The Legal News.

Vol. VII. MAY 17, 1884. No. 20.

WAGERING CONTRACTS.

In the recent case of *Irwin* v. *Williar* the Supreme Court of the United States pronounced on the question of contracts to deliver at a future day. It was held that a contract for the sale of goods to be delivered is valid, even though the seller has not the goods, nor any other means of getting them than to go into the market and buy them; but such a contract is only valid when the parties really intend and agree that the goods are to be delivered by the sellers, and the price to be paid by the buyer. If under guise of such a contract, the real intention is merely to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, then the whole transaction constitutes nothing more than a wager, and is null and void.

As to the position of the broker it was held that when the broker is privy to the unlawful design of the parties, and brings them together for the very purpose of entering into an illegal agreement, he cannot recover for services rendered or losses incurred by himself, on behalf of either, in forwarding the transaction. Compare *Fenwick* v. *Ansell*, 5 L. N. 290; *Allison* v. *Macdougall*, 6 L. N. 93.

WELDON v. *WINSLOW.*

Mrs. Weldon, whose suit against her husband was noticed on page 101 of this volume, has gained a victory over the doctor of the asylum who certified the fact of her insanity. The case is of interest, as it shows how jealously the judges of England regard the slightest interference of an unlawful character with the liberty of the person. Mrs. Weldon sued Dr. Forbes Winslow for entering, on the 13th April, 1878, a house where she resided and committing an assault upon her in attempting to confine her as a lunatic, and also for libel, the libel being in a letter to her husband on the same day, in which he wrote, "I have seen Mrs. Weldon, and deem it my duty to inform you that it is imperative that immediate steps to secure her should be taken." The defendant, as to the alleged assault, set up an order upon certain certificates under the Lunacy Statutes for her seclusion as a lunatic; and as to the alleged libel he pleaded that the occasion was privileged, and that the letter was written without malice and in the discharge of his duty. The case was tried at great length before Baron Huddleston, and the learned Judge held that the order, coupled with the certificates of medical men, protected those who acted under them in entering the house and attempting to take Mrs. Weldon, and that as to the libel it was privileged, there being no evidence to show that it was written maliciously or from an improper motive, and so he directed a nonsuit or verdict for the defendant.

The plaintiff, Mrs. Weldon, then applied for a new trial on the ground of misdirection. The main question arose upon the count for libel, viz., whether there was any evidence of improper motive to take away the privilege arising from the occasion. Mr. Justice Manisty, in the Queen's Bench Division, remarked that the case was one of the most important that had come into Court for many years. It was a case involving the liberty of the person under the most extraordinary circumstances.

Mr. and Mrs. Weldon were married in 1860. In 1871 they went to reside in Tavistock-house, and continued to reside there until July, 1875, when they separated, the husband allowing the wife to remain at Tavistock-house, with £1,000 a year. The lady continued to reside there, doing nothing to annoy any one, and being in no sense dangerous to any one, though, perhaps, entertaining some strange notions or delusions. At one time she went over to Paris with a number of orphan children whom she was having instructed in singing. In April, 1878, when she returned suddenly, she found persons in her house of whom she had to get rid. Soon after her return proceedings were taken to have her confined as a lunatic. Mr. Weldon, her

