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ELECTION EXPENSES.

In a case of *Gauthier* v. *Bergevin*, in which Mr. Justice Jetté was counsel (22 L. C. Jurist, 51), it was held by the Court of Review, under the Quebec Election Act, that where a candidate has not incurred any expense, he is not bound to furnish the returning officer with the statement of expenses required by the provincial Election Act; and consequently he cannot be sued for the penalty enacted for failure to furnish such certificate. This decision is supplemented by a judgment recently pronounced by Judge Jetté in *Theriault* v. *Ducharme*, noted in our present issue. In this case the defendant was a candidate in the federal election for Verchères, and it appears that in the course of the whole election he had personally disbursed at hotels, in a large county, the sum of two dollars and forty-five cents. Of this no statement had been furnished, and the question was whether the federal Act obliges candidates to furnish particulars of such expenses as the cost of their supper, if they go to speak at a meeting twenty miles off, or the price of the oats consumed by their horse. The Court finds that the Act distinguishes election expenses from the personal expenses of the candidate. The former can only be paid through the election agent, who must make a statement of what he pays. But the personal expenses of the candidate are excepted from the head of election expenses, and our law, differing in this respect from that of England, does not provide for any statement of such items of personal expenditure. It may be added that in the present instance the expenditure was so insignificant that, even if the law were otherwise, the maxim *de minimis non curat lex* might perhaps be held to apply. It would be somewhat repugnant to one's notions of justice to enforce a serious penalty for an omission to state the expenditure of a few shillings, where it was apparent that no violation of the law was intended or thought of.

A WILL CASE.

The judgment of the Supreme Court of Pennsylvania in *Manner's Appeal*, March 1, 1880, contains some observations which are worthy of attention. A bill was filed by the heirs of Dr. James Rush, contesting his will by which he provided for the endowment of a library. The particular clause objected to by the plaintiffs was as follows:—"I do not wish that any book should be excluded from the library on account of its difference from the ordinary or conventional opinions on the subjects of science, government, theology, morals, or medicine, provided it contains neither ribaldry or indecency." The plaintiffs contended that this language constituted a direction or command that works advocating atheism, infidelity and immorality generally should be included, and that the law would not support such a trust. The Court held that the intention of the testator was not to command, but to express a preference merely, not legally binding on the executor. The following observations were added:—

"We must examine this clause of the will from the testator's standpoint, so far as that is possible, in order to ascertain his meaning in the paragraph in question. He was an educated man of scholarly habits, and of no mean scientific attainments. The ample fortune which he enjoyed gave him the opportunities of indulging his tastes fully. He says in his will: 'My property has enabled me to devote, happily and undisturbed, the latter part of my life to pursuits of scientific inquiry, which I have deemed to be more beneficial than the more common enjoyment of an ample fortune.' In his researches in the paths of science, even in the line of his own profession, it is not unlikely he fully realized that the conventional opinions of yesterday may not be those of to-day, and are not likely to be those of to-morrow. He possibly remembered that, when he commenced the practice of medicine, a patient burning up with fever was not allowed a breath of fresh air or a drink of cold water; that bleeding was resorted to in almost every disease; that the introduction of anæsthetics was by some regarded as impious and unscriptural, and an attempt on the part of females to defy the primeval curse; that before his day Harvey's theory of the cir-

culation of the blood was treated with derision, and cost that eminent physician a large portion of his practice, and that Jenner's discovery of vaccination was denounced by his own profession as empirical, and by the clergy as wicked. And outside of his own profession, in science, government, theology, and morals, he would have seen substantially the same thing—one discovery treading quickly upon the heels of another; one conventional opinion after another giving way before the spread of learning and the advance of science. From his own experience in various researches, the testator probably realized the importance and value to educated men of a public library which should place within their reach such books as are not readily accessible. With a desire to promote temperate, sincere and intelligent inquiry and discussion, he imposes no restriction upon the character of the books, except that they shall not contain either ribaldry or indecency. He would make his library a place where the student, whether of science, government, or theology, could find the information for which he longed. His recommendation in regard to books was negative merely. Beyond his own writings, he directed no book to be placed upon the shelves. This is as true in regard to theology as to any of the other subjects mentioned. It can hardly be said that the interests of Christianity and sound morality require that the student of theology shall be debarred access to all books that may be regarded as objectionable from an orthodox standpoint. He is best armed to defend Christianity who is familiar with the arguments against it. To enforce such a rule would exclude from this library a vast amount of the choice literature of the past, the works of authors who merely wrote according to the light of their day and generation. We may now safely enjoy all that is good of their writings. The world has outgrown their errors."

