The Legal News.

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THE BAR.

Some new by-laws were adopted by the General Council of the Bar on the 8th of the present month, and as these regulations furnish an answer to certain questions recently put by correspondents in relation to rules of professional conduct, solicitation of business, etc., we think it may be useful to place them before our readers. They are as follows:—

MAINTENANCE OF DISCIPLINE, HONOR AND DIGNITY.

V.

No member of the Bar shall at any time or on any pretext whatever, or for any purpose whatever, commit any or either of the acts prohibited in the next following Article; and members are hereby forbidden from exercising any profession, trade or industry other than the profession of Advocate, Solicitor, Barrister, Proctor, Attorney and Counsel-at-Law; and members are hereby forbidden to hold any office of profit or emolument, or employment whatever outside of the said profession of Law, (except those mentioned in Article IX of these By-Laws), or voluntarily to perform or assist in the performance of any act, service or duty appertaining to any office hereby forbidden, or any act usually performed by any such office holder or public functionary; and any member contravening this article shall be deemed and held to have committed a breach of the discipline of this Corporation, and shall be liable to punishment as provided in Section 25 of the said Cap. 27, 44 and 45 Vic., the whole subject, nevertheless, to the provisions of Article X of these By-Laws.

VI.

Whereas every member of the Bar owes to his fellow members the obligation of governing his life and conduct in accordance with the principles of honor, justice and morality, it is hereby declared that each of the following acts, when committed by a member of the Bar, is derogatory to the honor and dignity of the legal profession, to wit:

1°. Improperly revealing any secret of the profession, or any communication imparted in confidence by a client.

2°. Communicating to the newspapers or for publication any imperfect or false report of proceedings before the courts, or any report, with intent to injure or degrade a *confrère*.

3°. Practising any deceit or surprise upon a *confrère* with a view to gain in a pending cause an advantage which there is good reason for believing could not be gained without such improper practice.

4°. Abandoning a client on the day or on the eve of the trial of his cause, without having previously given him the opportunity of engaging other professional aid.

5°. Acquiring a litigious right, or a debt of any kind, with the intent and purpose of instituting legal proceedings thereon, and of earning fees therefrom.

6°. Soliciting clients, or business, or bargaining in any way with an *officier ministériel* or with an *agent d'affaires*.

7°. Accepting a salary in *lieu* of the regular tariff fees which, in exchange for the salary, are abandoned to the client, or making in advance any arrangement whereby a reduction or composition of the regular tariff fees may be effected.

8°. Dividing fees with a client for the sake of retaining his business, or making any arrangement whereby clients shall participate or have an interest in the fees.

9°. Undertaking any professional business under an arrangement to participate in the result, or agreeing, or consenting to trust to the result for remuneration, or in any way to speculate in or upon the result of litigation.

10°. Wrongfully withholding any monies, papers, books, documents or property belonging to clients or others.

11°. And any member who shall be convicted of any or either of the said acts, or of any action which the Council of a Section, on the trial of a complaint, shall deem to be derogatory to the honor and dignity of the profession, shall be liable to punishment, as set forth in section 25, cap. 27, 44 and 45 Vic., the whole subject, nevertheless, to the provisions of Article X of these By-Laws.

VII.

The exercise, for the purpose of profit or gain, of any profession other than that of an Advocate, Solicitor, Barrister, Proctor, Attorney, or Counsel-at-law, and the exercise of any trade or

other industry are hereby declared to be incompatible with the dignity and honor of the legal profession; and any member of the Bar of this Province who shall exercise any such other profession for profit or gain, or any trade or other industry, either directly or indirectly, either alone or in partnership with others, or in the name of another, shall be liable to punishment as set forth in said section 25, cap. 27, 44 and 45 Vic., the whole subject, nevertheless, to the provisions of Article X of these By Laws.

VIII.

The holding of any office as a means of obtaining a livelihood, or for purposes of profit, gain or emolument,—other than those specially excepted in the following article—is hereby declared to be incompatible with the dignity and honor of the legal profession; and any member who shall be convicted of holding any office other than those excepted as aforesaid, or of voluntarily performing or voluntarily assisting in the performance of any act, service or duty of a holder of an office, or of any public officer or functionary—other than those excepted as aforesaid—shall be liable to punishment as set forth in said section 25, cap. 27, the whole subject, nevertheless, to the provisions of Article X of these By-Laws.

IX.

