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CONTEMPT OF COURT.

There can be no sympathy for Mr. Gray or for his offence; and the fact that he is rich, that he has been Lord Mayor of Dublin, and that he is now High Sheriff, is the most sufficient justification that can be offered for the severity of his punishment. It is not the amount of his punishment, but the mode of its imposition that provokes indignation. It is in vain to say, the offence is very Irish, and therefore that its treatment must be exceptional. It is precisely the absurd special case argument we rejected when urged in support of the Land Bill, that we now reject when put forward in support of the Arrears Bill, and in the treatment of Mr. Gray. So long as "Justice to Ireland" means the violation of every principle of law and order, so long will the Irish, with some show of reason, demand abnormal legislation for imaginary grievances, and government be obliged to have recourse to exceptional laws to repress agitation they have themselves in great part created.

It is no new idea of Mr. Justice Lawson to punish crimes in Ireland as contempts of Court. Starting from some foolish maunderings of Chief Justice Wilmot, found in an old trunk after his death, and published by the uncritical piety of his children amongst his opinions, the Judges in Ireland conceived the idea of converting every crime into a constructive contempt of Court. A Dublin barrister wrote to Mr. Erskine on the subject (1785), and the latter answered: "Whenever this (trial by jury) ceases to be the law of England, the English constitution is at an end; and its period in Ireland is arrived at already, if the Court of K. B. can convert every crime by construction into a contempt of its authority in order to punish by attachment."

It may be said that this has not been done in Mr. Gray's case, and that his article on the jury was a contempt of Court. Of course, this is the point. What is the definition of a "contempt?" The advocates of Prerogative say it is undefined and undefinable. This is to say that it is whatever the judge chooses to make it. Such a conclusion is destructive of the whole position. But is it so? Its limits, as its cause, are evidently necessity. A contempt is a minor obstruction to justice—a matter which being within the actual cognizance of the judge, or at all events easily cognizable by him, would directly obstruct the course of justice, without being of sufficient importance in itself to merit severer discipline. This is evident by its punishment, which can only be by fine or imprisonment, or both. As an example, the refusal to obey a subpœna is not an indictable offence, but the party may be attached. But if he assaulted and wounded, or killed the bailiff, it will hardly be contended that he could be made to answer for a contempt. Mr. Gray was guilty of libel,—it appears, a very gross libel, untruthful and highly injurious to persons performing a public duty of no ordinary difficulty. But it was no more a contempt of Court than Macaulay's Chapter on Jeffries and the Bloody Assizes. One can easily conceive this prerogative being pushed so far as to forbid, or punish, writings intended to thwart justice in a pending case; but after the trial the proceedings surely must be public property on the same conditions as any other fact of a public character. If they are not so after the trial, at what period is the contempt prescribed?

Mr. Justice Lawson may make up his mind to this, that, while the people of England will applaud him for the vigorous punishment of insurrectionary delinquents, he will get no credit from them for an intemperate zeal which disregards the substantial forms of justice.

R.

UNLAWFUL ASSEMBLY.

The Salvation Army have scored a decisive victory. In various parts of the country the processions of the Salvationists have been interdicted by the local magistracy by proclamation, and, in the event of the processions having been held in spite of the proclamation, persons who led them or who helped to form them have been found guilty of unlawful assembly, and either imprisoned or bound over to keep the peace and to be of good behavior. This lately occurred at Weston-super-Mare. The defendant, however, not satisfied with the decision of the magistrates, brought the matter before the Queen's Bench Division (*Beatty* v. *Gillbanks*, June 13th), and the order of the magistrates was quashed, Justices Cave and Field being of opinion that the mere procession