husband, communicated with Dr. Forbes-Wilson, the defendant, and in consequence of that, on the next day, Sunday, April 14, Dr. Wynn, father-in-law of the defendant, and another medical man had an interview with Mrs. Weldon under feigned names, and entered into conversation with her, in which, they afterwards said, she seemed to entertain some strange notions. Now, Dr. Winslow was at that time the registered proprietor of a private lunatic asylum at Hammersmith, as far as appears, unknown to Mr. Weldon except by reputation; but Mr. Weldon consulted him with a view to see whether or not his wife ought to be put in an asylum. Whether at that time it had entered into Dr. Winslow's mind, as it did afterwards, that if Mrs. Weldon was sent to an asylum she might be sent to his, did not appear. But he was, in fact, the registered proprietor of an asylum, and when asked by Mr. Weldon what asylum it would be better to send her to, he suggested his own. He, however, went to see Mrs. Weldon on that day, and he then wrote the letter complained of as a libel:—"It is my duty to inform you that it is imperative that immediate steps to secure her should be taken." Mr. Weldon then gave him *carte blanche* to make any arrangement, necessary for the purpose. It was then discussed to what asylum she should be sent, and it was arranged she should be sent to his private asylum, and the terms were settled at 500 guineas a year. Now that, said Mr. Justice Manisty, is a most important fact, and it has a bearing on the whole cases both as regards the authority to take her, and also as to the privilege for the libel. If Dr. Winslow had it at all in his mind that she should be taken to his asylum, he ought to have told Mr. Weldon at once—"I can take no part in these proceedings. I can take no part in obtaining the certificates, or in getting the order. You must get some one else to act in the matter." But, at all events, when it was arranged that she should be taken to his asylum he was bound to take no part whatever in the matter. He, however, had instructions from Mr. Weldon to do whatever was necessary in the matter, and was paid thirty guineas for his own fees and those of the other medical men who were to act in the matter, and whom he himself selected—Dr. Wynn and Dr. Temple—he selecting the medical men who were to go to see Mrs. Weldon and certify whether she ought to be removed. It was most improper. It was wrong that the proprietor of a lunatic asylum should interfere in any way in selecting the medical men who were to give the certificates, and in getting the particulars of the "statement," a most important document, required by the Legislature for the protection of persons supposed to be insane, when he should have nothing to do with it, and it ought to be perfectly independent and absolutely free from all suspicion of his interference. It was a great power which was intrusted to persons in that position—to take the preliminary steps for sending a person to a lunatic asylum, and the Legislature had provided certain safeguards. But what took place in this case? Dr. Winslow saw these medical men, who ought to have been two independent medical men, qualified to form an independent judgment on the case, and they went to the house and contrived to have an interview with the lady, and they first saw her together, and then one stepped out and the other remained to make what was to be called a "separate and independent examination," and then he stepped out and the other came back to make his separate and independent examination of the lady. This was supposed to satisfy the requisitions of the statute that the medical men should be absolutely independent, and each exercise an independent judgment, and have nothing to do with the proprietor of the lunatic asylum to which the person is to be sent. The medical men having had what they called their "separate examinations" returned; and it was suggested that Mr. Weldon should give the order, but it was found that he could hardly do so, as he had not seen her for three years, and the law evidently intended that the order should be given by some one who knew the person; and then it was suggested that Sir H. de Bathe should go and see her, and take the responsibility of the order, and Dr. Winslow prepared the "particulars of the statement," and sent them to him. The learned Judge said this was what the Legislature looked upon as a most important document, for it was to state the facts showing that the person in question was in a condition

