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THE COURT OF QUEEN'S BENCH AND ITS SITTINGS—LEGAL ARITHMETIC.

Mr. Geoffrion is reported to have said in answer to a *Gazette* reporter, after approving the four days system and disapproving of the term system: "I am strongly opposed to Judge Ramsay's suggestion, because, even with these two extra terms, we would really have fewer days for the hearing of cases than if the Court sat every day during the present regular terms."

Mr. Justice Cross seems to have communicated the same curious property of figures to a *Gazette* reporter in these words: "The proposition to adjourn for two days in the week will retard rather than facilitate exhausting the roll, because even with the additional two terms which the Government have proclaimed, if we adjourned for two days each week we would have at least four days less for the hearing of cases than with the present regular terms." In making a statement in Court on the 27th November, the Chief Justice said: "There was only one other remark he wished to make, and it was this: The regular terms between the 15th November and the vacation would have given 39 working days. The two additional terms proclaimed would give in all 58 working days. But the suggestion to sit four days in each week would only give 36 days from November to May."

Of course this could not be. But to leave no doubt as to the result of the two extra terms worked on the four days a week plan with the regular terms, here are the dates:

November 15 to 27	11	days of term
December 12 to 22 *	10	" " "
In all.....	21	" " "
Subtract at rate of 2 dys per week..... ...	7	" " "
Leaves.....	14	as against 11
January 15 to 27	11	days.
February 15 to 27	11	"
In all	22	"
Off $\frac{1}{3}$ $7\frac{1}{3}$.....	$14\frac{2}{3}$	as against 11

Or taking the terms together $28\frac{2}{3}$ as against 22

The result of sitting four days a week during eight months of the year, that is six months in Montreal and two in Quebec, is easily ascertained. For Montreal,

Say 6 months.....	180	days.
Off 26 Sundays.....	26	"
	154	
Off $\frac{1}{3}$.....	$51\frac{1}{3}$	"
	$102\frac{2}{3}$	"
As against 5 terms of 11 days....	55	"
Or a gain of.....	$47\frac{2}{3}$	

Of course the result at Quebec will be in proportion,

Say 2 months	60	days.
Off 9 Sundays.....	9	"
	51	
Off $\frac{1}{3}$.....	17	
	34	
As against 4 terms of 7 days.....	28	
Or a gain of.....	6	

It will be observed nothing is here allowed for holidays in either calculation, as it is evident this cannot alter them materially.

It will also be observed that the number of sitting days at Quebec is very slightly increased while at Montreal it is nearly doubled. The former may become insufficient, but unless there is an unexpected increase of business in Montreal it will not be necessary to have 102 days sittings in Montreal after the arrears have been cleared off, so that it will be the easiest of operations (if any operation is ever easy in the Court of Appeals) to adjust the matter between the two seats of the Court.

It will further be observed that four months are allowed for vacation, whereas three might suffice. It is, however, important that the judges of appeal should have ample vacation, which means leisure not holidays. In so close a programme as that suggested there will be difficult cases, and inflated ones, which cannot

* The author of this luckless proclamation, if he intended to fix terms for December and February next, which is not said, has included a Sunday in express words, the 23rd December, the last day of the new term. Will the Judges be breaking the law of Quebec by keeping the law of Moses and its presumed substitute?

be disposed of during the interim days, and consequently they will impinge on the vacation. There is also a quantity of work, unseen and unsuspected often, which a judge doing his duty has to perform. Again, we must not allow ourselves to be swept into the vulgar error of supposing that because a labouring man can work with his hands so many fixed hours a day, and almost every day in the year, therefore persons performing the higher intellectual work can do the same. There is this difference, a carpenter can lay down his saw or his plane and go to rest. A philosopher or a judge cannot command his brain to be still.

In another number I shall continue my remarks on this subject.

R.

WHICH IS IT?

Mr. Justice Cross is also reported to have said to the *Gazette* reporter: "We commenced this term with 116 cases, and at the end of the term probably not more than 20 will have been heard, which we can easily decide in a day or two after the term."

In his statement in Court on the 27th he is reported to have said: "As regards terms, he must say that his own feeling was that two days in the week were not sufficient for deliberation. He could not make up his mind in important cases in two days."

Both reasons may be bad; it is impossible to contend that both are good.