per se could not constitute an unlawful assembly. The law has long been settled as to what constitutes an unlawful assembly. Hawkins, in his Pleas of the Crown, bk. 1, ch. 28, secs. 9 and 10, thus defines it: "Any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the King's subjects, seems properly to be called an unlawful assembly, as where great numbers complaining of a common grievance, meet together armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for none can foresee what may be the event of such an assembly. Also, an assembly of a man's friends for the defence of his person against those who threaten to beat him if he go to such a market, etc., is unlawful, for he who is in fear of such insults must provide for his safety by demanding the surety of the peace against the persons by whom he is threatened, and not make use of such violent methods, which cannot but be attended with the danger of raising tumults and disorders, to the disturbance of the public peace." Dalton, in his book of Justices, in dealing with unlawful assemblies, says that, four circumstances are to be considered: first the number of people assembled; secondly, the intent and purpose of the meeting; thirdly, the lawfulness and unlawfulness of the act; fourthly, the manner and circumstance of doing it. In treating of the lawfulness or unlawfulness of the act, he says that that doth not always excuse or accuse the parties in a riot, for the manner of doing a lawful thing may make it unlawful, also the manner of doing an unlawful act by an assembly of people may be such as that it shall not be punished as a riot. For instance, he says, if in doing a lawful act the persons assembled shall use any threatening words, or shall use any other behaviour in apparent disturbance of the peace, then it seemeth to be a riot; also, if a man be threatened that if he come to such a place he shall be beaten, in this case if he shall assemble any company to go thither with him (though it be to safeguard his person) it seemeth to be unlawful. The view of the law adopted by these two learned writers has always been acquiesced in; Mr. Baron Alderson expressly adopted it in the trial of the Chartists in 1839: *Reg.* v. *Vincent*, 9 C. & P. 91. In summing up in that case he further says: "I take it to be the law of the land that any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighborhood is an unlawful assembly." The same words are used by Mr. Justice Holroyd in *Redford* v. *Birley*, 3 Stark. 106. The view taken by Justices Field and Cave of the law, was that the actual assembly complained of must, in itself, without regard to the action of others, be of such a character as to inspire terror either by its object, acts, or expressions, and that therefore a procession of Salvationists, of itself innocent, and having primarily a peaceful purpose, could not become an unlawful assembly merely because it was, to their knowledge, certain to be resisted by force. If this is a true view of the law, it seems rather difficult to reconcile it with the illustrations given by Dalton and Hawkins of the man who, knowing that he would be beaten if he went to a certain market, assembled some followers, if necessary, to protect him. Might it not be said that his primary object was going to market, but that his determination to carry out that object at all risks in company with friends made his an unlawful assembly? So, too, with the Salvation Army, who, in spite of all opposition, are determined to continue their march in procession. It may well be, their primary object in starting was to return through certain streets to their hall; but, in consequence of their determination to do so at all hazards, it may well be said, in the words of Hawkins, no one can foresee what may be the event of such an assembly.—London *Law Times*.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, February 15, 1881.

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

BOISCLAIR, (defft. below), Appellant, & LALANCETTE (plff. below,) Respondent.

Suit on a Suit—Right of Action.

An action of damages will not lie against a party to a previous suit by his adversary, for an alleged false affidavit by which such party obtained a final judgment in his favor in the previous suit. The first judgment is res judicata.

RAMSAY, J. This is a peculiar action. The appellant sued in the Commissioners' Court as Tutor to the minors "Maxime Proulx," and, condemned in this quality, sued out a writ of *Certiorari*, and in the affidavit of circumstances he declared: "qu'il n'était pas le tuteur des mineurs Proulx ainsi qu'allégué dans le dit jugement, et que la dite Cour des Commissaires n'était autorisé et n'avait aucune jurisdiction pour rendre jugement de cette manière." The judge in the Superior Court, it would seem, set aside the judgment of the Commissioners' Court owing to this allegation of the affidavit of circumstances. The plaintiff before the Commissioners' Court, now Respondent, sued Appellant in damages for this false statement, as he calls it, and proved as the measure of damages what he had lost by the setting aside of the judgment in the Commissioners' Court. The question now arises whether such an action will lie. Had it not been for the decision in the case of *Gugy* v. *Brown*, I should have had no hesitation in saying that there could be no suit on a suit, except to set aside judgments in specified cases, and this on the general principle that otherwise a legal difficulty might be made perpetual. In that case the parties who had neighboring properties near Quebec, had been in litigation for many years. At last all causes of quarrel seemed to be about exhausted, when one of them sued the other for having sued him so often, in suits in which he had been unsuccessful, and without probable cause. The Court of Appeals held that such an action would lie. This decision seems to me to be open to the objection I have just mentioned; but it would not warrant, even if sustainable in principle, what is sought in this case. If such an action as the present could be maintained it would be a mode of evading the rule of *res judicata*. It is therefore open to the general objection to the decision in *Gugy* v. *Brown*, with this one added.