which rendered it fit and proper that she should be removed to an asylum; and it was revolting to one's sense of right that merely because the person had some strange or eccentric ideas therefore she was to be shut up for life. But that took place on the evening of the same day on which Dr. Forbes Winslow had written that it was "imperative" that this lady should be secured, when it did not appear that she had done a single act to render it necessary to shut her up. And then, upon these authorities so obtained, they attempted to take her; but she escaped, and from that day, the 13th April, 1878, to the present time in 1884—there had been no further attempt to confine her, though if at that time she was a dangerous lunatic it was their bounden duty to take proper measures for her protection. Yet ever since then, down to the present time, she had remained at large, mistress of her own liberty; and though she may have caused annoyance to some persons by bringing actions, she said that she was determined to bring her case before the public and endeavour to obtain redress, and nothing had been shown to justify any steps for shutting her up. Then came the question, Is there, upon these facts, anything that could be left to the jury to show that the libel was written maliciously—that is, from some bad motive, and that so it was not privileged, but was a false and malicious libel? It seemed to have been supposed at the trial that the truth was not material; but if the libel were false, that would be some evidence that it was malicious. Where the occasion is privileged, as the learned Judge at the trial held here, it is necessary to show malice, and falsehood may be evidence of it. Was there, then, evidence of malice? The Court held there was, and on that point they gave judgment that there must be a new trial. It was not the case of a medical man merely giving an honest opinion. The defendant was the registered proprietor of an asylum—the asylum to which the lady was to be sent. He was the person responsible for the management, and in whose care and custody the lady would be. All the facts and circumstances in the case were evidence of malice—that is, of some indirect motive. All these proceedings took place upon the same day, on the Sunday. He had written that it was "imperative" that "immediate steps" should be taken to secure her. But what was the difference between the condition of the lady on that day and any other day during the previous five years? It was not any mere harmless delusion or eccentricity which required a person to be confined in an asylum. The question was whether in this case there was any sufficient cause for immediate removal to an asylum. All these circumstances were for the jury to consider. The learned Judge said he "could not suppose that Dr. Winslow would be actuated by sordid motives." But it was not for him to decide that; it was for the jury to decide it. Having regard for the position of Dr. Winslow and all the circumstances of the case, it was for the jury to decide whether he acted honestly or with some indirect motive. All the proceedings under the statutes must be conducted independently of any proprietor of an asylum. And if this case goes to a second trial (as, the Court said, if it depends on us, it will), the question will be open whether, under the circumstances, these orders and certificates were of any validity and any protection to anyone at all. That will have to be decided at the second trial; and it may be a very serious question whether the proprietor of any asylum can act in any way in the matter, and then set up the order and certificates so obtained. But on the other question, as to the libel, there can be no doubt there was evidence which ought to have been left to the jury that the libel was written maliciously in the legal sense—that is, from some indirect or improper motive, and therefore, in the opinion of the Court there must be a new trial.

THE LATE MR. J. P. BENJAMIN.

It is less than a year since we noticed the retirement of Mr. Benjamin from practice, owing to ill-health (6 L. N. 266). Now the cable despatches inform us of his death, which took place at his apartments in the Avenue Jena, Paris.

Mr. Benjamin was born in St. Croix, a Danish West India island, in 1811, of Eng-

lish parents of the Jewish faith, who emigrated in 1816 to Wilmington, N. C., where his father became naturalized as an American citizen, the son remaining a native born subject of England. He entered Yale College in 1825, but left, without graduating, in 1828, when he went to New Orleans, and was admitted to the Bar in 1832. He entered prominently into politics, originally as a whig, but on the merging of that party into the "Know Nothing," or native American party, he attached himself to the democratic party. He was elected to the United States Senate in 1852, and re-elected in 1858. On December 31, 1860, in a speech to the Senate, he avowed his adhesion to the State of Louisiana, which had seceded from the Union, and he at once withdrew from the Senate and returned to New Orleans. He was then called by Jefferson Davis, who had just been elected President of the Southern Confederacy, to join the Cabinet as Attorney-General. To the duties of this office were added those of Acting Secretary of War during a temporary vacancy in that office. On the appointment of a permanent Secretary of War, the Cabinet was reorganized, and Mr. Benjamin was made Secretary of State, retaining that office and the confidence of the President until the overthrow of the Confederacy. He then escaped the pursuit of the Northern troops, and succeeded in reaching Nassau, New Providence, whence he sailed for England, where he arrived in September, 1865. He was called to the English Bar in June, 1866, established himself in London and rose to successful practice, receiving a silk gown in June, 1872. In 1868 he published the first, and in 1873 the second edition of a "Treatise on the Law of Sale of Personal Property." By the fall of Overend & Gurney Mr. Benjamin lost the sum of £3,000—all that he possessed on earth—and had to cast about for something to do until his book on the "Sale of Personal Property" was completed. Having a wife and daughter to maintain in Paris and himself in London, he prepared, with that easy adaptability to circumstances which had distinguished him throughout the whole of his versatile and many sided career, to sustain himself for awhile by writing for the press. It was under these circumstances that he temporarily joined the staff of the *Daily Telegraph* and contributed for many months a series of brilliant leading articles to the columns of that journal. The publication of his book upon "Personal Property" brought him immediately into notice. Shortly after its publication Baron Martin, when taking his seat one morning upon the bench, asked to have Mr. Benjamin's work handed to him. "Never heard of it, My Lord," was the answer of the chief clerk. "Never heard of it!" ejaculated Sir Samuel Martin; "mind that I never take my seat here again without that book by my side." It was soon after this date that, speaking to one of Mr. Benjamin's most intimate friends, the same able judge pronounced the new ornament of the English Bar to be "the greatest advocate that he had heard since Scarlett." It is doubtful, however, whether Mr. Benjamin would ever have been so effective before a British jury or in the atmosphere where Scarlett was omnipotent, as he was in the Appeal Courts of the House of Lords and the Privy Council. To these courts he confined himself exclusively toward the end of his English career.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, April 29, 1884.