It appears that 17 cases have been heard and have not been adjudicated upon. The judges go to Quebec on Friday the 30th and they return on Saturday the 8th, and the Court reopens on the 12th. That is, the Judges will have four clear days all counted to deliberate on 17 cases forming a pile of printed matter seven inches thick. It may be hoped that no judge will attempt to make up his mind in all these cases in four days, for though his diligence and honesty may be above reproach, the results of his lucubrations will not be very valuable.

R.

THE NOVEMBER APPEAL TERM.

The Court of Queen's Bench sat during eleven juridical days, from the 15th to 27th November. Besides disposing of motions and other applications the Court heard twenty-one cases on the merits. Two appeals were dismissed because the appellant was in default to proceed. Thus the roll, which comprised 116 cases, was reduced by 23 cases, leaving 93 cases unheard. Judgment was rendered on the 19th instant in six cases remaining over from September, and on the 27th in four cases heard during the present term. There are, therefore, 17 cases in which judgment stands over till December.

The above figures may serve as the basis of one or two remarks. It has been said that business would be advanced by the adoption of an hour rule for arguments, as in Louisiana. Without the prospect of some substantial advantage, it will not be contended that a tape measure is desirable in these matters; would there be any positive gain by its adoption? Let us see. The November Term, of eleven days, should comprise 55 hours' sitting. But the delivery of judgments consumed six hours, and the hearing of motions and other applications occupied at least four hours. Three hours were lost on one day by an adjournment, counsel not being ready to proceed. This reduced the time devoted to hearing arguments to 42 hours, for 21 cases, or precisely an hour to each side, including replies on the part of appellants.

No time, therefore, appears to have been lost under our elastic system, which leaves counsel unfettered in important cases, and does not encourage prolixity in trifling matters. If the hour rule were established, counsel would feel bound, more or less, to spread their argument over the sixty minutes in every case, more especially as clients often drop into Court to listen to the efforts of their advocates, and, every body being impressed with the importance of his own case, they might feel that justice was not being done to them, if the argument fell much within the hour.

MALICIOUS PROSECUTION OF SUIT.

In the case of *Boisclair & Lalancette* (5 Legal News, 266), the Court of Queen's Bench decided that there could be no action of damages based on something a party had done in a previous suit. Ramsay, J., remarked: "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."

We are reminded of this case by one which came up lately in the Supreme Court of Pennsylvania, *Muldon* v. *Rickey*, March 22, 1883, 13 W. N. C. In this case it was held that no action lies to recover damages for the prosecution of a civil suit, however unfounded, where there has been no interference with either the person or property of the defendant. The Court said: "The action of ejectment temporarily clouds the title to the property in controversy, and so may, for the time, prevent a sale of, or mortgage upon it. But a damage of this kind is not more direct than that resulting from the expenses, loss of time, and often loss of credit, arising from the ordinary forms of legal controversy. All are troublesome, expensive, and often ruinous; and if for such damage the action of case could be maintained there would be no end of litigation, for the conclusion of one suit would be but the beginning of another. It has therefore been wisely determined, that for the prosecution of a civil suit, however unfounded, where there has been no interference with either the person or property of the defendant, no action will lie. In *Potts* v. *Imlay*, 1 South. 330, Chief Justice Kirkpatrick alleged that the books, for four hundred years back, had been searched to find an instance where an action on the case for the malicious prosecution of a civil suit, like the one then trying, had been successfully maintained; and that it was conceded by the counsel for the plaintiff that no such case had been found. He also, in this connection, cites with approval the case of *Parker* v. *Langley*, Gilb. Cases, 161, wherein it was said: 'An action on the case has not yet succeeded, but only where the plaintiff in the first suit made the course of the court requiring special bail a pretence for detaining another in prison, and where the malice was so specially charged, that it appeared that the end of the arrest was not the expectation of benefit to himself by a recovery, but a design of imprisoning the other.' And in the case of *Woodmansie* v. *Logan*, 1 Penning. 67, the learned judge expressed a doubt whether actions for malicious prosecutions, in civil cases, will lie at all. Our own cases, whilst they do not carry the doctrine stated quite as far as those cited, do nevertheless confine actions of this kind to very narrow limits. Thus, it was held in *Kramer* v. *Stock*, 10 Watts, 115, that to sustain an action on the case for malicious prosecution, it was necessary that the party should have committed an illegal act, from which positive or implied damage ensued, but that to bring an action, though there was no good ground for it, was not such an illegal act. On the other hand, where one abuses legal process, as by maliciously holding one to bail, or wantonly levies an execution for a larger sum than is due, or after the payment of the debt, an action will lie against him, 'for these are illegal acts, and damage is thereby sustained.' Again, Mr. Justice Sharswood in the case of *Mayer* v. *Walter*, 14 P. F. S. 283, has without qualification declared, that a mere suit, however malicious or unfounded, cannot be made the ground of an action for damages. 'If,' says the learned justice, 'the person be not arrested, or his property seized, it is unimportant how futile and unfounded the action may be, as the plaintiff, in consideration of law, is punished by the payment of costs.' Then, again, we have the case of *Eberly* v. *Rupp*, 9 Nor. 259, the very latest expression of this court upon the subject in hand, and a case much stronger in its facts than the one under consideration, for there the action was for the recovery of damages resulting from the service of a writ of estrepement. But it was held that the action could not be maintained, inasmuch as the writ being purely preventive, neither arrested the person of the defendant nor seized his goods. It will also appear, upon an examination of the opinion in that case, that the point now under discussion is there met and disposed of. In opposition to this array of authorities the counsel for the defendant in error has produced nothing that can have weight with this court."

