The Legal News.

Vol. II. DECEMBER 6, 1879. No. 49.

INJUNCTIONS.

The application for an injunction in *Mallette* v. *City of Montreal*, which was rejected by a Judge of the Court of Queen's Bench (p. 370), was renewed before a Judge of the Superior Court. Mr. Justice Papineau entertained no doubt of the jurisdiction of the Superior Court to issue an injunction to the defendants, to restrain them from taking any step towards executing the judgment of the Recorder's Court, but his honor did not consider that it was a case in which the Superior Court, in the exercise of its discretion, ought to interfere. The injury apprehended was not irreparable. The defendants had to deal with a solvent adversary, and even if they did not relieve themselves by paying the fines which had been imposed upon them, they would have a recourse for illegal imprisonment, if the result of the litigation showed that the by-law was a nullity. But as to this point, his honor appeared to concur in the view expressed by Mr. Justice Monk, that the presumption was in favor of the validity of the by-law, which had been upheld by several decisions.

ATTORNEY AND CLIENT.

In a small case of *Keller* v. *Watson*, noted in this issue, the Court decided that an attorney of this Province, who had been engaged by an attorney of Ontario to sue a person here, could not recover his fees in a direct action against the client. It was not disputed that the attorney here would have an action against the attorney who employed him, but the Quebec attorney was not allowed to recover directly from the client from whom he had no authority to act. The question seems to be how far the authority given by a client in Ontario to his attorney there, to collect a debt, includes the power to authorize legal proceedings in another Province. If it does include power to authorise such incidental proceedings, it seems fair that the Quebec attorney should have a direct recourse against the known principal. Article 1727 of our Civil Code gives such recourse to third persons for acts of the mandatary in execution of the mandate. In this case the Court, apparently, considered that a general authorization to an attorney to collect a debt did not include authority to cause legal proceedings to be instituted in another Province.

LESSOR AND LESSEE.

The case of *Poitras & Berger*, noted in our last issue, p. 390, though not deciding any principle of much novelty, is deserving of attention, inasmuch as it places in a clearer light the relation of the tenant to the lessor. The pretension in the case was, that a person who had leased some houses as a usufructuary, could not collect the rent, or take proceedings to resiliate the lease, because she had assigned her interest in the property during the lease. There had been no signification on the tenant of this or any other deed, and it did not appear that the latter had any reason to apprehend trouble in the enjoyment of his rights; in fact, he seems to have been perfectly certain that the action was brought in the name of the lessor with the concurrence of the proprietors. Under these circumstances the majority of the Court held that the tenant could not raise the question of proprietary right in the property, and he was ordered to pay the rent to the lessor, if he wished to avoid the cancellation of the lease.

Although the decision was against the pretensions of the tenant in this particular case, the principle laid down by the Court of Appeal is one which works largely in the interest of tenants generally. It spares them the necessity of investigating what might often be trouble-some or intricate questions of ownership in the premises they occupy. It is not for them to inquire what changes may have taken place in the rights of the lessor. They are safe in paying the rent into his hands, for he can give a good discharge. This decision appears to be in harmony with the spirit of the law on the subject of lease and hire, by which the rights of the tenant are carefully protected. Even a sub-tenant may pay his rent to the tenant, and although the proprietor himself may not have been paid by the principal lessee, he cannot claim anything from the sub-tenant.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 19, 1879.

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

WRIGHT et al., Appellants, and FOSTER (deceased) and FISH, *mis en cause*, Respondent.

Surety in appeal—Alleged insolvency—Order that he be examined as to his solvency.

A motion was made on the part of the *mis en cause*, that the appellants be compelled to furnish another surety in the place and stead of William Euard, one of the sureties of the appellants, whose insolvency was alleged.

The Court ordered, "*avant faire droit*, that "the said William Euard do appear before this "Court to-morrow, 20th Sept., at 10 a.m., to "answer such questions as may be put to him "as to his solvency."