The North Carolina Supreme Court has held that dogs are not the subject of larceny in that State. (81 N.C. 527.)

Rochester, N.Y., claims to have the oldest practising lawyer in the world—Azgill Gibbs, who in a few days will be 93 years of age, and is still hale and hearty, and actively engaged in professional work.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

[CROWN SIDE.]

Montreal, April 22, 23, 1880.

RAMSAY, J.

REGINA v. LEONARD.

Perjury—May be assigned upon deposition taken by sworn stenographer, though it did not appear that there was any consent of parties that the evidence should be taken by a stenographer—Amendment of indictment.

The defendant was indicted for perjury in a civil suit. The deposition of the defendant was produced. It was taken by a stenographer, and it appears by the *plumitif* that the stenographer was sworn; but it appears also, that there was no demand in writing by either of the parties that the evidence should be taken by a stenographer, and no deposit of the necessary fee, nor any consent of the parties that the evidence should be taken by stenography.

Prevost, on the part of defendant, urged that the deposition was not taken according to law, and the case of the *Queen* against *Martin** was cited. It was also urged that there should be a certificate of the swearing of the stenographer.

RAMSAY, J., thought the *plumitif* was the proper record of the administration of the oath to the stenographer. On the other point, he remarked that the case of Martin was decided on a principle totally unlike that raised in this case. There the Prothonotary had no authority to swear the witness without the consent of the parties in writing. This consent was wanting, and therefore, the prosecution failed. Here the witness was sworn by the Judge in open Court, and, therefore, by competent authority; and the only thing that could be said was that an immaterial form, or a form only important in order to provide for the payment of certain costs, had been omitted. The Court is, therefore, of opinion that the objection is invalid; but as there was an irregularity, the point will be reserved, if there is a conviction.

The civil suit was described as a case between *Emilie Lamoureux* v. *David Lamoureux*. The real title of the case should have been *Emilie Lamoureux* against *Didier Lamoureux*. This

* 21 L. C. J. 156.

error appeared twice; but elsewhere the defendant was called *Didier*. The prosecution moved to amend.

The COURT was of opinion that the amendment was strictly within the terms of section 70, 32 and 33 Vic., cap. 29.

The prosecution then moved to be allowed to add a negative amendment to correspond with the third answer assigned as false.

The COURT was of opinion that this did not come within any of the Statutes allowing amendments.

The prosecution then moved to be allowed to amend by striking out the question and answer.

The COURT was of opinion that a count might be rejected, but not an allegation.

The defendant was convicted, the jury finding that the allegations with regard to the answers to the questions set forth in the indictment were true.

St. Pierre for the prosecution.

W. Prévost for the defence.

COURT OF QUEEN'S BENCH.

MONTREAL, April 24, 1880.

RAMSAY, J.

REGINA v. LAPRISE.

Indecent Assault—Consent—A prosecution for indecent assault on a boy about thirteen years of age cannot be maintained where it is clearly shown that the boy assented to the act.

The prisoner was indicted for an indecent assault on the person of a boy of about fourteen, nearly two years ago, the boy being then almost thirteen. The evidence clearly showed the consent of the boy, and that he only denounced the facts when questioned by his father.

On the authority of the case of *Reg.* v. *Wollaston*, 12 Cox, p. 180, the Court intimated to the Crown that the prosecution could not be maintained, and a verdict of *Not Guilty* was rendered.*

E. C. Monk for the Crown.

Pelletier for the defence.

* In the *Wollaston* case, the boys with whom the acts of indecency were committed were over 14 years of age. (Ed.)

COURT OF QUEEN'S BENCH.

MONTREAL, April 24, 1880

RAMSAY, J.

REGINA v. HICKSON.

Libel—Justification cannot be proved unless it be pleaded that the publication was for the public good—Publication in district where trial takes place must be alleged—Amendment of indictment.