THE ADDITIONAL APPEAL TERMS.

The following observations were made by the Judges of the Queen's Bench at the opening of the Court on the 27th November :—

The CHIEF JUSTICE said a proclamation had been issued on the 22nd of October last, fixing two additional terms of the Court of Appeals. This proclamation would be read and the Court

would adjourn to the 12th of December. The reason why this was done was that there was a little difficulty about the proclamation—it did not mention in what year the terms were to be held (laughter); in order that there might be no difficulty whatever, the Court had resolved to adjourn to the 12th of December next. The Chief Justice proceeded to observe that there had been a good deal of misrepresentation about these additional terms, and a good deal of discussion had been going on without it being known exactly what were the facts under which the terms were proclaimed. It would be recollected by the Bar that a bill had been introduced last year into the Legislative Assembly of Quebec for the purpose of doing away with the term system and arranging for the Court to sit almost continuously. That bill passed through the Legislative Assembly but did not pass the Legislative Council. Immediately after the session the Council of the Bar met and passed a resolution praying the Attorney General to fix a monthly term at Montreal, according to the promise which had been made by him during the session. The Attorney-General had sent him (the Chief Justice) a copy of this resolution with a request, not to express an opinion on the propriety of having additional terms, but that he should indicate the days on which the additional terms might be most conveniently fixed. He (the Chief-Justice) communicated with his colleagues, and it appeared that no common action could be taken. He therefore took it upon himself to suggest to the Attorney-General what he thought should be done, that is, that no term should be fixed before the vacation (it was then the 23rd of June), but having calculated what he thought was the number of days necessary to get rid of the roll, or to reduce it so much as to bring it under the control of the Court, instead of five or six additional terms, as was suggested by the resolution of the Bar, he proposed that three additional terms should be fixed, one in October, one in December, and one in February, giving thirty additional working days. At the same time he took particular care to say this was to be considered as his own suggestion, and not that of any one else. He expressly stated that. Now, the Government had fixed two instead of three terms, omitting the term suggested to be held in October. They were not to be blamed for that, for one of his colleagues had specially dissented from that, and the Government were informed of the fact. This statement showed how it came about that additional terms were fixed. He had nothing else to say. It was evident that it was at the suggestion of the Bar, or rather of the Council of the Bar, that the additional terms were fixed. There was only one other remark he wished to make, and it was this: The regular terms between the 15th November and the vacation would have given 39 working days. The two additional terms proclaimed would give in all 58 working days. But the suggestion to sit four days in each week would only give 36 days from November to May, that is, three days less than if there had been no extra terms. His Honor concluded by observing that he made these remarks so that the Bar might put the blame, if there was any blame, where it rests and not where it does not rest.

The proclamation was then read.