On Sept. 20, Euard not appearing, the appellants were ordered to furnish another surety.

A. & W. Robertson for Appellants.

T. W. Ritchie, Q.C., for Respondent.

MONTREAL, Sept. 22, 1879.

THE OTTAWA AGRICULTURAL INSURANCE CO., (deits. below), appellants; and BOUTHILLIER *alias* BOUTIGUÉ (plff. below), respondent.

Insurance (Fire)—Payment of premium—Insured not liable for misrepresentation of agent to Company without knowledge of insured.

The action was brought by the respondent to recover the amount of a loss by fire. The plea was that the premium had not been paid by the insured, and the policy had been voided.

It appeared that the insurance had been effected through one Labonté, an agent or canvasser for the Company, who agreed to take out the premium in board. Labonté made a note for $6.65, representing the premium, which he sent in to the Company's general agent. This note purported to be made by the insured, payable three months after date, but it appeared that Labonté made the note himself, and though indebted to the respondent for board, he did not pay the amount to the Company till after the fire.

The Court below, (Sicotte, J.) considered that the plaintiff, (respondent) had acted in good faith, and given value for the premium, and the action was maintained. The reasons of judgment were as follows:—

"La Cour, après avoir entendu les parties, considérant qu'il est constant par le reçu interim et par le contrat et police d'assurance donnée en la forme ordinaire, et permise le 16 Mars, 1877, que la défenderesse a déclaré et reconnu que, pour et en considération de la somme de $5 elle assurait le demandeur pour la somme de $1000 sur les propriétés immobilières décrites dans la police et les écritures, pour les valeurs et sommes indiquées, tant pour les propriétés immobilières que pour leur contenu, contre pertes ou dommages par le feu ou la foudre durant le terme d'un an, depuis le 16 Mars, 1877, au 16 Mars, 1878;

"Considérant qu'il est constaté que le demandeur a souffert des pertes et dommages par le feu qui a brulé et détruit le 4 Septembre, 1877, l'étable et la grange du demandeur assurées comme susdit, ainsi que leur contenu;

"Considérant qu'il est constant que les pertes et dommages soufferts par le demandeur par le feu en question sont au moins de la somme de $320;

"Considérant que le demandeur s'est conformé à ce qui était requis pour informer la défenderesse, et obtenir d'elle l'indemnité qu'elle lui devait;

"Considérant que le contrat d'assurance est réglé d'une manière finale et absolue par l'affirmation faite authentiquement par la dite Compagnie d'assurance, et qu'elle ne peut être admise à prouver la fausseté de l'affirmation ainsi faite; considérant que la prime peut être payée par toute valeur acceptée par l'assureur;

"Considérant que la prime faite en cette cause, constate que le demandeur a agi de bonne foi, et que la défenderesse a connu les faits de l'agent employé par elle pour effectuer l'assurance, et que des faits de cet agent, identiques à ceux qui ont effectué la présente assurance, ont été reconnus et acceptés par la défenderesse;

"Considérant que le demandeur a prouvé sa demande, et que la défenderesse est mal fondée dans ses défenses;

"Condamne la défenderesse à payer au de

mandeur la somme de $320, pour la perte qu'il a soufferte par le feu ; avec intêret," &c.

CROSS, J. (*diss.*), was of opinion that the policy was a nullity. The agent had no authority to make a contract binding on the Company in consideration of board given to himself. The principle which had been laid down in *Mechanics Bank & Bramley* (p. 389) should be applied here, and the policy should be declared null.

