harbor of Quebec; that they did so tender for said work, and also made a supplementary tender for the same work, and it was contemplated by them, understood and agreed that they should be jointly interested not only in the profits of the entire work, but in such portion of it as could be secured, either directly or by subcontract;

"And considering that the respondents afterwards, in violation of their obligations and in fraud of the rights of the appellant, procured the contract for the execution of a large proportion of said works, in conjunction with one Simon Peters, of the City of Quebec, contractor, in the profits of which the appellant has a right to participate as regards the respondents;

"And considering that the respondents, after they had secured, in conjunction with the said Peters, the contract for the construction of a large proportion of said works, offered the appellant and the said Angus P. McDonald a share in said contract, which they agreed to accept, but the respondents afterwards refused to fulfil their said offer;

"And considering that it is proved that said contract so secured by respondents was of great value, and that the appellant is entitled to one-fourth of the profits of said contract, which respondents have refused to allow him;

"And considering that the appellant by reason of the premises has suffered damage to the amount of $2,500;

"And considering that there is error in the judgment rendered by the Superior Court on the 30th day of September, 1878;

"This Court doth reverse and cancel the said judgment of the 30th September, 1878, and proceeding to render the judgment which the said Superior Court should have rendered, doth condemn the respondents to pay to the appellant the said sum of $2,500 as and for his damages in the premises, with interest from this date, and the costs as well those incurred in the court below as on the present appeal."

Judgment reversed.

Girouard & Co. for appellant.

Bethune & Bethune for respondent.

RECENT U. S. DECISIONS.

Common Carrier—Rights of Express Companies on Railroads.—A railroad company cannot, directly or indirectly, trammel or destroy express enterprises by excluding express companies from its lines, or fettering them with unjust regulations or unfair discriminations. Nor can it assume to itself the exclusive right of carrying on the express business over its own lines.—*Southern Express Co.* v. *Louisville & Nashville R.R. Co.*, Tennessee, Western District, Nov., 1880.

Crim. Con.—Damages.—Damages for criminal conversation with plaintiff's wife may be mitigated by proof of her consent. Whether she yielded only to importunity or threw herself in the way of her paramour is material.—*Ferguson* v. *Smethers*, Supreme Court, Indiana, Nov. 24, 1880.

GENERAL NOTES.

Mr. Justice Strong, at the age of 72, has retired from the bench of the Supreme Court of the United States. Judge Strong first served ten years as Chief Justice of Pennsylvania, and subsequently ten years in the U.S. Supreme Court. He is now entitled to his salary of $10,000 per annum for life.

The London *Law Journal* says: "The other day a learned gentleman of somewhat persistent eloquence, who was employed in an appeal against a decision of Vice-Chancellor Malins, informed the Court of Appeal that in the argument below the Vice-Chancellor 'stopped' him. 'Indeed!' said the Master of the Rolls; 'how did the Vice-Chancellor ever manage that?'"

The *Central Law Journal*, referring to the rights of check-holders and payees of unaccepted drafts, says: "The courts of the United States, England, Massachusetts, Pennsylvania, Louisiana, and New York maintain that the holder of neither of these instruments can sue the drawee before acceptance, while the courts of South Carolina, Illinois, Iowa, Kentucky, and Missouri hold that check-holders can maintain such suit against the bank or banker, whether the amount of the check is the whole or a part of the sum on deposit in favor of the drawer."

William Wait, a law writer of note, died of consumption at his residence in Johnstown, N.Y., Dec. 29. Mr. Wait is the author of several works of importance, including "Wait's Law and Practice," a "Digest of the New York Reports," "Supreme Court Practice," and lastly, "Actions and Defences," in seven volumes, a work which, it is said, has had an immense sale in every State in the Union. In the preparation of these voluminous works, the author overtasked his powers and contracted the disease which has cut short his days. He leaves a fortune of $100,000 derived from the sale of his books.