Notwithstanding the provisions of the four preceding articles, any member of the legal profession shall be permitted to hold any office in the Privy Council of the Dominion of Canada, or the Executive of any one of the Provinces, or the office of Professor of Law, the office of Registrar of the Vice-Admiralty Court, any office, such as a Commissioner, created for a special temporary purpose by the Privy Council of Canada, the Executive Council of any of the Provinces, any Legislature, any Municipal Council, or any corporate body, or any office in any scientific or literary society, or the office of President or Director in any corporate body: and any member of the Bar is hereby permitted to act as an arbitrator.

X.

In all cases, the Council of any Section before whom a complaint against a member is tried, as well as the General Council sitting in Appeal from the decision of a Council of a Section, shall always have the right to exercise its own discretion as to the gravity of the act under the particular circumstances proven, and to decide, if they shall see fit, that the circumstances proven have or have not been derogatory to the honor and dignity of the profession, or such as rendered the act excusable.

XI.

Any member of the Bar who considers himself injured, or that his honor be compromised by an act of authority, shall have the right to bring a complaint before the Council of his Section, and submit to them the examination of his conduct and acts, and obtain their decision upon the same.

XII.

On the trial of any complaint against a member of the Bar, the party accused shall have the right to offer his own testimony, if he shall deem necessary.

PROCEEDINGS UPON ACCUSATIONS BEFORE COUNCILS OF SECTIONS.

XIII.

All complaints against any member of the Corporation shall be in writing, signed by the complainant, and shall set out the time, place and circumstances thereof explicitly, and in as summary a manner as may be consistent with the distinct enunciation of the charge preferred.

XIV.

The expenses of all accusations shall be borne, in the first instance, by the party making the charge; but the Council shall, on the determination of the case, decide who shall pay the costs, and settle the amount of such costs in its judgment.

XV.

It shall be especially the duty of the *Syndic* to see that all the proceedings of the Council, respecting accusations, be regular as to form.

XVI.

The Secretary of the Section shall transmit to the Secretary-Treasurer of the General Council, within three days after he shall have received notice of the deposit required by Section 78, of Cap. 27, the record of the cause in which the said judgment has been rendered, including all the proceedings and the evidence adduced on both sides respecting the accusation, and all the papers produced either in support of the accusation, or for the defence.

XVII.

The complainant, the accused, and the Council of the Section which rendered the

judgment appealed from (the latter if it think proper), shall prepare a written statement (or *factum*) of the case, ten copies of which each of them shall transmit to the Secretary-Treasurer eight days at least before the hearing.

XVIII.

The Secretary-Treasurer shall keep a Special Register in which shall be registered all appeals, and all proceedings on them in the order of their date, and each appeal shall be proceeded with in its turn according to its place on the roll.

XIX.

The Council of the Section which rendered the judgment appealed from shall be represented by the *Syndic*, if it thinks fit to prosecute the said appeal, and to be heard before the General Council.

XX.

The Appellant as well as the Respondent may be heard either in person or by attorney.

XXI.

In no appeal shall more than two Counsel be heard in opening the case or in answer, and only one shall be heard in reply

ROLL AND CHANGES IN THE ROLL.

XXII.

The Secretaries of the Councils of Sections shall be bound, whenever required so to do by the Secretary-Treasurer, to transmit to the General Council a correct roll of the members of their respective Sections, which roll shall contain the name, christian name, residence and date of commission, of all the members of the said respective Sections, indicating whether such members are practising, or whether they have notified the Section that they have temporarily ceased to practice, or whether they have been suspended, and for what cause.

XXIII.

The Secretaries of the Councils of Sections are bound to notify the Secretary-Treasurer forthwith of the death of any member of the Section, of all notifications received from members temporarily ceasing to practice, or declaring that they resume practice, and also of suspensions, either temporary or permanent, and to specify whether such suspension has been pronounced by law, or by sentence of the Council of the Section.

TRADE MARK.

In a recent case in our Courts, there was a question whether a horse's head could be readily distinguished from the head of a unicorn, (*Darling* v. *Barsalou*, 4 L. N., p. 37). A question somewhat similar arose in *Read* v. *Richardson*, 45 L. T. (N. S.) 54, in respect of the heads of a bull-dog and a terrier.