RAMSAY, J., said the majority of the Court were of opinion that the judgment must be affirmed. There was no doubt in the world that the agent, Labonté, could not make a contract insuring the respondent for his board. But the question was this, if such contract were confirmed by the insurers, would it not be binding? Now, here the contract was confirmed by the Company. The contract was that the insured, instead of getting money from the agent for his board, should be insured by him, and the agent made such representations to the Company, out of the presence of Boutigué, that they issued the policy. Boutigué never knew that the policy had been obtained by fraud, and he naturally held himself insured. It was only when the fire took place that he was told "You have not paid your note." In the *Mechanics Bank & Bramley*, the ground of the judgment was that the Bank knew perfectly well that the note given to them for McNaughton's debt was not the property of McNaughton, but the property of the Sincennes-McNaughton Line. Here, it was a matter of fact that the representation that the agent made to the Company was that he held Boutigué's note, while the latter had never made such note, and knew nothing of the agent's representation to the Company, his principal.

The following was the judgment :—

"La cour, etc.

"Considérant que l'intimé a constaté par la preuve faite en cette cause que partie de la grange et étable décrites dans la police d'assurance du 13 Mars, 1877, a été détruite par un incendie qui a eu lieu le 4 Septembre, 1878, pendant que cette police était encore en force ;

"Et considérant que les pertes que l'intimé a souffertes, par suite du dit incendie, et dont l'appelante est responsable, s'élèvent à $296, savoir $75 pour dommages causés à la grange, et à l'étable, $45 pour perte sur les effets y contenus, et non à $320, tel que porté au jugement de la cour inférieure ;

"Et considérant que cette police d'assurance a été emise en faveur de l'intimé sans aucune connaissance des fausses représentations que le nommé Labonté, l'agent de la compagnie appelante, ait pu faire à la compagnie, et auxquelles il n'a aucunement participé ;

"Cette cour confirme, etc., excepté quant à la somme de $24 qui doit être déduite, etc." Appellant to pay costs in both courts.

Hutchinson & Walker for Appellant.

A. Dalbec for Respondent.

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

FAIR, assignee of insolvent Rooney (contestant below), Appellant, and DOLAN (claimant below), Respondent.

Cancellation of agreement — Pleading — Writing signed by one party only.

Rooney and Dolan owned jointly a property near Montreal known as the Gregory property, and on the 16th August, 1878, by an agreement in writing, Dolan sold his interest to Rooney for $7,500, payable in goods. The next day Rooney desired to have this agreement cancelled, and he caused his clerk to draw up a receipt for certain payments which he had made, and to embody in it a clause cancelling the agreement of the previous day. Dolan happening to come into his store, Rooney produced this paper, and as Dolan was unable to read it without his spectacles, Rooney's clerk commenced to read it, but being called away, Rooney finished reading it himself. The agreement of 16th August first above referred to was as follows :

"Mr. Dolan sells his interest in the Gregory pro-
"perty to Mr. Rooney for $7,500, and the assump-
"tion of his half in the Trust & Loan Company's
"claim, the said $7,500 payable in goods. The sale
"made subject to right of redemption for one year.
"Mr. Dolan will give Mr. Rooney notes payable in one
"and two years for $7,500 ; Mr. Dolan to pay notes if
"he wishes to redeem ; otherwise Mr. Rooney will
"pay them. The notes to be given as the goods are
"delivered. Goods at regular market price from 70
"to 75 advance on Stg. costs. Goods for $2,500 at
"once.

"Mr. Dolan to pay half interest to Trust & Loan
"Company, and also taxes for one year, also to

"advance half capital, which Mr. Rooney will re-
"imburse as soon as the delay for redemption has
"expired."

And the document by which, it was alleged, the above agreement was cancelled, was as follows:

"MONTREAL, August 17th, 1878.

"Received from Patrick Rooney my half of all the "payments (at the time they were paid) by the under-"mentioned purchasers of the lots sold on the Gregory "Farm as follows:

Late Hon. Malcolm Cameron.....	$12,192 28
J. J. Milloy	4,759 44
John Fearney and Polk Ryan.....	4,044 75
Henry Brownrigg.....	4,206 75
J. Paxton.....	3,787 12
J. Grogan	1,200 00
Her Majesty Queen Victoria.....	18,000 00
	$48,190 34

"The balance of remaining lots unsold will be as "heretofore according to the deed, each of us having "our half share."