RAMSAY, J., said the remarks which the Chief Justice had made necessitated some observations from him. The Chief Justice stated that he communicated with him on this subject. He (Mr. Justice Ramsay) had no recollection of that, but he found no fault on that account, because communication with him would have been useless. It was well known to the bar that he had all along been opposed to any system that would prevent deliberation. It had been stated in certain quarters that he had approved of these extra terms: he had never approved of them, on the contrary, he had disapproved of them in the strongest manner. If the bar asked for a system by which the Court would have to sit perpetually, he could not understand on what ground it could be justified. It was in the recollection of the bar that seven or eight years ago they pressed upon the Government the plan of sitting four days in the week. He was no stickler for forms; the sittings might be called terms or otherwise; but he wished to perform his duty conscientiously and well, and he regretted that the Chief Justice had suggested these additional terms, because it was impossible that the work could be done. That was the view of the bar, for every man who had been consulted and who had furnished his views to the *Gazette*, agreed with the four days system. Only two judges

of the court had expressed a contrary view. If the bar asked for these additional sittings, they might just as well ask for a bit of the moon. No court in any part of the world was doing such work, and he did not think people here were more able to do it than elsewhere. The terms had been fixed against his will. It had been said that in refusing to sit he was disobeying the law, but this was not so. The power accorded to the Lt.-Governor to proclaim terms is a delegated power, and it is always understood that such a power is to be exercised in a usual and reasonable manner. Now this proclamation is totally unusual and unreasonable. He (Mr. Justice Ramsay) was not violating the law in refusing to sit; he was carrying it out. He was not going to rush into a vain effort to sit all the days of the week, because he could not do it. He concurred in the prudence of adjourning the court to the 12th, if the court desired to sit, because the proclamation was illegal, there being no date, and he did not wish it to be understood that, by joining in this resolution to adjourn, he concurred in the proclamation. He proposed to avail himself of the December sittings to deliver judgments, but he would not hear cases.

DORION, C.J. My principal object was to show that what I had seen in the papers—that Mr. Justice Ramsay, after approving of the additional terms had refused to sit—was incorrect.

CROSS, J., said the view he had taken of the terms was this: The terms were well placed, and the Court had power to adjourn for a day or two if necessary. But while there was a large number of cases in arrear it was wise to increase the working days either by adjournments or by additional terms. The Court ought to have done this of itself. As regards terms, he must say that his own feeling was that two days in the week were not sufficient for deliberation. He could not make up his mind in important cases in two days. The system of terms had long prevailed, and he did not like, for the sake of mere novelties, to depart from the old system which obtained in England and elsewhere. After all, the times of sitting had not much to do with the progress of business: it was merely shifting the days of work. He believed that the Privy Council sat almost continuously until the work was exhausted. Papers had been received lately from the Chief Justice in Louisiana, indicating the progress of business there. There were about one hundred cases at Shrieveport, and they were despatched in about a fortnight. The Bar there consented to limit their arguments to one hour unless special application were made. It seemed to him that the Court had full power to sit on extra days, and he for one was well disposed to do this. In his view the Court should have adjourned of its own accord to convenient days for hearing arguments, and he had been of the opinion that if they did not do this the Government would force it upon them and fix terms when they would be obliged to sit.

MONK, J., said he had not intended to make any remarks upon the difficulties which had arisen, but he thought it was due to the bar that he should make one or two observations. The Chief Justice communicated with him on the subject, and as he anticipated from the resolution of the Bar and from the proposed action of the Government that these terms were to be fixed, and as he had entire confidence in the Chief Justice, he said to him, "Whatever you think is proper, whatever the bar think is expedient, I am perfectly willing to agree to. Fix any days you please, and as many as you please, only don't let us come back during the holidays." He thought the arrangement which had been made was a good one, and that with a little good will they could do what was required of them. With respect to the four days in the week system, he had been decidedly of opinion and was still of opinion, that four days in the week were enough; it was about as much as the bar were equal to. But the majority of the Court were not of that opinion, and with perfect confidence in their judgment he bowed to their decision. He was perfectly willing to sit there every day, but he did not think it would be convenient for the bar. With a little energy and a little forbearance the work would no doubt be done—whether satisfactorily or not he did not know.

BABY, J., said when the Chief Justice consulted with him, he felt doubtful as to the possibility of undertaking so much. When the proclamation was issued making it imperative to sit from November to the end of March, he represented to this colleagues that the amount of work imposed on the Court was very considerable, and that if they were to do justice to the cases they should have more time for deliberation. With the best will in the world and the strongest desire to expedite the business of the Court, the judges were not machines, and there was a limit to their endurance. He had favored the four days system, but as the matter had been otherwise ordered, he bowed to the wish of the bar and the decision of the majority of the Court.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Oct. 31, 1883.