The defendant was indicted for a malicious libel, and specially pleaded the truth of the libel as well as the plea of "not guilty." Under this plea he endeavoured to prove justification.

The COURT refused to admit the evidence, as it was necessary, to bring the defendant within the Statute, to plead that the publication was not only true, but made for the public good.

In the same case the original printing and publishing was alleged to have taken place in the District of Terrebonne, and there was only a general allegation that the newspaper in which it appeared circulated in the District of Montreal. Under this allegation the Court would not allow evidence of the publication of the special article in the District of Montreal.

An application was then made to be allowed to amend, under section 70, 32 and 33 Vic., cap. 29, but the Court did not think that section authorized an amendment of the character sought to be made.

The defendant was acquitted.

Keller for the prosecution.

Burroughs for the defendant.

COURT OF QUEEN'S BENCH.

SWEETSBURGH (Dist. of Bedford),
March 11, 12, 13, 1880.

DUNKIN, J.

REGINA v. WYLLIE.

Confession, when inadmissible—New evidence discovered after retirement of jury.

Three indictments were found against the prisoner, lately assistant postmaster at Sweetsburgh, and a clerk in the store there kept by the postmaster; one, for having stolen a registered post office letter arriving there, and containing $50; a second, for having forged in the book of record there for such letters, a signature pur-

porting to be that of the person to whom the stolen letter had been addressed, as evidencing his receipt thereof; and a third, for embezzlement.

On his trial under the first of these indictments, it was sought by the Crown to prove that he had confessed his guilt, in a conversation between himself on the one hand, and the postmaster and one Bury on the other.

Upon the postmaster's approaching this subject, in the course of his evidence, the prisoner's counsel claimed and was allowed the right to examine him, as on the *voir dire*, to ascertain whether or not the alleged confession was one that could legally be given in evidence. From this examination it appeared that the witness, with Bury, had a conversation with the prisoner which began about the embezzlement, and went on later, and without interruption, to the matters of the theft and forgery. At the outset of this conversation and in connexion with this first subject, the witness admits having in effect intimated to the prisoner that he had better confess.

Application was then made on the prisoner's behalf, for examination of Bury also on the *voir dire*. But this was not allowed.

After argument as to the admissibility of evidence by the witness to show the tenor of the alleged subsequent confession,

The COURT ruled, that as the conversation was continuous, and the three subjects covered by it were connected, and all stood in relation to this opening language of the witness, such language, although specially referring to the embezzlement, must be held (for the purposes here in issue) to have covered this charge of theft also; that the witness, as postmaster and employer, must be held to have been a person in authority as regarded the prisoner; and that the language which he admitted himself to have used, was such as (according to established precedent) must be held to make evidence of any confession consequent upon it, inadmissible.

After retirement of the Jury under charge by the Court, application was made by the prisoner's counsel, supported by affidavit, setting forth that a person who had not been examined or known or thought of as a witness, had, since the delivery of the charge, come forward proffering evidence material to the defence, and which indeed if true would be conclusive of the prisoner's innocence of the theft and forgery, and praying for the recall of the Jury, and the submission to them of such evidence. The Court ruled, that although according to some American authorities cited in support of the application, it would seem that such a proceeding had been more or less allowed in some of the United States, it could not be allowed here, under our established rules of English and Canadian criminal procedure. The remedy here would be, a discharge of the jury, at the instance of the Crown (which was bound to give the prisoner's case the utmost degree of fair consideration), with the prisoner's consent The Crown prosecutor expressed his willingness to make this application, with such consent. But the prisoner's counsel declined to give it.

The jury, being called in, stated that they had not agreed upon a verdict, and were thereupon discharged.

G. C. V. Buchanan, Q.C., prosecuting for Atty. Genl.

Racicot & Mitchell for prisoner.

SUPERIOR COURT.

MONTREAL, March 31, 1880.

THÉRIAULT v. DUCHARME.

Election expenses—Personal Expenses of candidate need not be included in statement of agent.

JETTÉ, J. Aux élections fédérales de Septembre 1878, le défendeur était candidat à la députation pour le comté de Verchères.

Ni le défendeur, ni son agent n'ont transmis aucun état de dépenses d'élection à l'officier-rapporteur du comté, dans les deux mois après l'élection.