"FRS. DOLAN."

"Witness this day, August 17th, 1878.

"R. W. H. SMITH."

Dolan signed this document, and took away the duplicate, but some days afterward, he returned and alleged that he had been deceived as to the contents, and that he had not intended to cancel the sale of the previous day. Rooney afterwards becoming insolvent, Dolan filed a claim, under the agreement of 16th August, for the $7,500, offering to take the amount in goods. The assignee contested the claim, alleging that the agreement of 16th August had been cancelled, but he did not set up the agreement by which it was pretended that the cancellation had been effected.

In the Court below (Jetté J.,)April 5, 1879, the contestation was rejected on the following grounds:—

"La Cour, etc....

"Considérant que le 16 Août, 1878, le Réclamant a, par acte sous seing privé, vendu au failli sa part ou son intérêt dans une propriété connue sous le nom de propriété Gregory, alors possédée en société par les dites parties, et ce aux termes et conditions énumérés au dit acte ou document sous seing privé;

"Considérant que le document marqué "Z," invoqué par le Syndic Contestant comme étant une résolution et annulation de la vente faite la veille par le Réclamant au failli, ne peut être interprété dans le sens que lui donne le Contestant;

"Considérant que le dit écrit, rédigé sous forme de reçu destiné à constater le réglement antérieur des transactions entre les parties, au sujet des sommes par eux reçues en société comme propriétaires de cet immeuble avant l'époque à laquelle il était écrit ou signé, ne contient aucune stipulation formelle d'annulation de l'acte de vente sus-mentionné;

"Considérant que le dit document a été rédigé sous la dictée du failli, sans aucune participation de la part du réclamant, et que par suite toute ambiguité ou incertitude sur le sens ou la portée du dit document doit être interprétée contre celui qui l'a écrit ou dicté, savoir, le failli;

"Considérant qu'il est établi en preuve que le Réclamant n'a pas pu lire le dit document avant de le signer; qu'il a protesté contre le sens et la portée qu'on voulait lui donner, aussitôt qu'il a pu en prendre connaissance par lui-même, et que le dit Réclamant ne peut pas être présumé avoir voulu renoncer, au moyen d'un écrit aussi vague, au bénéfice de la vente qu'il avait faite la veille même;

"Considérant que le reçu du six Septembre, 1878, ne peut être invoqué contre le Réclamant comme comportant une ratification au dit document marqué "Z;"

"Déclare que le dit document marqué "Z" n'est pas et ne peut pas être considéré comme une résiliation ou annulation de la vente du 16 Août, 1878, et en conséquence renvoie la contestation de la réclamation du Réclamant, faite par le dit Syndic Contestant, le tout avec dépens, etc."

RAMSAY, J. (*diss.*), was of opinion that the judgment was unfounded. Error was not shown as clearly as it ought, in order to have the document of 17th August treated as null and void. A new point had been raised at the last moment, that the deed of cancellation was not complete, not having been signed by Rooney. But this question had not been raised by the pleadings, and it was to be observed that the document was produced by Rooney. The judgment of the Court below was not based on the ground that Rooney had not signed, and this Court was not changing the reasons of judgment. If the judgment of the Court had been put on that ground, he would not have been disposed to dissent.

Sir A. A. DORION, C. J., said it was not contested that a writing is not binding which is signed by only one of the parties. The decision in *King v. Pinsoneault* was in point. Then the Court had to see whether that was pleaded or not. What did the plea say? Dolan made a claim in bankruptcy on the deed of 16th August, signed by Dolan and Rooney, claiming $7,500 which Rooney promised to pay him for his half share in the Gregory property, if he did not exercise his right of redemption. The assignee contested the claim, and what was the contestation? Did he set up the deed of 17th August? Not at all. The writing of 17th August was not set up in the contestation. Why was that not pleaded? Dolan could not answer that the writing had been obtained by fraud when it was not pleaded. There was nothing to show an intention on the part of Dolan to cancel the contract of 16th August. The majority of the Court were of opinion, not only that this writing of 17th August was not binding and did not annul the contract of the previous day, but, upon the evidence, that it was a fraud and surprise on Dolan.