Before JOHNSON, J.

GERBIE v. BESSETTE et al.

Capias, Malicious Issue of—Damages.

The defendants bought up some debts and caused the arrest of the plaintiff under a capias for the purpose of detaining his person and getting possession of certain papers. Held, an abuse of the process of the Court, and that exemplary damages should be awarded.

PER CURIAM. The plaintiff sues Bessette, a broker, and Vandevliet, a contractor, jointly and severally, for $15,000 damages for having had him arrested under a writ of capias.

Gerbie, the plaintiff, was secretary to a Mr. Legru who came out here as agent of some French capitalists, and he had had some business relations with the defendant Bessette, and having occasion to go to France,

had got as far as New York when he was arrested there by Bessette. In order to get his liberty he had to send back his secretary to Montreal to bring some necessary papers, which the latter procured, and was on his way back to New York with them when he was arrested on the train at St. Lambert soon after leaving the railway station here, at the suit of Vandevliet, acting, as it is alleged, in concert with Bessette — the two having bought up three small accounts due by Gerbie, Vandevliet making the necessary affidavit. The plaintiff had offered to pay the debt and costs before the train left; but this offer was refused, and the train left the station with the bailiff on board. Before the arrest at St. Lambert the plaintiff again offered to pay the debt and costs, but met with a second refusal, and the object of the party or parties making the arrest was openly avowed to be not to get payment of the debt, but to get possession of the plaintiff's person and of his papers; and he was brought back to Montreal and gave bail, and the *capias* was subsequently quashed.

Bessette pleads (besides some irrelevant matter, such as Vandevliet's being justified in causing the arrest, and Gerbie aiding Legru to escape from his creditors to France) what merely amounts to a denial of his complicity with Vandevliet in taking the proceedings against Gerbie.

Vandevliet answers the action by setting up first that the judgment setting aside the *capias* was susceptible of appeal, and therefore there was no right of action when it was brought; but this would be a temporary exception merely, and would not give rise to a dismissal of the action, which is asked by the conclusion. The rest of Vandevliet's plea simply means that he had probable cause for issuing the *capias*.

I think it is impossible to read the evidence of Bessette and Vandevliet without an inevitable conclusion that the former was the prime mover in the whole affair. The other may have had some claim against Legru also. He swears he had—but what his claim was does not appear. Bessette was the party principally interested, if not the only party interested in preventing the papers which Gerbie carried from reaching Legru—an interest that he may have had in common with Vandevliet, but certainly one that he had himself whether along with the other or not. The office of a judge would be merely mechanical if he shut his eyes to the inevitable inductions of common sense from proved facts, and I feel no doubt whatever that Bessette was at the bottom of the arrest of Gerbie, and that Vandevliet carried out his friend's and his own purpose by buying up petty claims against Gerbie, and then swearing that he was likely to lose them if he did not get a *capias*,—a shameful abuse of the process of the court, and an evidence of malice in both of them as plain as any evidence can be. On this subject I would refer the counsel to Sourdat, No. 152.