But it is contended that Boisclair was not a party to the proceedings on the *certiorari* in the same quality as he is sued in this action, and that identity of quality is requisite to make good the defence of *res judicata*. I think this answer to the objection is put forward without due reflection. It is perfectly true that there is no *res judicata* where A as heir of C has sued B to recover a certain thing, and again sues him as heir of D, for a man may have two titles to a thing. In the first suit against B the title adjudicated upon is the succession of C, in the second suit it is the succession of D. The question, then is different. But to hold the plaintiff *ès qualité* liable personally for his conduct in a suit would be virtually to try the issue over again. It is even much to be doubted whether a civil action will lie against a witness who has sworn falsely to a material fact, for his evidence was there to be contradicted. The decision of the matter before us has nothing to do with the question of the concurrent proceedings civil and criminal. There never was any doubt that as a general rule the criminal prosecution did not prevent the civil remedy, and I fancy it is quite as clear that the civil suit would be no bar to a prosecution.

The judgment in appeal is as follows :—

"La Cour, etc....

"Considérant qu'il n'appert pas par la preuve faite en cette cause que l'affidavit donné par l'appelant au soutien de sa demande pour *certiorari* à l'effet de faire annuler le jugement rendu par la cour des commissaires de St. Aimé, du 7 janvier 1878, ait été la seule raison pour laquelle le jugement aurait été annulé et mis de côté par la Cour Supérieure, le 14 février, 1879;

"Considérant, en outre, que l'intimé ne pouvait, au moyen d'une action en dommages, et en produisant de nouvelles preuves, renouveler une contestation sur une question définitivement jugée entre les parties par le jugement rendu en dernier ressort par la Cour Supérieure;

"Et considérant qu'il y a erreur dans le jugement rendu par la cour de circuit pour le district de Richelieu, siégeant à Sorel, le 26 octobre, 1879;

"Cette cour casse et annule le dit jugement du 25 octobre, 1879, et prononçant le jugement que la dite cour aurait du rendre, déboute l'action de l'intimé, et condamne l'intimé à payer à l'appelant les frais encourus, tant en cour de première instance, que sur le présent appel."

Judgment reversed.

A. Germain, for Appellant.

C. A. Geoffrion, Counsel.

Longpré & David, for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, January 19, 1882.

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

CHRETIEN (deft. below), Appellant, & CROWLEY (plff. below), Respondent.

Consolidation of Causes—Principal and Agent—Misrepresentation.

A suit instituted under the Lessors and Lessees' Act may be united with a cause proceeding between the parties under the ordinary jurisdiction of the Superior Court, in which the same question is involved.

Where an agent in making a contract suppressed a material fact within his knowledge, his principal cannot profit by the fraud, although he was himself ignorant of the fact suppressed.

Where shares were sold, purporting to be the shares of an incorporated company, when, in fact, no such corporation was in existence, the error into which the purchaser was led was sufficient to annul the contract.

The appeal was from a judgment of the Superior Court, Montreal, Torrance, J., which will be found at p. 171 of vol. 4, Legal News.

RAMSAY, J. The appellant sued the respondent under the provisions of the Lessor and Lessees' Act for rent, and in expulsion from certain premises leased to respondent by appellant by deed of lease dated 21st July, 1880. The respondent met this application by a plea in which he, in effect, set forth that the deed of lease resulted from a deed of sale made on the same date, of the house mentioned in the deed of lease and of other property, and which he was induced to make by the fraud of appellant, that the deed of sale ought to be declared null, and that it being declared null the lease also must fall, and with it appellant's demand for rent and in expulsion. Respondent also brought a direct action to set aside the deed of sale as regards all the property so sold by him to appellant, alleging the same fraud. Both cases were in the Superior Court, and both came at the same time before the same judge, the case under the Lessor and Lessees' Act on the merits, and the suit to set aside the deed of sale, on a demurrer to a plea of litispendence. Seeing that the cases involved the same question, and that they should have the same fate, the learned judge in the Court below ordered them to be united, and that they should proceed together.