Judgment confirmed.

Bethune & Bethune for Appellant.

Beique & Choquet for Respondent.

PEPIN (deft. below), Appellant, and COURCHÊNE et ux. (plffs. below), Respondents.

Prohibition to alienate—C. C. 972, 975—*Registration—Substitution.*

This case, (by which the respondents claimed the succession of their deceased grandson) in the opinion of the Court below, turned upon the effect of two clauses in the will of Emilien Courchêne, the question being whether the testator thereby simply made a donation of usufruct, or created a substitution. The clauses are as follows:—

"Pour par ma dite épouse, jouir de la dite terre sa vie durante, seulement, après quoi cette terre retournera à Joseph Calixte Courchêne, mon fils, en toute propriété; ma dite épouse sera privée de sa jouissance si elle convole en secondes noces, et dès ses secondes noces mon fils prendra la dite propriété comme si sa mère était morte.

"Je donne et lègue au dit Joseph Calixte Courchêne le total des biens que je possèderai au jour de ma mort, pour par lui jouir, faire et disposer du total des dits biens en toute propriété, dès l'instant de mon décès; sauf le don fait ci-dessus à ma femme et à la condition à elle imposée."

The Court below held that these clauses of the will simply gave the wife the usufruct of the immoveable in question.

In appeal, the judgment was confirmed, but the *motifs* were changed.

Sir A. A. DORION, C. J., said the majority of the Court considered that a substitution was created by the clauses cited, but the judgment must nevertheless be confirmed, because the prohibition to alienate in the marriage contract under which he received the property, deprived Emilien Courchêne of the right of disposing of it by will.

The judgment as amended, sets forth the grounds as follows:—

"La cour, etc.

"Considérant que les demandeurs, intimés, Gabriel Courchaine et Dame Alice Manseau, sont devenus sur les renonciations de sa mère, Marie-Anne Pepin, la défenderesse, appelante, de ses sœurs Marie-Alice Courchaine et Marie-Elmina Courchaine, et de son aïeul maternel Gabriel Pepin, les seuls et uniques héritiers de feu Joseph-Calixte Courchaine, leur petit fils né du mariage de leur fils feu Emilien Courchaine et de la dite Marie-Anne Pepin, décédé *intestat* le 29 avril, 1873, et qu'en cette qualité ils ont été saisis de tous les biens composant son hérédité et dont il était lui-même saisi à l'époque de sa mort, et qui lui venait de son père, le dit Emilien Courchaine, lequel, par son testament solennel fait le 10 août, 1872, devant Blondin, notaire et témoins, l'avait institué son légataire universel;

"Considérant que ses biens consistaient dans ceux donnés au dit Emilien Courchaine par ses père et mère, les demandeurs, intimés, par l'acte de donation du 30 avril, 1870, reçu devant David, notaire, et dans la moitié des biens qui avaient composé la communauté qui avait existé entre le dit Emilien Courchaine et la dite Marie Anne Pepin, en vertu de leur contrat de mariage reçu le 17 juin 1850, devant Blondin, notaire;

"Considérant que par le dit contrat de mariage, les demandeurs, intimés, firent au dit Emilien Courchaine, donation de l'immeuble suivant, tel que décrit au contrat de mariage, savoir:

" Un lot de terre, etc., à la charge de ne pouvoir vendre, céder, échanger, ni autrement aliéner le dit immeuble sans exprès consentement et par écrit des dits demandeurs ;

" Considérant que par son testament solennel reçu devant le même Blondin, notaire et témoins, le 10 août, 1872, le dit Emilien Courchaine a, dans les termes suivants, disposé du dit immeuble et du reste de ses biens comme suit :