I am of opinion, then, that the plaintiff has made out a very strong case against both of the defendants. The damages, besides being necessary as arising from the commission of legal wrong, should in such a case be exemplary. The judgment of the court is that the defendants jointly and severally be adjudged to pay to the plaintiff $500 and costs of suit.

I had omitted to mention that a motion was made by the defendants' counsel to set aside the enquête. That point has been settled in the present case by the judgment rendered in the Practice Court, which I have no power to disturb, and no disposition to disturb, if I had the power.

Judgment for plaintiff.

Mousseau, Archambault & Lafontaine, for the plaintiff.

Prefontaine & Co., for the defendants.

SUPERIOR COURT.

MONTREAL, April 29, 1884.

Before JOHNSON, J.

REA v. KERR.

Dissolution of Sale for non-payment of price —C. C. 1543—Payment by Note.

The fact that the buyer gave a note for the price of goods, which note was discounted at a bank by the seller, does not affect the right of the latter to dissolve the sale when the note is not paid at maturity.

PER CURIAM. This is a *saisie conservatoire* of a number of pairs of boots sold by the

plaintiff to the defendant, and founded upon Art. 1543 C. C., reproducing the article of the old Custom of Paris; and the prayer of the action is to have the defendant condemned to restore the things, or in default pay the price.

The defendant offers a confession of judgment for the price; but resists the right of seizure, on the ground that the goods have been unpacked and mixed with his other merchandize; and further he alleges that he gave a note for the price (which indeed is also alleged in the declaration), and that such note having been discounted at a bank, though subsequently paid by the plaintiff, the latter is merely *subrogé* to the bank.

There is really not a word to be said about such a case as this. There is an admission of facts, and there is the evidence of a witness as to the state of the goods being the same as when sold. The idea of the plaintiff's right being limited to the extent of the rights of the discounter of the note is inadmissible. It would be of little use to merchants to have their safes full of notes, if by raising money on them, which they subsequently had to repay, they were exposed to lose their recourse against purchasers of their wares. The judgment will be for the plaintiff, maintaining the seizure and granting the other conclusions.

Busteed & White for the plaintiff.
Cooke & Brooke for the defendant.

CIRCUIT COURT.

MONTREAL, 30 avril 1884.

Coram LORANGER, J.

LA CORPORATION DE LA PAROISSE DE LA POINTE AUX TREMBLES, Appelante, v. LA CORPORATION DU COMTÉ D'HOCHELAGA, Intimée.

Procédure—Conseil de Comté—Appel.

JUGE: 1. *Que l'appel pris à la Cour de Circuit de la décision donnée par un conseil de comté, relativement à son procès-verbal, fait et homologué sous l'autorité du conseil, doit être porté contre les intéressés, requérant tel procès-verbal, et non contre la corporation de comté, à moins que le conseil n'eût agi, proprio motu.*

2. *Que dans l'espèce ce sont les intéressés qui ont signé la requête demandant l'action du conseil, qui auraient dû être mis en cause sur l'appel, et non la corporation du comté, qui n'aurait fait qu'exercer par son conseil des fonctions judiciaires.*