There can be no doubt as to the equity of the order, but the authority of the judge to make it is questioned. The appellant says: that the jurisdiction of the Superior Court acting under the provisions of the Lessor and Lessees' Act differs from the ordinary jurisdiction of that Court, that the delays are different, that an action in nullity could not be brought under the special Act and with these delays, and that the two issues cannot be mixed because of their different mode of trial.

I think appellant is wrong in the foundation of his argument. The Superior Court proceeding under the Lessors and Lessees' Act is exercising the same jurisdiction as in every other case. By certain rules of procedure it in certain cases proceeds summarily, and in other cases less expeditiously, but it remains the same Court, just as the jurisdiction is the same whether the proceedings begin by a *capias* or by a writ of summons. The mode of exercising the jurisdiction only is different. This being the case, in what does appellant suffer? If he had been compelled to proceed in the action in nullity on the short delays of the Lessors and Lessees Act, he would have had a serious ground of complaint; but all that has happened to him is that he has been hindered from snatching a judgment under that Act, without affording the fuller information which the judge required in order to guide him to a safe conclusion. Again, I think it is unimportant whether the judge united the cases on his own movement or by consent of the parties, and it is equally unimportant whether he united them from information gained on an incident where the appellant must succeed or the reverse. Again, if the action under the Lessors and Lessees' Act ought to have been brought in the Circuit Court, it is no reason why it should not proceed *pari passu* with an action properly instituted in the Superior Court. It is also clear that if the Superior Court had no jurisdiction *ratione materiæ* over the case under the Lessors and Lessees' Act, it was an additional reason for dismissing the action.

On the merits, the alleged fraud consisted in appellant having given by machinations to which he was a party, a false value to certain shares of the Silver Plume Mining Company.

The whole question resolves itself into one of fact, and a very narrow one; namely whether the

appellant was a party to, or was cognizant of, the artifices practised. There can be no doubt that if respondent had known the real state of the facts he would not have contracted as he did. Error, as appellant properly remarked, is not specially pleaded; but something more is pleaded. Error is included in a plea of fraud. The witnesses for respondent are nearly all interested in defeating his suit, and the evidence is only extracted from them with extreme difficulty. It seems, however, to be sufficiently established that a piece of property supposed to include a mine was purchased for $15,000 by Messrs. Dorion and Bickerdyke from a Mr. Matheney. The ostensible object of the vendor and the purchasers was to form a joint-stock company to work this mine, and they actually passed a Deed before Mr. Hart, notary, on the 17th April, 1880, organising an association in the form of a joint-stock company, which they designated as the "Silver Plume Mining Company." The company never was incorporated, but the parties to the Deed selected a form for a common seal or stamp, and they issued scrip, stamped with this so-called seal. The association took over the property purchased for $15,000 at $1,000,000 which was to represent so much paid up capital stock of the company. How this $1,000,000 of paid up stock was distributed does not clearly appear. Mr. Dorion, President and Treasurer of the Company, admits he was a large holder; but to what extent he declines to say, for the very plausible reason that he does not desire to make an ostentatious display of his wealth. He also declines to state at what price that wealth was secured. He swears positively that he believes, at the time he gives his evidence the stock is intrinsically worth par, in other words that the mine is worth what the association took it at.