" Je donne et lègue à Marie-Anne Pepin, ma " femme, une terre située, etc., pour par ma dite " épouse jouir de la dite terre sa vie durant seu- " lement, après quoi cette terre retournera à " Joseph-Calixte Courchaine, mon fils, en toute " propriété ; ma dite épouse sera privée de sa " jouissance, si elle convole en secondes noces " et dès ces secondes noces, mon fils prendra la " propriété comme si sa mère était morte. Je " donne et lègue au dit Calixte Courchaine " le total des biens que je posséderai au jour de " ma mort, pour par lui jouir, faire et disposer " du total des dits biens en toute propriété dès " l'instant de mon décès, sauf le don fait ci-des- " sus à ma femme, à la condition à elle impo- " sée, etc." ;

" Considérant que la prohibition d'aliéner, contenue au dit contrat de mariage, comprend en termes exprès toute aliénation par vente, cession, échange ou autrement, et qu'en vertu des articles 972 et 975 C.C., une telle prohibition, faite sans restriction, est censée s'étendre à toutes aliénations soit par acte entre vifs ou à cause de mort, et doit être interprétée comme constituant un droit de retour en faveur des donateurs ;

" Considérant que sous ces circonstances le dit Emilien Courchaine n'avait pas le droit de disposer du dit immeuble même par testament, sans le consentement par écrit des demandeurs, intimés ;

" Considérant que l'absence d'enregistrement du dit contrat de mariage n'a pas pu priver les intimés du droit de retour en leur faveur résultant de l'art. 630 C.C., parce qu'à raison de l'art. 2098 C.C., le dit Emilien Courchaine ne pouvait conférer aucun droit sur la dite propriété au préjudice des intimés sans avoir lui-même fait enregistrer le dit contrat de mariage, qui était son titre d'acquisition ;

" Considérant qu'il résulte de ce que dessus, que les demandeurs, intimés, sont propriétaires du dit immeuble ainsi que des deux suivants, par eux donnés au dit Emilien Courchaine, par l'acte de donation ci-haut cité du 30 avril 1870, et décrit comme suit :

" Deux lots de terre situés dans la paroisse de St. Antoine de La Baie-du-Febvre, etc. ;

" Considérant qu'il est en preuve que les demandeurs, intimés, sont en possession de ces deux derniers immeubles, mais que les défendeurs, appelants, sont de leur côté en possession du premier, dont la dite Marie-Anne Pepin réclame à tort la propriété en vertu du legs à elle fait par le testament du dit Emilien Courchaine, à charge de la prétendue substitution, contenue au dit testament et dont elle invoque la caducité par le prédécès du dit Joseph-Calixte Courchaine, et que les défendeurs ont vendu en justice les biens meubles de la communauté qui a existé entre le dit feu Emilien Courchaine et la dite Marie-Anne Pepin et la continuation d'icelle communauté, et qu'ils n'ont jamais rendu compte aux demandeurs du produit de cette vente pour les parts dont ils sont propriétaires comme héritiers du dit Joseph-Calixte Courchaine ;

" Faisant droit à la demande, la maintient jusqu'à concurrence des condamnations qui vont être prononcées et a rejeté et rejette les défenses *pro tanto* ;

" A déclaré et déclare les demandeurs les seuls et uniques héritiers du dit Joseph-Calixte Courchaine et comme tels propriétaires de la succession mobilière du dit Joseph-Calixte Courchaine, des trois immeubles ci-haut décrits, et de la part du dit Joseph-Calixte Courchaine dans la communauté d'entre le dit Emilien Courchaine et la dite Marie-Anne Pepin et dans la continuation d'icelle ;

" A condamné et condamne la défenderesse tant personnellement que comme curatrice à son mari Pierre Grandmont, interdit pour cause d'aliénation mentale, à délivrer aux demandeurs la possession de l'immeuble en premier lieu décrit sous quinze jours de la signification de la présente sentence, si non et ce délai passé, les dits demandeurs en seront mis en possession sous l'autorité de la Cour et par main de Justice ;