In this case the plaintiffs and the defendants were bottlers of beer for export. The plaintiffs' label consisted of a bull-dog's head on a black ground surrounded by a circular band on which were the words "Read Brothers, London. The Bull-dog Bottling." The defendants' label represented a rough terrier's head on a black ground surrounded by a red circular band on which were the words "Celebrated Terrier Bottling, E. Richardson." The plaintiffs' beer was well known in the colonies as the "Dog's-Head" beer, and they alleged that the defendants, by exporting to certain colonies beer with the terrier's head label, led to their beer being substituted and taken for the plaintiffs' beer. *Held* (reversing the decision of Jessel, M. R.), that the plaintiffs were entitled to an *interim* injunction restraining the continuance of the terrier's head on the label on the bottles of beer exported to such colonies by the defendants. Jessel, M. R., had observed below: "I should certainly never have taken one of these dogs' heads for the other, and I do not think anybody else would. With the exception of the one witness I have mentioned, nobody says he would. It is a very different animal. Of course they are both dogs and dogs' heads, but I think there the resemblance stops. They are differently coloured, one is yellow and white and the other is brown and tan. They are a very different kind of dog, remarkably different. This bull-dog's head is a most emphatic bull-dog's head, whereas the terrier is a remarkably mild species of terrier, and by no means so acute as a terrier generally is. They are very different animals indeed; in fact, the terrier looks something like a cat. It is a very mild specimen. The dogs, too, have different collars on. I do not think that ordinary people who cannot read, who are generally pretty observant, would take one of these for the other."

It appears, however, that on the appeal, the appellants relied chiefly on the fact that the beer was known to the colonists as "Dog's Head," without any distinction of canine breed, and this was supposed to give the bull-dog beer a quasi-monopoly of beer-labels bearing a dog's head. The logic of the decision is not quite convincing

CONTRIBUTORY NEGLIGENCE IN MALPRACTICE.

The case of *Potter* v. *Warner*, 91 Penn. St. 362; S. C., 36 Am. Rep. 668, is of especial interest to physicians. It is there held that the measure of skill which a physician is bound to exercise is not affected by his refusal of the proffer of assistance from other physicians; and that if a patient contributes to present sufferings and permanent injury, attributed to malpractice of a physician, by disregard of his instructions, either personally or by those in charge of the patient, there can be no recovery in damages.

On the first point the court said: "Having assumed the charge of the boy Warner, the measure of professional skill which the plaintiff in error was bound to exercise did not depend on whether or not he refused the proffered assistance of other medical men. His refusal was no more than an implied declaration of his ability to treat the case properly. By assuming and continuing the charge of the patient, he was under an obligation to exercise a degree of skill which was neither increased nor diminished by such refusal." This doctrine will prove a gratification to the sensitive jealousy of the medical profession. It would be hard on the doctors to charge them with negligence in failing to call in a hated rival.

On the other point the court said: "The court, however, said to the jury, 'the doctrine of contributory negligence, if it is properly applied to this case, does not control it. The defendant is charged with unskillfulness and negligence in his professional treatment of the plaintiff. If he was guilty of unskillfulness or negligence which directly caused any injury to the plaintiff, he is responsible for such injury to the plaintiff; but of course he is not responsible for any injury resulting from any other cause. For instance, the permanent deformity of the limb may have resulted from the fault of the boy or his parents, for which the defendant could not be responsible; yet if the boy suffered unnecessary pain or a protracted illness from the fault of the defendant he would be responsible for that.' The learned judge failed to give due legal effect to contributory negligence of the defendant in error. It is true the plaintiff in error was charged with negligence and unskillfulness. Although guilty thereof, yet it did not necessarily follow that he was liable in damages therefor. If the contributory negligence of the defendant in error united in producing the injuries complained of, he was not so liable. This rule applies to the unnecessary pain and protracted illness as well as to the permanent deformity of the limb. The evidence is amply sufficient to submit to the jury the question of contributory negligence on the part of the defendant in error. If they find the parents of the boy were in charge of and nursed him during his sickness, and that they did not obey the directions of the plaintiff in error in regard to the treatment and care of their son during such time, but disregarded the same and thereby contributed to the several injuries of which he complains, he cannot recover therefor. If the injuries were the result of mutual and concurring negligence of the parties, no action to recover damages therefor will lie. A person cannot recover from another for consequences attributable in part to his own wrong."