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

BEARD (deft. below), Appellant, & MILLIKEN *es qual.* (plff. below), Respondent.

Accession—C. C. 435.

Article 435 *C. C. does not declare that the property of material belonging to another is transf.rred*

to the workman when the added workmanship is so important that it greatly exceeds the value of the material employed. The workman has only the faculty of retaining the thing on paying the owner the price of the material, and thus becoming the owner.

The action was in revendication of 250 cords of shingle wood for cedar butts, valued at $125.

The respondent, a lumber dealer, held under license from the Provincial Government certain lots in the third range, northeast of the township of Stratford, with the right of cutting timber growing thereon. In the winter of 1879-80, as he alleged, a quantity of cedar was cut by trespassers and brought to the appellant's mill, where it was partly converted into shingles. The respondent, on learning this, caused the timber to be seized.

The defence was that the shingle wood had been purchased in good faith.

The Court at Sherbrooke maintained the defence, and held that the timber had been cut by permission.

This decision was reversed by the Court of Review at Montreal and the action was maintained. It was from this judgment that the present appeal was taken.

RAMSAY, J. This is an action by way of *saisie-revendication* of certain wood cut on Government limits of which respondents, plaintiffs in the Court below, are the lessees. In first instance the action was dismissed; but in Review this judgment was reversed, and $125 accorded as the value of the timber before it was manufactured into shingles.

Appellant's first proposition is this, there could be no revendication because the wood was manufactured into shingles, the labour was of greater value than the new material, and therefore the manufacturer became the owner. This is not the meaning of Art. 435, C. C. The rule of ownership is established by Art. 434, that the owner is he to whom the material belongs. If, however, the workmanship be so important as to exceed in value the material, the workman may invert the general rule, and make himself owner, by disinteresting the proprietor by paying him the value of the material. Till that is done the owner remains owner of the manufactured article. The case of the *Paper Co. & B. Am. Land Co.* (5 L. N. 310) has a resemblance to this and no more. It was alleged that the appellant was in fraud, to give some consistency to the action; but the existence of fraud was the reverse of being proved, and the judgment of this Court going on the principle that *possession vaut titre*, held, that the defendants bought in good faith from a dealer in such an article—fire-wood from the owner of a bush lot—and had paid the price, and that they could not be obliged to pay again, much less to pay for the value of the fire-wood. As for the words referred to, they do not maintain the doctrine sought to be established by appellants, namely, that the wood became defendants' by turning it into fire-wood or shingles; but only this, that as between the innocent third party and the Land Company the former could not be compelled to pay more than the value of the wood, for that the manufacturer *in any case* was entitled to the value of his workmanship.

Appellant's second proposition is somewhat different. He says the wood was cut by consent of the lessee, and consequently it was only a question of the value of the timber.

If this be true the revendication should have been discharged with the extra costs it entailed, and defendant been compelled to pay the value of the timber.

The Court of Review took a different view of the case and thought that the permission to cut was not proved, that the value of the timber was proved, and they condemned the appellant to pay this value and no more. He has suffered no wrong, except in a matter of costs, and I do not think we should disturb the judgment, even if we were of opinion that under the evidence the judgment might have been framed otherwise in this particular.

Judgment confirmed.

Hall, White & Panneton for appellant.
J. J. Maclaren, counsel.
Camirand & Hurd for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, November 27, 1883.

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

LA CORPORATION DU COMTE D'OTTAWA (deft. below), Appellant, and LA COMPAGNIE DU CHEMIN DE FER, M. O. & O., (Plff. below), Respondent.

Damages—Default to give debentures.

The failure to pay money at the proper time can only give rise to the immediate and direct damages resulting therefrom, which are limited by law to the legal interest on the sum. But an obligation to give debentures bearing interest is not to be treated as a mere obligation to pay money, and nominal damages may be allowed for default, without proof of actual damages.

The appeal is from a judgment of the Superior Court, Torrance, J., reported in 5 Legal News, p. 132.

The action in the Court below was for the recovery of damages, under unusual circumstances.