" De plus a condamné et condamne la dite défenderesse esqualité de curatrice et personnellement à rendre, d'hui à deux mois de la signification de ce jugement et devant cette Cour,

compte aux demandeurs des fruits et revenus qu'elle a perçus tant seule que avec le dit Pierre Grandmont, depuis leur mariage arrivé comme susdit, le 1 octobre 1874, et de l'administration qu'ils ont eue et de la disposition qu'ils ont faite des biens meubles de la dite communauté et de la continuation d'icelle, pour être sur le dit compte (dans lequel pourront entrer les droits matrimoniaux de la dite Marie-Anne Pepin, contre la succession du dit Emilien Courchaine, son premier mari, aujourd'hui représenté par les Demandeurs), et qui devra être débattu suivant la loi, etc."

Germain, for Appellants.

Mathieu & Gagnon, for Respondents.

MONTREAL, Sept. 20, 1879.

HUNTINGTON v. WHITE.

Appeal from judgment maintaining demurrer to portion of plea.

Carter, Q. C., for the defendant, moved for leave to appeal from an interlocutory judgment, (Rainville, J.) rejecting part of the defendant's plea, on an answer in law. The judgment, he contended, was evidently wrong, for the defendant, after setting out, in support of his plea of justification to an action for libel, various charges in the part of the plea objected to, concluded by averring: "which charges are the "charges referred to and commented upon in "the said articles complained of." Notwithstanding this allegation, the truth of which for the purposes of the demurrer, must be considered admitted, the Judge in the Court below, upon a simple demurrer, assumed that these charges were *not* the charges referred to in the articles, and had ordered a considerable portion of the plea to be struck out.

The Court was of opinion that the appeal must be allowed, unless the other side were able to show that the judgment was correct, and that the Court could say so on a motion.

Laflamme, Q. C., was heard on the part of the plaintiff, after which,

The CHIEF JUSTICE said the Court was of opinion that leave to appeal must be granted.

Laflamme & Co. for plaintiff.

Carter, Church & Chapleau for defendant.

SUPERIOR COURT.

MONTREAL, Nov. 25, 1879.

MALLETTE et al. v. THE CITY OF MONTREAL.

Injunction—Jurisdiction of Superior Court.

The plaintiffs in the case referred to at p. 370, having been refused an injunction by Mr. Justice Monk in Chambers, renewed their application before a Judge of the Superior Court.

Doutre, Q.C., for the petitioners, said that the application had been made first before two of the Judges of the Court of Queen's Bench, who did not consider that they could exercise jurisdiction in the matter, but expressed the opinion that perhaps the Superior Court might.

Roy, Q.C., opposed the application, urging that the constitutionality of the law, which was attacked by the petitioners, had been affirmed by several decisions, and that it would be dangerous to municipal administration to interfere under such circumstances with the collection of fees due the city.

PAPINEAU, J., rejected the application. The petition, he remarked, was not presented as an incident of any case now pending before the Court. It was a new and independent demand, to avert from the petitioners an injury which they regarded as irreparable, until the Court of Queen's Bench should have disposed of the appeal now pending before that Court. If the by-law in question was illegal, the Superior Court, undoubtedly, had power under 41 Vict. c. 14, to issue an injunction to restrain the City from proceeding before the Recorder's Court under the by-law. Such injunction would not be addressed to the Recorder's Court, but to the City of Montreal, forbidding it to ask the Recorder to exercise the authority conferred on him;—Kerr on Injunctions (Ed. of 1867), pp. 14, 15, 21. Nor would this Court be interfering with the case now before the Court Appeal.