This view of the matter was not, however, that generally received, and Mr. Dorion determined to make a supreme effort to correct the erroneous impression. On two occasions he admits that he directed a broker, Mr. Kinsella, to sell the stock at 50 cents and to buy it back the next day at a slight advance. These instructions were carried out. Mr. Kinsella being examined, tells us, curiously enough, that he sold Silver Plume Mining stock for him on four or five occasions. He has no personal knowledge of "matched orders," that is, I presume, an order to sell with a simultaneous order to buy back; but he admits he bought as well as sold for Dorion, and that, as he says, "it was an ordinary transaction. He gave me the stock to sell and I sold it." He is then asked the question: "He (Dorion) just now said that he had given you stock to sell and had bought it in the next day, do you contradict that statement?" To this he answers: "*I do not remember without reference to my books.*" And still he had just said that he had no personal knowledge of "matched orders," and that the transactions for Mr. Dorion were "ordinary" transactions. He further says, that the stock "was jumping up from 50 to 72½, and no one knew any reason for it, and he advised his clients not to touch it." He "understood the majority of the brokers would not touch it, and that there was some mystery about it." He cannot mention any *bona fide* transactions on the stock exchange with respect to this stock, except Dorion's, and he did know that there were outside transactions, at what rate he will not say. What idea Mr. Kinsella may have desired to convey by his answers it is perhaps unnecessary to examine; but taken along with Mr. Dorion's admissions it is perfectly clear to my mind that they together simulated transactions, in order to have a quotation of the stock at a fictitious value, and that this was done progressively to convey the impression that the stock was rising in marketable value.

Other witnesses flit through the transactions with regard to this so-called company, and give evidence which throws some light on the issues before the Court. These are Parent, and Hawkes, and Silverman, and Chretien himself.

Silverman avoided compromising himself by excuses that look almost as if he were ashamed of admitting that he had declined to join in an organization to defraud innocent traders in Boston and New York. Being less compromised than some of the others, his evidence possesses a certain frankness which makes it compare favourably with the testimony of some other witnesses. Fully to understand the effect of his evidence, however, it is necessary to state the relations in which the appellant and Parent stood to each other, and the story Parent tries to induce the Court to believe. In the first place, Parent acts ostensibly as the agent of Chretien, in his transaction with Crowley. So

completely does he efface his principal, that one is almost forced to the conviction that Chretien is a *prête-nom* in the affair. Mr. Chretien gives the following account of himself and his position. He says, he has no *état*, that he has commenced to work with Parent, that he lives on his private means and by his work, that Mr. Parent does all his business, and that he keeps Mr. Parent's office when he is out, that he knew nothing of the transaction with Crowley, that he gave his *money* into Parent's hands. He admits also that Parent sometimes signs the receipts for his rents which he himself collects, and that he allowed Parent to hypothecate the property bought from Crowley. There is not a word to show the extent of his means, or of what they consist. He gave his *money* to Parent, but it was not with money Parent acquired Crowley's property.

Again, Parent tells us that the proposition to take Silver Plume stock for part price of Crowley's property was made to him by Hawkes, that he said he had no stock of his own but that Chretien had some. He pretends that he never had any but the trifling amount of $10,000 worth of this stock, which first he tells us he got as a commission for selling the mine, which afterwards he explains to mean as a substitute for the commission he was to have if he sold it, and which he did not do. This stock he sold to one Baxter. Being examined again, and being asked about a project of trading off this stock for goods in Boston and New York, he explains that he wished to try and buy stock "cheap, very cheap," and when it rose on the publication of an anticipated report by Mr. Sills, Silverman and he were to buy goods in Boston and New York with the stock.

Now, let us see Silverman's account of the proposed transaction at page 45 of Respondent's evidence:—

Q. Mr. Parent has referred to a conversation he had with you in regard to sending you to New York and Boston with this stock and to buy goods, do you remember the date of that conversation, and will you state to the Court the nature of the proposition, and of the conversation, and state what occurred?

A. He mentioned that Mr. Bickerdyke and himself had something like a quarter of a million dollars of stock. He said $250,000 worth, and he asked me to go with him and Mr. Bickerdyke to New York and Boston, and trade, or endeavor to trade, the stock off for whatever I could get hold of, for jewelry or anything else; goods of any kind or description.

Q. You have seen that report of Mr. Sills?

A. I have.

Q. And this conversation that you have just referred to was in anticipation of this report of Mr. Sills coming out?

A. Yes, I remember the occasion now very well; Mr. Parent said that if we went on, Mr. Sills would very soon make his report from the mines, and while we were on in New York the papers would run up the stock as high as possible.

Q. This was before the report came out?

A. It was a few days before the report came out.

Q. What date was that conversation?

A. I do not remember exactly. It must have been a week or two before the report came out that the proposition was made. The report came out perhaps only a few days after this conversation.

Q. And the nature of this proposition was to buy stock when it was low and take advantage of Mr. Sills' report, to exchange it off?