Le demandeur allègue, par son action, que le défendeur a fait pendant la dite élection des dépenses dont il était tenu par la loi de rendre compte; qu'il a laissé écouler plus de trente jours après les deux mois accordés pour fournir cet état, et que par suite, il est devenu passible d'une condamnation s'élevant à pas plus de $20 par jour, soit $600—et à un emprisonnement de pas plus de deux ans, à défaut de paiement.

Le défendeur plaide :

1o. Qu'il n'est pas responsable de la négligence de son agent, si toutefois celui-ci est cou-

pable ; mais que son dit agent n'a fait aucune dépense dont il y ait lieu de rendre compte.

2o. Quant à lui, le défendeur, qu'il n'a fait aucune dépense, tombant, à son avis, sous la disposition de la loi, art. 123.

Cependant qu'il a dépensé, pour lui-même :

1o. Pour 1 souper à Contrecœur	$0.45
2o. 3 repas de son cheval à Verchères et 1 verre de bière pour lui, le défendeur	0.70
3o. 2 repas et un coucher à Varennes—1 verre de vin, 3 repas de son cheval	1.30
En tout	$2.45

Qu'il ne se croyait pas tenu de fournir un état de ces dépenses—qui sont les seules qu'il ait faites—et qu'il n'a eu aucune intention de violer la loi, en ne fournissant pas cet état.

Que depuis l'action il a fourni à l'officier-rapporteur un état conforme à ce que dessus, et que pour éviter les conséquences d'une interprétation différente de la loi, et *montrer sa bonne foi*, il consent à ce que jugement soit rendu contre lui pour $10 et les *frais* de l'action *telle qu'intentée*.

En cas de refus de cette offre il demande que le demandeur soit condamné aux frais de contestation.

Le demandeur répond à ce plaidoyer disant que les dépenses dont le défendeur rend compte sont des dépenses d'élection et que, par suite, sa négligence à rendre ce compte lui a fait encourir la pénalité demandée ; et qu'en outre, le défendeur a fait *d'autres dépenses* d'élection que celles mentionnées en son compte.

Il y a donc ici deux questions à résoudre, une question de droit et une question de fait :

1o. Les dépenses mentionnées au compte du défendeur sont-elles des dépenses d'élection, dans le sens du Statut ?

2o. Le défendeur a-t-il fait d'autres dépenses que celles dont il a rendu compte ?

Sur le *premier point*, il ne peut y avoir aucun doute.

L'art. 121 du Statut fédéral de 1874, dit qu'aucun paiement, *à raison de l'élection*, sauf pour les *dépenses personnelles* d'un candidat, ne sera fait autrement que par l'entremise d'un agent. Toutes les *dépenses d'élection* doivent donc être soldées par l'agent électoral ; le candidat lui-même ne peut en faire le paiement, mais si le candidat encourt des *dépenses personnelles*, il peut les solder sans avoir recours à son agent. Pourquoi ? Parce que la loi exige qu'il soit rendu compte des *dépenses d'élection*, et qu'aucun tel compte n'est dû des *dépenses personnelles*.

En effet l'art. 123 dit :

« Un état détaillé de toutes les *dépenses d'élec-* « *tion* encourues par un candidat, ou en son « nom, etc., sera sous deux mois .... préparé et « signé par l'agent, etc.

Et l'art. 125 énonce que :

« L'expression *dépenses personnelles* .... com- « prendra tous les frais de voyage raisonnables « de ce candidat, et ses *frais* raisonnables *aux* « *hôtels* et autres lieux où il se retirera, pour « les fins et à l'égard de cette élection."

Notre Statut fait donc une exception formelle pour les *dépenses personnelles*, et n'exige pas qu'il en soit rendu compte.

Il en est tout autrement en Angleterre :

« Within two months after the election.... « a detailed statement of all *election expenses* in- « curred by, or on behalf of, the candidate, *in-* « *cluding payments for his personal expenses in* « *relation to the election*, must be made out and « signed by the agent, &c."

Et la sec. 38 de l'acte Impérial 17 et 18 Victoria, ch. 102, explique ce que veulent dire ces mots *personal expenses :* « and the words « per- « sonal expenses " as used herein with respect « to the expenditure of any candidate in rela- « tion to any election, *shall include* the reason- « able travelling expenses of such candidate, « and the reasonable expenses of his living at « hotels or elsewhere for the purposes of and in « relation to such election."