It remained to be considered whether the petitioners were in a position to ask for the exercise of the extraordinary and discretionary power possessed by this Court. It was a remedy only granted in cases where there is no other, and where the injury is irreparable. The party seeking it should be able to show a clear right, or at least a strong presumption in favor of the pretensions which he wishes to protect by in-

junction. It was also the duty of the Court to see that the adverse party was not exposed to any considerable damage ; Hilliard on Injunctions, pp. 14, 15, 19 and 25 (Ed. 1869,) ss. 16, 18, 22 and 32. Now the letter of the law, 37 Vict. ch. 51, ss. 31 and 32, was against the petitioners, as well as the interpretation given to the law by the Judges who had given judgment on its validity. However, the petitioners have in their favor the principle of justice that taxes should be levied equitably as far as possible on all rate payers similarly situated ; and notwithstanding the appeal from the judgment which had been rendered by the Superior Court, the City had proceeded to execute the judgments of the Recorder's Court against the petitioners. On the other hand the City might suffer considerable loss by delaying the collection of license fees for a long time. The injury to petitioners was not irreparable, at least as far as those able to pay the fines were concerned. And it was not absolutely irreparable in the case of those imprisoned in default of payment. Courts of justice are often asked to give damages for illegal imprisonment, and in this sense, imprisonment is not absolutely irreparable, for the City is solvent. For these reasons the right of the petitioners was not sufficiently clear, nor the injury so absolutely without remedy, as to justify the issue of an injunction, especially in view of the loss which the City would suffer by such a course.

Petition rejected.

Doutre, Joseph & McCord for petitioners.
R. Roy, Q. C., for the City of Montreal.

CIRCUIT COURT.

MONTREAL, Nov. 1879.

KELLER et al. v. WATSON.

Attorney and Client—Suit in Quebec at request of plaintiff's attorney in Ontario.

The plaintiffs, who are barristers and attorneys of the Province of Quebec, sued for the recovery of a bill of costs incurred in an action against a debtor of defendant. It appeared that the plaintiffs received instructions to institute the action referred to from Mr. Murdoch, a barrister of Ontario. Mr. Murdoch, being examined, said he had been instructed by the defendant to collect a claim against a party in Quebec, and had obtained judgment in Ontario, and had then instructed Messrs. Keller & Co. to take proceedings in the Province of Quebec. The defendant pleaded that there was no privity of contract between him and the plaintiffs, and that he had never authorized or ratified the proceedings in which the costs were incurred.

RAINVILLE, J., did not consider that the defendant was liable under the circumstances, and the action was dismissed, but without costs.

Keller & Co., for plaintiffs.
Bethune & Co., for defendant.

CURRENT EVENTS.

THE LABOUCHERE CASE. — In the Court of Queen's Bench (Nov. 20), Lord Chief Justice Cockburn delivered judgment, refusing the application of Labouchere, of *Truth*, for a *mandamus* to compel Sir Robert Carden, magistrate, to hear further evidence in justification of the alleged libel against Lawson, of the *Daily Telegraph*. The Lord Chief Justice said that the attempt to have the Court prescribe to a magistrate what evidence he should receive or reject was certainly anomalous. The court had no authority in that form to do any such thing, and it ought not to hesitate a moment to discharge the rule *nisi*.

A PECULIAR CASE.—A remarkable case was tried recently at the Old Bailey. A man named Jonathan Gaylord surrendered to the police at Lewes, and confessed that he had murdered an old woman at Chingford, one of the suburbs of London, about seventy years ago. There was very little evidence against the man besides his own confession, but it sufficed to confirm his statement in some particulars, and as he persisted in declaring that he had committed the murder, he was found guilty and sentenced to death. It is not thought probable that the sentence will be carried out.

JUDICIAL APPOINTMENT.—Mr. Joseph Dubuc, of St. Boniface, in the Province of Manitoba, has been appointed a Puisné Judge of the Court of Queen's Bench, in the said Province, vice Mr. Justice Betournay, deceased. The vacancy caused on the Bench of the same Province by the death of Mr. Justice McKeagney has not yet been supplied.