PER CURIAM. Il s'agit de l'appel d'une décision rendue par le conseil du comté d'Hochelaga homologuant le procès-verbal de Jos. Marion, écuier, surintendant nommé par l'intimée, pour faire droit à la requête de certains propriétaires des paroisses de la Pointe aux Trembles et de la Rivière des Prairies, demandant des changements aux procès-verbaux qui règlent l'entretien d'un chemin qui relie ces deux paroisses. La requête signée par un grand nombre des intéressés de ces deux localités, situées dans le même comté, a été soumise en la manière ordinaire au conseil de comté qui a nommé un officier pour faire la visite des lieux, et lorsque son rapport fut soumis pour homologation, les intéressés furent entendus contradictoirement. Les minutes de la séance démontrent que les opposants à l'homologation étaient représentés par avocat, mais les noms ne sont pas donnés, et nulle opposition écrite n'a été produite; il en est de même pour les intéressés favorables à l'homologation; ils sont également représentés par avocats, mais leurs noms ne sont pas donnés. Il faut présumer que se sont les requérants qui ont provoqué l'action du conseil et la nomination du surintendant. Le conseil de comté a maintenu le procès-verbal, et maintenant la corporation de la Pointe aux Trembles qui se dit lésée par cette décision, en appelle et prend le bref en son nom contre la corporation du comté d'Hochelaga.

L'intimé demande par motion le renvoi de cet appel pour entr'autres raisons les suivantes:

1o. Parce que le bref n'a pas été pris entre les parties concernées au litige devant le conseil de comté; 2o. Parce que le cautionnement est insuffisant.

Le premier grief, et le plus important est formulé de la manière suivante dans la motion: "Parce que la corporation du comté d'Hochelaga, assignée comme intimée, n'était pas partie intéressée au procès-verbal, mais a agi seulement comme tribunal statuant et adjugeant sur le mérite du procès-verbal; que les intéressés sont les contribuables qui ont signé la requête demandant l'action du conseil, et sont les seuls qui devaient être mis en cause sur le présent appel, et non la corporation du comté qui n'aurait comme dit ci-dessus, fait qu'exercer par son conseil, des fonctions judiciaires."

L'art. du C. M. qui régit la matière est l'art. 106, qui déclare qu'une copie du bref doit être signifiée à l'intimée ou à son procureur, et au juge ou l'un des juges de paix qui ont rendu le jugement, ou à leur greffier, ou au bureau du conseil s'il s'agit d'une décision d'un conseil de comté, ou au secrétaire du bureau des délégués, si l'appel est d'une décision de ce bureau.

L'article se sert de la conjonctive et en parlant de la signification du bref, elle doit être faite à l'intimé et au juge ou au conseil suivant le cas. Quel est l'intimé dans le cas où comme dans l'espèce actuel la corporation n'a pas été partie au litige nominativement? Evidemment celui qui a obtenu gain de cause devant le tribunal. La signification du bref se fait au conseil comme au juge pour les fins de la transmission des papiers, ainsi que l'indiquent suffisamment l'art. 1068 qui règle le mode et les délais de cette transmission.

Le conseil n'a rempli que des fonctions judiciaires qui n'engagent en aucune manière sa responsabilité corporative. Il ne faut oublier que la question soumise à sa considération, était d'un intérêt purement local et n'affectait dans ses résultats que les biens des parties immédiatement intéressées; et l'intervention du conseil du comté n'est devenue nécessaire, que par le seul fait que la loi ne reconnait pas d'autre tribunal que le sien pour régler les différends de cette nature. On conçoit que si le conseil du comté avait agi *proprio motu* et nommé lui-même le surintendant, le cas serait différent, car alors il serait censé avoir agi dans l'intérêt général du comté; dans ce cas il aurait été la partie requérante.

La corporation du conseil du comté ne peut poursuivre et être poursuivie que pour des fins qui intéressent le comté généralement, et le code ne reconnaît aucun cas d'intérêt purement local qui engage sa responsabilité. La division des pouvoirs et des attributions des corporations locales et des corporations de comté, de même que leurs obligations, est parfaitement définie par le code. Il en est de même des conseils des mêmes corporations dont la juridiction pour être concurrente dans certains cas, ne laisse pas cependant d'être bien distincte quand il s'agit des intérêts généraux du comté ou de questions qui intéressent des contribuables de différentes paroisses d'un même comté. Dans ce dernier cas, le conseil de comté est mis en requisition comme tribunal. Tel est le sens des art. 1063-1073. On a paru confondre le conseil de comté avec la corporation même, ce qui est une erreur, puisque la corporation est sans intérêt comme sans pouvoir sur la question en litige.