The editor of the American Reports appends the following note to this case: "In *Hibbard* v. *Thompson*, 109 Mass. 286, it was held that a patient cannot recover, either in contract or in tort for injuries consequent upon unskillful or negligent treatment by his physician, if his own negligence directly contributed to them to an extent which cannot be distinguished and separated. The court said, the instructions 'seem to us to contain a careful and accurate discrimination between the different aspects of the case as the jury might find the facts to be.' They were first instructed that 'if it be impossible to separate the injury occasioned by the neglect of the plaintiff from that occasioned by the neglect of the defendant the plaintiff cannot recover;' but the judge added: 'If however they can be separated, for such injury as the plaintiff may show thus proceeded solely from the want of ordinary skill or ordinary care of the defendant he may recover.' The first part states the ordinary rule as to the negligence of the plaintiff; the second states the proper limitation of the rule. It is an important limitation, for a physician may be called to prescribe for cases which originated in the carelessness of the patient, and though such carelessness would remotely contribute to the injury sued for, it would not relieve the physician from liability

for his distinct negligence and the separate injury occasioned thereby. The patient may also, while he is under treatment, injure himself by his own carelessness; yet he may recover of the physician if he carelessly or unskilfully treats him afterward, and thus does him a distinct injury. In such cases the plaintiff's fault does not directly contribute to produce the injury sued for.'

"In *Geiselman* v. *Scott*, 25 Ohio St. 86, it was held that if the patient neglects to obey the reasonable instructions of the surgeon, and thereby contributes to the injury complained of, he cannot recover for such injury; but the information given by a surgeon to his patient concerning the nature of his malady is a circumstance that should be considered in determining whether the patient in disobeying the instructions of the surgeon was guilty of contributory negligence or not.

"In *McCandless* v. *McWha*, 22 Penn. St. 261, Woodward, J., said: 'Nothing can be more clear than that it is the duty of the patient to co-operate with his professional adviser, and to conform to the necessary prescriptions; but if he will not, or under the pressure of pain cannot, his neglect is his own wrong or misfortune, for which he has no right to hold his surgeon responsible. No man can take advantage of his own wrong or charge his misfortunes to the account of another.'

"If the patient is insane, and so incapable of co-operating with the physician, contributory negligence is not imputable. *People* v. *New York Hospital*, 3 Abb. N. C. 229. And this inability the physician is bound to take into account.

"If the physician has injured the patient by his negligence, the refusal of the patient or his custodians to allow an experiment by another physician to repair the injury, is not contributory negligence unless they had reasonable assurance of the success of the experiment. *Chamberlin* v. *Morgan*, 68 Penn. St. 168. The court said: 'Is it the duty of a person who has been injured by the malpractice of a physician or surgeon to make any experiment which may be suggested to him, however plausible it may appear? A man who is not himself a physician, and cannot be expected to know any thing upon the subject, cannot be himself a judge of such matters. It is very reasonable for the father of Hattie Morgan to say when Dr. Richardson proposed to put her under the influence of an anæsthetic and attempt to reduce the limb, 'that so long as she was improving so fast as she had done since he came home, he should not have it disturbed.' Had Dr. Chamberlin proposed this experiment there might be some reason to hold that he should have the opportunity of redeeming his mistake, or even if he had called in Dr. Richardson to act on his behalf. Mr. Morgan merely called in Dr. Richardson to examine his daughter's arm and give his opinion about it. That did not oblige him to adopt his advice, or to incur the hazard and expense of another operation. He owed no such duty to Dr. Chamberlin. It was offered to prove that the injury could then have been reduced. But how was Mr. Morgan or Hattie to have known this? Had the experiment failed, it might well have been urged that as she was improving she ought to have been let alone, and that Dr. Chamberlin was relieved from all responsibility by the case having been taken out of his hands."—*Albany Law Journal*.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 15, 1881.

DORION, C. J., MONK, CROSS, BABY, J J.

LOW v. THE MONTREAL TELEGRAPH COMPANY *et al.*

Pleading—Rejection of plea on motion.

Leave will be granted to appeal from an interlocutory judgment dismissing upon motion a demurrer and a special plea filed by the defendants.

The action was instituted by the plaintiff as a shareholder in the Montreal Telegraph Company, to set aside an agreement entered into between that Company and the Great North Western Telegraph Company, as being *ultra vires;* to restrain the Montreal Telegraph Company from acting further upon it; and to compel the Great North Western Telegraph Company to render to the Montreal Telegraph Company an account of all it had received under the provisions of the agreement.

The defendants demurred to the action upon the ground, amongst others, that the conclusions taken by the plaintiff were conclusions such as could not by law be taken in an ordinary suit or action by one shareholder in a cor-

poration. That such conclusions could only be taken in proceedings under the Act respecting injunctions, or by a public officer under the provisions of the law respecting the remedies against corporations for acts in excess or abuse of their franchises.