The plaintiffs, now respondents (the Montreal, Ottawa, and Western Railway Company), set up that on the 12th of June, 1872, the defendants passed a by-law authorising them to take stock in the railway to the amount of $200,000, and pay the same in bonds or debentures. On the 9th July, 1872, the by-law was adopted by the electors, and by 36 Vic., cap. 49, was declared valid. By this by-law the Mayor

of the Council subscribed the stock on the following, among other, conditions:—(1.) The amount should be payable in debentures of $100 each, payable in 25 years. (2.) The subscription was only exigible as the work progressed, not to exceed 50 per cent. of the value of the work done, payments to be made monthly, as the work progressed, on the certificate of the Company's engineer. The plaintiffs further alleged that, conformably to the by-law, they commenced the works, and in March, 1875, had constructed to the value of more than $300,000 on a length of fifty miles in the County of Ottawa; that this gave the Company the right to claim $150,000 payable in debentures; that the plaintiffs were ready to terminate the works on condition that the defendants should fulfil the conditions of the by-law; that the defendants failed to pay to plaintiffs said debentures, and caused damage to plaintiffs, by shaking their credit and depriving them of considerable sums of money, which the plaintiffs would have had a right to, as well from the city of Montreal as from the Quebec Government. Damages were under these circumstances claimed.

The defence was to the effect that the defendants were not bound to deliver the debentures until the conditions were duly executed; that among the conditions was one that the road should be completed and in running order on 1st December, 1875; that the road could not be completed within that time, and that the plaintiffs were utterly insolvent; that the only claim the plaintiffs could legally make was for the issuing of the debentures or their value in money. There were some other points of lesser importance raised.

The Court below was of opinion that although as a general rule, in obligations limited to the payment of a sum of money, damages arising from delay in their fulfilment consist in a condemnation to pay interest, yet there may be cases in which the creditor is entitled to damages other than interest. There may be other causes of damage besides simple delay, and these fall under the general rule which allows the Court to assess the amount of damage according to the loss really sustained by the claimant. The Court accordingly allowed $100 damages for default of defendants.

For the appellants it was contended that the obligation was to pay a sum of money, and there could not be other damages than the interest thereon. It was also submitted that the plaintiffs were completely disinterested, the Provincial Government of Quebec having acquired the road and all the right, title, and interest of the plaintiffs. Moreover there was no proof of damage.

For the respondents it was urged that the appellants were in a great measure responsible for the financial difficulties which had crushed the company in the autumn of 1875. The withholding by appellants of the amount due by them led other corporations to withhold their subventions, and it was submitted that these damages were not too remote to be taken into account. The authorities sustained a right of action for damages apart from mere interest, and the amount which had been awarded by the Court below was the smallest sum that could be assessed.

RAMSAY, J. This appeal gives rise to a question of some interest and some novelty. The County of Ottawa agreed to take 200 shares in the stock of the company respondent, and to pay for them by debentures bearing interest at six per cent, on certain conditions. These conditions were complied with, but the company on demand refused to deliver the debentures.

This appears to have deranged the affairs of the company respondent and to have done the respondent great damage. The respondent sued the appellant in damages, and was met by a demurrer taking up the ground that this was an undertaking to pay money, and that the only damage for the delay in the payment of money was interest at the legal rate.

The demurrer was dismissed, we are not told why, but I think there is no difficulty in suggesting more than one good reason for its dismissal.

The whole question came up on the merits, and the learned Judge in the Court below awarded the respondent $100 damages. In doing so he adopted a principle which was insisted on by the learned counsel for the respondent before this Court, and which he supported by a very respectable array of authority. It is this: that article 1077 C. C. only provides that the damages for the delay in the payment of money "consist only of interest," etc., "*ne consistent que dans l'intérêt*"—and that therefore there may be other damages for the non-payment of money. It is said this article is borrowed from Art. 1153, C. N., and that the writers under this article in France have held that there may be other damages than interest where money has not been paid. It is proper to remark that the *redaction* of 1153 C. N. is very different from that of Art. 1077 C. C. Art. 1153 is in these words: "Dans les obligations qui se bornent au paiement d'une certaine somme, les dommages et intérêts, résultant du retard dans l'exécution, ne consistent jamais que dans la condamnation aux intérêts fixés par la loi."

I do not however attach much importance to this difference of *redaction*. It seems to me to establish a distinction almost inappreciable, and one which it is evident the codification commissioners did not see. They say, p. 18, 1st Rep. "The section intituled 'Of damages' resulting "from the inexecution of obligations, contains "articles numbered from 90 (96) to 98 (103), "which, with some changes of expression and "difference of arrangemeut, embody the rules "contained in the articles of the French Code,

" numbered from 1145 to 1154, and declare the " existing law."