Je suis donc d'avis que les seuls intimés sur le présent appel étaint les requérants qui ont réussi à faire homologuer le procès-verbal. La même question a été jugée dans ce sens par l'honorable juge Chagnon, dont on trouvera le jugement élaboré dans le 7e vol. de la Revue Légale.

L'honorable juge Bélanger, *in re Cantwell* v. *La corporation du comté de Huntingdon*, rapportée à la page 263 du 23e Jurist, paraît avoir jugé dans le sens contraire, en décidant qu'il est pas nécessaire que le bref d'appel d'une décision d'un bureau de délégués, soit signifié aux parties qui ont requis le procès-verbal. Le savant juge semble d'opinion que le mot *intimé* doit s'entendre des causes intentées devant les juges de paix où il y a deux parties régulièrement mises en litige. Ce jugement paraît appuyé sur une décision analogue qui aurait été rendue quelque temps auparavant par son honneur le regretté juge Wilfrid Dorion dans la cause *Huot* v. *La corporation du comté de Chambly*. Cette cause n'a pas été rapportée, et en consultant le dossier et le jugement on s'aperçoit que la citation qui en a été faite au tribunal était erronée. Le point avait été soulevé, il est vrai, par la plaidoirie écrite, mais il a été abandonné à l'audience.

Le jugement constate que l'intimée n'a pas comparu à l'audition. Les parties étaient entendues sans doute pour faire infirmer la décision du conseil. Le précédent de Huot est donc sous les circonstances sans importance.

Malgré le respect que je professe pour l'opinion du savant juge *in re Cantwell*, je ne puis partager sa manière d'interpréter l'art. 1067. Il y a suivant l'art. 1061 appel à la Cour de Circuit de tout jugement rendu devant les juges de paix en vertu des dispositions du C. M. et des décisions du conseil de comté, tout procès-verbal homologué. Dans les deux cas le dossier doit être transmis de la même manière; il faut pour cela que le bref leur soit signifié, et c'est tout ce que l'art. 1067 qui ordonne cette signification, peut avoir en vue. Il est vrai que la procédure originaire devant les juges de paix est différente de celle qui est suivie devant le conseil du comté. Dans le premier cas il y a toujours deux parties au litige, tandis que dans le second il n'y en a souvent, comme dans le cas actuel, qu'une seule, c'est-à-dire les intéressés qui demandent le procès-verbal,—mais on ne doit pas oublier que le litige peut être requis et continué entre d'autres parties après l'homologation. Quiconque se trouve lésé par la décision du conseil, a droit d'appel, même s'il n'était pas partie au litige auparavant.

C'est ce qui a été fait dans le cas actuel. La corporation de la Pointe aux Trembles, qui n'était pas en cause comme corporation, intervient dans l'intérêt de ses municipes qu'elle croit lésés par la décision dont est appel, et personne ne lui nie ce droit.

Mais il ne suit pas de là, que les véritables intéressés, savoir les requérants qui ont demandé l'homologation, doivent s'effacer du

dossier pour laisser le conseil du comté plaider en leur lieu et place. Ce sont eux qui ont provoqué l'appel et c'est avec eux qu'il doit être continué.

L'appelant se plaint que l'intimé aurait attaqué le bref par voie de motion au lieu de le faire par exception à la forme. Je dois avouer que la procédure suivie en pareil cas, a toujours été à ma connaissance la contestation régulière; mais l'art. 1071 autorise la procédure adoptée dans la présente instance.