Notre législature, tout en acceptant le sens donné aux mots *dépenses personnelles*, par la loi impériale, a repoussé l'obligation imposée au candidat de rendre compte de ces dépenses, et le laisse libre de les payer lui-même.

La prétention du demandeur d'exiger du défendeur non-seulement un compte de ses dépenses d'élection, mais encore de ses dépenses personnelles, est donc mal fondée.

Maintenant le défendeur était-il tenu de rendre le compte qu'il a rendu ?

La Cour de Révision a décidé, en Novembre 1877, dans deux causes de *Gauthier* v. *Bergevin*, et de *Primeau* v. *Roy*, que lorsque le candidat ne fait aucune *dépense d'élection* il n'est pas tenu de rendre compte.

Dans l'espèce, le compte du défendeur, ne mentionnant aucune *dépense d'élection*, il n'était, par conséquent, pas tenu de le rendre, et son

défaut ne peut le soumettre à aucune pénalité.

Sur le second point, c'est-à-dire si le défendeur a fait d'autres dépenses que celles dont il rend compte, la preuve consiste dans la déposition d'un seul témoin, l'hôtellier *Cabana*, chez qui le défendeur a dépensé les *soixante et dix centins* mentionnés dans son compte.

Bien que ce témoin déclare que le défendeur, dans l'occasion mentionnée à son compte, a payé pour trois verres de bière, au lieu d'un seul, c'est-à-dire un pour le défendeur, un pour l'aubergiste lui-même, et un pour une personne qui accompagnait le défendeur, cette déposition n'est pas assez précise et assez formelle pour motiver une condamnation contre le défendeur. Ainsi ce témoin croit que la personne qui accompagnait le défendeur, voyageait avec lui pour son élection, mais il n'en est pas sûr ; puis il ajoute que ces trois verres de bière *n'ont pas été pris pour des motifs d'élection.* Et il ne peut pas dire non plus que le défendeur ait dépensé chez lui, ce jour-là, plus que ce qui est mentionné au compte.

Le défendeur interrogé sur ce fait, le nie formellement.

L'action du demandeur aurait donc été renvoyée en totalité, si le défendeur n'avait offert lui-même de laisser prononcer jugement pour $10 et les frais, et demandé le renvoi pour le surplus seulement.

Jugement sera donc rendu conformément à l'offre du défendeur pour $10 et les frais de l'action telle qu'intentée, jusqu'à et y compris l'enfilure du plaidoyer ; l'action étant renvoyée avec dépens pour le surplus.

J. E. Robidoux, for plaintiff.

Lacoste, Globensky & Bisaillon, for defendant.

SUPERIOR COURT.

MONTREAL, April 20, 1880.

BELLEISLE, petitioner for certiorari, and ALLAN et al., Respondents.

Harbor Commissioners of Montreal—A quorum of five is required, under 36 *Vict. c.* 61, *for the trial of charges against pilots.*

The petitioner complained that he had been illegally sentenced to three months' suspension from his functions as pilot, by a tribunal composed of three members of the Board of Harbor Commissioners for Montreal. A writ of *certiorari* had been allowed to issue by Mackay, J., Dec. 15, 1879. The following judgment was rendered by JETTÉ, J.

"La Cour, etc....

"Considérant que le 11 Septembre 1879, le requérant a été assigné à comparaître devant les commissaires du Hâvre de Montréal pour répondre à une plainte faite contre lui en sa qualité de pilote, par James Gray, capitaine du steamer Bengal, l'accusant d'avoir, le 7 du même mois, par son impéritie, sa négligence grossière et sa faute lourde, fait toucher le dit navire, dont il avait la charge, à une batture bien connue du dit requérant dans le port de Montréal, puis d'avoir ensuite échoué le navire sur l'Isle Ste. Hélène, dans le fleuve St. Laurent ;

"Considérant que sur telle assignation le requérant a comparu devant les dits commissaires du Hâvre, et qu'après enquête devant trois des dits commissaires, savoir, Messrs. Andrew Allan, Victor Hudon et Henry Bulmer, les dits trois commissaires ont rendu contre le requérant, le 12 Novembre 1879, le jugement contre lequel il s'est pourvu par bref de *certiorari*, ce jugement déclarant le requérant suspendu de ses fonctions de pilote jusqu'au 1er d'Août 1880 ;