The defendants alleged substantially the same grounds of defence by a plea, *exception péremptoire en droit.*

The plaintiff moved to reject the demurrer and plea upon the ground that the matters therein set forth ought to have been pleaded by an *exception à la forme.*

The Superior Court granted the plaintiff's motion, on the ground stated, and rejected the demurrer and plea from the record.

Abbott, Tait & Abbotts for defendants, moved for leave to appeal from this judgment, contending, amongst other things, that the grounds of the demurrer and plea were properly the subject matter of plea to the merits, as they put in issue plaintiff's *right of action,* and that the sufficiency of those pleas could not be tried by motion.

Maclaren & Leet, for plaintiff, contended that the pleas attacked the quality of the plaintiff, and therefore an *exception à la forme* was the proper pleading. And that as the subject matter of an *exception à la forme* was irregularly introduced into the record, by styling it a demurrer and a plea to the merits, after the time at which the exception ought to have been filed, the proper proceeding to get rid of the irregularity was by motion.

The COURT allowed the appeal, mainly on the ground that the sufficiency of pleas to the merits could not be tested on a motion to reject them ; and that the Court below should have rejected the plaintiff's motion, leaving the merits of the plea to be tried in the usual way after joinder of issue.

Appeal allowed.

Maclaren & Leet for plaintiff.
Abbott, Tait & Abbotts for defendants.

COURT OF REVIEW.

MONTREAL, Oct. 31, 1881.

[From S. C., St. Hyacinthe.

JOHNSON, MACKAY, RAINVILLE, JJ.

MICLETTE v. LE MAIRE, ETC., DE LA VILLE DE ST. HYACINTHE.

Lease of Stall—Failure to pay license fee—Lessor's right of re-entry.

The defendants, the City of St. Hyacinthe, leased to the plaintiff for two years and nine months from the 1st of February, 1877, the butchers' stalls or *étal double,* Nos. 28 and 29, in the central market of the city. The rent was $70, payable in advance on or before the 15th October annually, the first rent apparently for the nine months was to be paid at the passing of the lease, for it is dated the 3rd of February, and makes the first payment of rent to be payable on the first of February *courant.* The lease stipulated that the lessee was not to sublet, nor to permit anybody but himself to occupy the stalls, that he was to conform to all the *réglements* then in force or afterwards to be made concerning the markets, that if the rent was not punctually paid, the city might either sue for payment or might retake the stalls (*les reprendre*), and finally the city might, at any time "*s'emparer du dit étal ou banc,* sans être tenu de payer aucune "indemnité quelconque, dans le cas de contra-"vention de la part du preneur à aucune des "clauses du présent bail et des réglements des "marchés." On the 15th October, 1878, the plaintiff paid his rent, $70, up to the 1st November, 1879.

MACKAY, J. On the 27th September, 1879, the plaintiff protested the defendants, because of two policemen, or clerks of markets, employees of defendants, having on the 16th June, by malice and without cause taken possession of plaintiff's stalls 28 and 29, locking them up, and preventing plaintiff carrying on his business. The plaintiff, following his protest, has sued the defendants for $526.25. The $26.25 is a sum equal to the rent from 16th June to 1st November, 1879, paid October, 1878, in the $70 paid in advance that day. The $500 are damages for the alleged causeless and illegal dispossession of the plaintiff.

The defendants' first plea is that plaintiff had sublet the stalls in May and June, 1879, and suffered other persons to occupy; that by a *réglement* of 1877 all persons in St. Hyacinthe are prohibited from exercising the occupation of butchers unless upon payment to defendants before the 1st of May each year, of $5. That before 1st May, 1879, the plaintiff had permitted a third person unlicensed to carry on the trade of butcher in the stalls against the will of the

defendants and their *réglements*, and in violation of the lease. That the plaintiff had failed to take a license as a butcher from 1st May, 1879, and in June, date of his expulsion, alleged, was still in default, against the provisions of the defendants' *réglements* and their lease to plaintiff. That the dispossession complained of was lawful, under the circumstances, and the plaintiff is entitled to no damages nor indemnity; particularly as the defendants have been under impossibility to lease the stalls for the time between the 16th June and 1st November, 1879.

In June last judgment went against the plaintiff, the Court finding proved in favor of the defendants the substance of their pleas, that the plaintiff had not paid his license fee of $5 before 1st May, 1879, or since; also, that he had permitted a butcher named Lachapelle to occupy the stalls in 1879, who had been selling there for his own account, the plaintiff was continuing in default, and the defendants were justified in retaking possession in June, as they did.