A. No, we were not to buy stock at all; we were to get rid of stock for any other kind of goods.

Q. And you refused to have anything to do with it?

A. Not exactly refused it, but the same thing. When Mr. Parent was ready to go, I was not. I sought for an excuse, and was not ready to go when he was; but it came to the same thing.

Q. But you were to pay no money at all?

A. No.

Q. The proposition looked to your buying goods, and you would be furnished with mining stock?

A. Yes.

Q. Well now, was Mr. Parent speaking for himself alone, or for others connected with the company?

A. Mr. Bickerdyke was with him in my office, with Mr. Parent.

It is also denied that Parent had anything to do with the company. Silverman again tells us how little truth there is in this. He is asked:

Q. Had you an interview with Mr. Parent in the beginning of last year, in connection with a list of mining properties now in question in this cause, and did Mr. Parent as an agent offer it to you?

A. I had, but I do not know what quality he was acting in I had an interview with him when the company was first formed; it was just starting. Mr. Parent sent for me when Mr. Matheny was here. He then asked if I would form a company for the Silver Plume Mine.

Q. Mention what passed at that interview, and at what price the property was put down?

A. I will qualify my last answer. I saw Mr. Matheny, I went to see Mr. Parent, and Mr. Matheny was there, and he wanted us to float the Silver Plume Mining Company, and he offered us the mine if we would open it out with a million dollars capital. He was to receive $200,000 of stock, and the balance $800,000 he said Mr. Parent and myself were to have to float the company.

Q. You yourself were to have how much?

A. $200,000 of the stock, and Mr. Parent was to get $200,000 of stock, and the balance of the $800,000 was to pay Mr. Matheny and to float the company.

Q. You were to pay no money, were you?

A. No.

Q. And the property was to be turned over to the company?

A. Yes.

Q. And it was to represent a capital of how much?

A. Of one million dollars.

Q. Did you accept or refuse that proposition?

A. I refused it on certain grounds. We were to take our $800,000 of stock, and we were to sell certain shares.

Q. And you refused it?

A. I refused it.

Q. Supposing that proposition had been accepted, in what proportion would the money have been furnished by the promoters and by the general public?

A. The general public would have furnished all the money, and the promoters of the company would have made the profits to be made out of it.

That is, they would have gained all but $15,000. Mr. Dorion says, however, that Parent had nothing to do with the organization of the association. Still Mr. Dorion takes credit to himself for having offered Crowley back his property, and that he refused it. Why this zeal, real or affected, for Parent's credit?

I fully concur with the learned judge in the Court below, that "a very clear case of fraud has been made out," but appellant argues that, even admitting this to be true, the knowledge of the fraud is not brought home to him, and that even if Parent were cognizant of the fraud, he, Chretien, is not responsible for the fraudulent reticence of his agent.

It is a startling proposition that a party can, under any circumstances, profit by the fraud of his agent because the principal is not privy to it. Appellant's argument is this, that when the agent only suppresses a fact which he knew, and which the principal did not know, and which the principal was only obliged to disclose in case he knew it, there is no fraud of which the purchaser can take to advantage; that the purchaser has no right to profit by the accidental knowledge of the intermediary. It seems to me that this is a fallacy. I cannot see how the legal effect of the knowledge of the agent who transacts my business can be distinguished from my knowledge, with regard to one fact more than with regard to another. I am presumed to know what he knows, for it is by his eyes and ears I carry on my business. I cannot think there can be any doubt on this point in our law, and in English law it seems to be authoritatively decided. Story, Agency, No. 139, 139 a and 140. In one case Lord Justice Bramwell said: "I think that every person who authorizes another to act for him in the making of any contract, undertakes for the absence of fraud in that person in the execution of the authority given, as much as he undertakes for its absence in himself when he makes the contract."

Another point urged is that if there be a fraudulent misrepresentation, and the party complaining did not act upon it but acted independently of it, he cannot take advantage of the fraud. The general proposition is indisputable, but it does not apply here. What is contended is that the whole available sources of information were poisoned.

There is another view of the case. If fraud were not clearly established, substantial error remains. The scrip purported to be that of a corporate body: no such body existed. This would be sufficient under our law to annul a contract for want of consent.