"Considérant que le requérant s'est pourvu contre ce jugement, alléguant entre autres motifs au soutien de son pouvoir, que les dits Messieurs Allan, Hudon et Bulmer n'avaient aucun pouvoir ou juridiction pour entendre la dite plainte et rendre le jugement qu'ils ont rendu ;

"Considérant qu'aux termes du Statut 36 Vict. c. 61, qui a transféré à la corporation des commissaires du Hâvre de Montréal, les pouvoirs et la juridiction auparavant attribués à la Maison de la Trinité de Montréal pour la connaissance des plaintes portées contre les pilotes, il est spécialement déclaré que ces pouvoirs ne seront exercés que par un *quorum* de cinq des membres de la dite corporation des commissaires du Hâvre de Montréal ;

"Considérant en conséquence que les dits trois commissaires MM. Andrew Allan, Victor Hudon et Henry Bulmer, en exerçant comme susdit les pouvoirs conférés à pas moins de cinq des dits commissaires, ont outrepassé leurs pouvoirs et excédé leur juridiction ;

"Casse et annule à toutes fins que de droit le jugement rendu par les dits Messieurs Allan,

Hudon et Bulmer, suspendant le requérant de ses fonctions de pilote, avec dépens," etc.

Conviction quashed.

Duhamel & Co., for petitioner.
Abbott & Co., for respondents.

SUPERIOR COURT.

MONTREAL, March 17, 1880.

ADAMS et al. v. MCINTYRE et al.

Security for costs—Time to move.

Held, (by RAINVILLE, J.) that a motion for security for costs made after the expiration of four days from the return of the action will be dismissed.

Motion rejected.

Carter & Co. for plaintiffs.
M. J. F. Quinn for defendants.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, April 13, 1880.

O'BRIEN, Appellant, & MCLYNN, Respondent.

Security for Appeal to Queen's Bench—Hypothecs on Real Estate received.

The appellant, being sued in the Court below in an action for the sum of $1,450, had given security to the plaintiff (now respondent), by transferring to him, by deed of transfer 16th October, 1878, *bailleur de fonds* claims to the amount of $4,344. This security was given on the capias accompanying the action.

Being desirous of appealing from the judgment against him, the defendant, appellant, prayed *acte* of the declaration that he had previously given the above mentioned security, viz., to an amount three times the amount sued for, and that he renewed the offer of this security to avail as security for judgment and costs on the appeal, under Art. 1963, C. C.: "When a person cannot find surety he may in lieu thereof deposit some sufficient pledge."

PAPINEAU, J., accepted the security offered, conditionally—the appellant to prove the value of the hypothécs, and that it was sufficient for the purpose.

J. L. Morris for Appellant.
Macmaster, Hall & Greenshields for Respondent.

CIRCUIT COURT.

MONTREAL, April 12, 1880.

WORTHINGTON V. JAQUES.

Admissibility of parol testimony to contradict terms of written receipt, and prove error therein—Examination of attorney of record on behalf of client.

The action was for a balance (exceeding $25) of rent due 1st October, 1879. The plea was that plaintiff had already instituted a previous action for this balance due 1st October, 1879, and that defendant had paid the same and got a receipt and discharge in full from plaintiff's attorney for all rent due up to that date.

In his answer to this plea, the plaintiff said that the date, "1st October," in the previous action was an error, and should have been "1st August," and that the receipt was given by error, and signed by an unauthorized clerk; and was obtained by misrepresentation of defendant, and therefore not binding on the plaintiff.

At the trial, the defendant being put in the box, failed to prove that he had paid the whole rent due up to the 1st October, 1879, though he swore that he had settled for it. The clerk who signed the receipt was called, and proved that it was given in error as to the facts, and that he was not authorized to sign special receipts or receipts in full.

The plaintiff's attorney then asked to be examined as to the error in the previous declaration. The counsel for the defence objected, but the objection was overruled, the Court holding that in a case of this exceptional nature the evidence should be admitted, although it was not the usual practice. The witness then proved that the date 1st October in the previous action, was an error, and should have been 1st August; that the mistake arose through misunderstanding plaintiff's instructions, and he produced an account handed to him at the time the case was first put into his hands, showing the amount sued for in the first action to have been due 1st August. No other proof was made, though the defendant's attorney attempted to have the case referred to defendant's oath, which was objected to and objection maintained.