If I have understood the meaning of the French writers cited by respondent, it is this: that article 1153 C. N. limits the damages arising from the delay to pay money, to legal interest only when the obligation is limited to the payment of money, but that when the payment of money is portion of another substantive contract, then all the damages resulting indirectly from the delay can be exacted. This is ingenious but very forced, and it is absolutely inadmissible under the *redaction* of our article 1077. The opportunity of setting the legal mind astray on this question arises from the weakly pedantic and false doctrine of Article 1053 C. C. which is obviously incompatible with Articles 1074 and 1075 C. C. It is borrowed with variations from Arts. 1182 and 1183 C.-N., which in their turn are even more forcibly in contradiction with Arts. 1150 and 1151 C. N. Whatever may be the origin of the idea which was expressed by the application of the three degrees of comparison to *culpa*, we have the advantage of knowing that 1053 C. C. was adopted to substitute a new basis for damages, under guise of re-asserting the true principles of law. 1st Rep. p. 18. How far the omission of the square brackets is justifiable it is not necessary now to enquire.

I am therefore of opinion that the failure to pay money at the proper time can only give rise to the immediate and direct damages resulting therefrom, and which are limited by law to the legal interest on the sum.

But the next question is whether the obligation to give debentures bearing interest at 6 p. c. is an obligation to pay money? Strictly speaking it is not, and I think we can hardly say it is an equivalent, as when commercial paper is given. Now the rule of Art. 1077 is one of positive law, and an exception to the general rule of Article 1073 C. C. If Art. 1073 had stood alone, and without Art. 1077, damages for the delay to pay money would have been the loss the creditor has sustained. I am therefore to confirm. I think these remarks dispose of the whole argument as presented at the bar, but a new view is presented by the dissent, which it becomes important to consider in order that it may not be supposed we have overlooked it.

Before doing so I would however remark that reference was made to what I said in *Ansell & The Bank of Toronto;* but it will be remembered that the judgment went on the merits, and that I only put as a query whether that case was not within Article 1077 as being equivalent to the payment of money.

I understand the argument of the learned Chief Justice to be this:

The damages sought to be recovered are specially for loss of credit, loss of prospective gains and interest, that on such a declaration no general damages could be given, not even nominal damages, that there was no such thing as nominal damages in the French Law, that by that law all damages were real, and that the nominal damages of the English Law were a farthing or a shilling. It was further said that in England loose speculative opinions as to probable gains were considered as inconclusive and too remote. It was also said that there could be no damages by way of interest, for the action was taken out on the 19th June, and the *mise en demeure* to deliver the bonds was only on the 19th January, so that interest on the bonds was not due till July.

I quite agree with the Chief Justice that if the Civil Code is to be taken as embracing all the principles of damages known to the French law these damages are not sustainable; but it is evident that the articles on damages are miserably insufficient. I do not see how any one who has read Pothier and the old authors on the subject, can arrive at the conclusion, that there were no nominal or exemplary damages under the old French law when positive proof of loss was impossible. At all events it is pretty late in the day to set up such a doctrine, for we have been giving exemplary damages, damages estimated by the Court and nominal damages, ever since I have known anything of the matter. I never heard the right questioned before, except by a once well known litigant who made it a charge against Judge Aylwin that he had given some small damages as recognitive of the right of action although no real damage was positively proved. I don't think the criticism produced much impression. If nominal damages can only be a farthing or a shilling then nominal damages for personal wrongs cannot carry costs (478 C. C. P.) If again these debentures are considered as money or equivalent to money, what has been allowed, $100, is far less than the interest on $112,000 from 17th January to 19th June. To say that interest *as damages*, could not be due because the interest on the debentures was not due till July appears to me as a fallacy. The interest on the debentures could never be due, because they never were issued. Our article only says that interest is the measure of damage for non-payment of money. It does not surely mean that the damage may not be asked for with the demand. It has also been said that if the judgment is good it is for too little. That is hardly a ground of appeal in the mouth of the party condemned. It seems to me that the judgment is highly equitable and just, and is perfectly in accordance with the law, and that is the opinion of the majority of the Court. The appeal will therefore be dismissed with costs.

DORION, C. J., and CROSS, J., dissented.

Judgment confirmed.

Laflamme, Huntington & Laflamme, for appellant.

DeBellefeuille & Bonin, for respondent.