The judgment is confirmed.

J. E. Robidoux for Appellant.

Barnard, Beauchamp & Creighton for Respondent.

CIRCUIT COURT.

SHERBROOKE, July 11, 1882.

Before DOHERTY, J.

MORIN, Petitioner, v. THE CORPORATION OF THE TOWNSHIP OF GARTHBY, Respondent.

Municipal By-Law not promulgated.

The Petitioner complained that the Corporation illegally passed a by-law on the 8th of April last, repealing a by-law passed on the 29th of March previous, by which the number of licenses to sell liquor was limited to two, and that the by-law of the 8th of April granted two more licenses.

A preliminary hearing was ordered under Art. 355 of the Municipal Code.

Panneton, for Respondent, contended that the attack on the by-law was premature, inasmuch as it had never been promulgated, and never had been put in force, as appeared by the allegations of the Petition; that the entry of an intended by-law in the books of the Council without afterwards giving it effect by promulgation was a mere expression of will which could have no legal effect. M. C., Art. 704: "Tout règle-"ment ou partie de règlement ainsi cassé cesse "d'être en vigueur à compter de la date du juge-"ment." The judgment, if rendered in accordance with the conclusions of the Petition, could not have the only effect intended by such judgment, since it was never put in force. The by-law attacked never existed.

Bélanger, for Petitioner, argued that whether the by-law existed or not, the Corporation acted upon it in granting two licenses, and the by-law had sufficient existence from the time it was entered in the books of the Council, and quoted Art. 693, Sec. 3, M. C.

PER CURIAM. The granting of two more licenses is made part of an intended by-law which never was promulgated, and, consequently, cannot be attacked. Art. 708, M. C., limits the time to demand the annulment of a by-law to thirty days from the date it comes into force.

Petition dismissed without costs.

Bélanger & Vanasse for Petitioner.

Hall, White, Panneton & Cate for Respondents.

THE LAW'S DELAY.

When we hear of a complaint as to the law's delays, we find it is made only with reference to proceedings in our own courts, and it is, no doubt, by very many supposed that they manage these things much better abroad. This is certainly a great mistake, and though no doubt the costs are much heavier in this country than anywhere else, the duration of suits is much the same all the world over. A case tried before Mr. Justice Stephen on Wednesday and Thursday last, and reported by us this week, is a singular illustration of this fact. An action was brought by one Englishwoman against another in the Prætorial Court of Borgo a Mozzano, in Tuscany, in 1875, to recover damages for a breach of agreement to share the expenses of a house at the Baths of Lucca for the season. The sum eventually recovered was but £40, but the suit lasted nearly three years, and the defendant, in addition to that sum, was condemned to pay costs amounting to almost as much as the damages. The only wonder is that the litigation should not have cost three times as much as it did, and the fact that when the defendant, who was leaving Italy, was asked by her advocate to deposit a fund in the bank at Florence, on which he should have authority to draw for his costs in the litigation, he named a sum of only $20, seems to us almost ludicrous. The learned judge who tried the case remarked that it was very difficult to follow the course of the suit in the Italian courts, as it appeared that, after the evidence of any one witness had been taken, there had been an adjournment, followed by an appeal with respect to the legality of such adjournment, and that the record of the proceedings showed adjournment after adjournment and appeal after appeal during the course of two years. Another curious fact in the case was that the plaintiff, when the defendant had wished to leave the house and ignore the agreement between them to share it on certain terms, had got an authority from an Italian court to detain the boxes, etc., of the latter. The lady whose boxes were so ordered to be detained was the widow of a baronet, and it can scarcely be doubted that she could at once have given ample security for the very small sum of £40 which the plaintiff claimed from her. The Italian judge, whose decision on the point was, it should be mentioned, promptly reversed on appeal, seems never to have dreamt of this or of the harshness of the order he made, depriving, as it did, a lady well advanced in years and her invalid daughter of all their clothes other than those they then actually had in wear. It is curious to speculate on the value which the clothes so seized would have had if there had been no appeal and the plaintiff had retained possession of the boxes until the close of the litigation, nearly three years afterwards.—*Law Times.*