CARON, J., in rendering judgment, said that the defendant had rested his defence entirely on the receipt, which had been clearly proved

to have been given in error. His Honor referred to the case of *Whitney* v. *Clarke*, 3 L. C. J. 318, and 9 L. C. J. 339, as to a clerk giving evidence in explanation of a receipt, and in accordance with the decision in that case held that the evidence was admissible, as well as that of the plaintiff's attorney. The receipt having been proven an error, it remained with the defendant to show that he had paid the whole of his rent up to the date in question; but that the defendant entirely failed to do, though the case was in his own hands, and he had full opportunity afforded him to prove it.

Judgment for plaintiff.

H. Abbott for plaintiff.

C. H. Stephens for defendant.

RECENT CRIMINAL CASES.

New trial—Irregularity in reception of verdict.—Late at night a jury reported to the Court that they could not agree, but the Court sent them back for further consultation. Soon afterwards they brought in a verdict of guilty; but, when polled, one of them said "it was his verdict because it had to be." The Court informed him that he could not be forced to agree to a verdict, but must say whether the verdict was his or not; whereupon he said, "It is, but not without doubts." The Court again required him to say whether the verdict was or was not his, and he then said it was; and the jury collectively avowing the verdict, it was received by the Court. This action of the Court was assigned as cause for new trial, supported by affidavits of said juror and two others, intimating coercion. *Held*, that the Court below did not err in refusing a new trial. (Tex. Ct. of App.) *Gose* v. *State*, 6 Tex. App. 121.

Change of venue.—An application for a change of venue, both on account of local prejudice and of prejudice of the judge, having been refused, the judge stated, when a juror was challenged for cause, "I intend to give the defendant a better jury than he is entitled to." *Held*, that the application on account of prejudice of the judge should have been granted. (Iowa Supreme Court), *State* v. *Read*, 49 Iowa, 85.

Libel—Jurisdiction of Justice upon hearing—Truth of libel not a subject of inquiry before Magistrate.—Upon an information for maliciously publishing a defamatory libel under the 5th Section of (Imperial Statute) 6 & 7 Vict. c. 96, the magistrate has no jurisdiction to receive evidence of the truth of the libel, inasmuch as his function is merely to determine whether there is such a case against the accused as ought to be sent for trial; and a defence based upon the truth of the libel under Sect. 6 of the Act, can only be inquired into at the trial upon a special plea framed in accordance with the terms of that section. *Queen* v. *Carden* (English High Court of Justice), L. R. 5 Q. B. D. 1.

Larceny of lost property.—The finder of lost goods which have no marks by which the owner could be identified, and who does not know to whom they belong, is not guilty of larceny, even if he does not exercise diligence to discover who the owner of the goods may be. *State* v. *Dean* (Iowa Supreme Court), 49 Iowa Reports.

Rape.—To constitute rape it is not essential that the female shall make the utmost physical resistance of which she is capable. If, in consequence of threats and display of force, she submits through fear of death or great personal injury, the crime is complete. *State* v. *Ruth* (Kansas Supreme Court), 18 Am. Law Register (N. S.) p. 578.

Evidence—What questions call for expert testimony.—The question whether a piece of paper picked up near the scene of an alleged homicide by shooting, appeared to have been used as wadding for a gun, is not a question calling for the opinion of an expert. *Manke* v. *People* (New York Supreme Court), 17 Hun 410.

TRIAL.—A verdict will not be disturbed because it does not specify the count under which the defendant was found guilty, when it is supported by one good count in the indictment.—*State* v. *Testerman*, (Missouri Supreme Court) 68 Mo. 408. [This point was differently decided by the Court of Queen's Bench, Montreal, *Reg.* v. *Baix*, 23 L. C. J. 327.]

ERRATUM.—At the foot of p. 129 (last issue), a line was inadvertently dropped from the type. The clause should read:—"With such counsel as Mr. Benjamin, whose career at the *English bar has been so brilliant, might be* deemed well nigh impregnable."