La motion de l'intimée est donc régulière. J'ai pensé qu'il serait peut-être possible de suppléer à l'insuffisance de la procédure de l'appelante en ordonnant que les véritables intimés soient mis en cause, et appuyant sur l'article 1071 qui semblent reconnaître que l'appel en semblable matière, n'est en réalité qu'un nouveau procès, puisqu'il est loisible aux parties de faire entendre de nouveaux témoins. Mais d'un autre côté la révision de la division du conseil devait être amendée dans des délais fixes et déterminés par la loi. Ces délais sont maintenant expirés, et l'on peut se demander si la cour a le pouvoir de les faire revivre pour permettre à la partie en défaut de refaire sa position. Je crois donc qu'il est plus sage de laisser la loi suivre son cours.

La motion de l'intimée doit être accordée et le bref d'appel cassé et annulé tel que demandé avec dépens.

Préfontaine & Lafontaine, avocats de l'appelante.

Prévost & Bastien, avocats de l'intimée.

BELT v. *LAWES.*

The following summary of the Belt case is given in the *Spectator* :—

The old comment on English law, that it is a luxury to live under it, and a very costly one, is strongly illustrated by the ultimate result of the Belt case. The history of that case is, after all, both short and simple. Mr. C. B. Lawes, writer and sculptor, described Mr. R. Belt, sculptor, in print in words which signified that he was an artistic impostor, who obtained large orders for works the merit of which was due to other men. The charge would probably have been forgotten by the public in a week, but Mr. Belt had, of course, his right of action, and apprehending, as he says, that he might be professionally ruined by quiescence, he used it. He brought his action for libel, and after a huge trial, which moved the whole social world, the jury gave him a verdict and £5,000 damages, the verdict carrying the unusually heavy costs. Outsiders would, of course, imagine that this was victory for Mr. Belt, and congratulate him on his courage, but that gentleman and his solicitors knew that there was another side to the matter. So heavy had the expenses been that Mr. Belt had been compelled, as he says, in a letter sent to the journals, to accept assistance from his friends, and to incur liabilities to his solicitors apparently for money actually out of pocket, to an extent at this stage of the proceedings which we can only guess, but which ultimately, Mr. Belt says, reached nearly to the sum of £5,000, due to his advisers alone. When, therefore, during the hearing of an application for a new trial, the Lord Chief Justice Coleridge and two of his colleagues suggested that if Mr. Lawes paid £500 and costs, proceedings should terminate, Mr. Belt accepted that compromise. He would have vindicated himself, as far as obtaining a verdict went, and he would have only voluntary costs to pay; and like a wise man, he forced himself to be content with a little, lest he should ultimately have nothing. Mr. Lawes, however, probably under an idea that public opinion was with him, and would ultimately make itself felt, rejected the compromise, and brought a regular appeal, which ended in a unanimous decision by three judges that the verdict must be upheld, and that Mr. Lawes must pay £5,000 damages, and £6,000 costs. It was considered vain to appeal to the Lords against a judgment so unanimous, and Mr. Lawes offered a compromise. He would pay £5,000 down in forty-eight hours, if that sum were accepted in full of all demands; and if that were rejected, he would go into the Bankruptcy Court. Mr. Belt's solicitors very naturally advised the acceptance of this offer; but Mr. Belt refused, saying that the sum promised, though it would repay his solicitors, would not repay his friends who had advanced money, and that he found himself bound to repay them first of all. Mr. Lawes consequently filed his petition in bankruptcy, and it appears from Mr. Belt's published letter to his solicitors, that he foresees a necessity for the same step. "If," he says, "my creditors elect to force me into bankruptcy, it will be only one more knot in the lash of persecution to which I have been subjected." In short, judging from Mr. Lawes' action and from Mr. Belt's words, which he himself sends to the newspapers, the "Belt case" has ended in the pecuniary ruin of plaintiff and defendant and the exasperation of the lawyers, who do not this time find the oyster as satisfying as usual.