One question before us is this: Had the plaintiff made violation or violations of his lease before the 16th of June? It is to be observed that under the *réglement* of 1877 the plaintiff was bound not to carry on any trade as butcher in St. Hyacinthe after the 1st of May, 1879, without a license, under penalty of $20, or imprisonment for a term not exceeding two months. Plaintiff had incurred this penalty over and over again, before the 16th of June. He took no license, and acting without one, violated his lease conditions. It has been argued for him that the license fee had never been demanded. The lessors needed not demand it, seeing the character of the *réglement* of 1877 and its requisitions; to all of which the plaintiff, under his lease, has submitted himself. It has been said that this claim—that the plaintiff had forfeited his lease from not having paid his license fee—is an afterthought; but whether so or not, it is competent to the defendants, against an action of damages, to make it. Actions for damages must be well founded. The plaintiff claims from not having been able to carry on business in his stalls, as he had right to; that is his claim. But query as to his right to carry on without a license from the defendants, for he was violating a *réglement*, and incurred a penalty for each day that he carried on without license. His case has a weak side, seeing that, and that his lease (in words, at any rate), allowed defendants to *s'emparer du banc* in certain cases, as I have read at the commencement of this judgment. We do not now, since the enactment of our Civil Code, so easily hold penal clauses to be merely comminatory as formerly. (See what was said in the Pew case, even before the Civil Code, 5 L. C. R. 3.) Upon the question of whether or not plaintiff had also violated his lease, by permitting a butcher named Lachapelle to occupy the stalls, who had been selling in them for his own account, we do not feel strong enough to go against the finding of the Court below. Even if we did, the plaintiff would not gain his case, seeing our finding on the other part of it, upon which the judges here are unanimous.

There is forced upon us another question, namely: "Supposing that plaintiff did violate his lease conditions, was the course taken by the defendants lawful?" According to the plaintiff's argument the defendants had to sue in ejectment, and had no right to retake possession as they did. To this the defendants say: "Look at the lease, it stipulates for the right of re-entry as here, and without indemnity." The defendant argues that as in the case of a pew in a church held under lease, it is held that a clause stipulating that in default of payment of the rent at the time fixed, the lease shall cease from the moment of the default, and the lessor shall have the right to lease to another, without other formality, must be allowed force, and not be held as merely comminatory, so in the case of a stall in a market held under a lease such as the plaintiff and defendant settled between *them*. We do not see that the Judge in the Court below agreed to this in words, but he seems to have held the substance of it, to wit that the defendants were justifiable in retaking the stalls as they did. The plaintiff was dispossessed without violence to his person, or to any person. Nobody was in the stalls when they were taken possession of. They were stalls in a building property of the defendants, opened and shut when and as they ordered. Singly the stalls were of small value, yet the revenues of the market were considerable, and it was important that they should be collectable easily, and that leases of them should contain the most stringent clauses to provide for speedy payments. How could the

affairs of the market be administered under a system of expensive and tedious suits at law having to be against butchers, perhaps worth nothing, holding over and refusing to pay rent. We find that the defendants needed not resort to action *en résiliation de bail*. We also find, as regards the $26.25, that the defendants are not liable to indemnify the plaintiff. We confirm the judgment appealed from in its *dispositif* with costs against plaintiff.

Tellier & Co. for plaintiff.

R. E. Fontaine for defendants.

RECENT DECISIONS AT QUEBEC.

Procedure.—When an action is returned during the long vacation, the 1st of September is not to be deemed the return day under art. 463 C.C.P., but is the first of the four days allowed by art. 107 for filing preliminary pleas. —*Beausoleil* v. *Méthot*, 7 Q.L.R. 257.

License Act — Information—Conviction.—Jugé (1), que "La loi des licenses de Québec, de 1878," ne limite que par le montant réclamé la juridiction qu'elle donne au juge des sessions pour la poursuite de contraventions à ses dispositions, et qu'en vertu de cette loi, aussi bien que du droit commun, plusieurs offenses distinctes peuvent être poursuivies par une seule plainte et comprises dans une seule conviction.

(2) Que l'énonciation dans la plainte de ventes, au même temps et au même lieu, de neuf différentes espèces de boissons n'est que l'allégation d'une seule vente, et que, y fut-il allégué plusieurs ventes distinctes, la demande de la condamnation à une seule penalité n'excédant pas $100 conserverait sa juridiction au juge des sessions.—*Coté* v. *Chauveau et al.*, 7 Q.L.R. 258.

Attorney—Désaveu.—An attorney who appeared in a case, for a defendant upon whom process had not been regularly served, and who denies that he employed such attorney, is bound to show that he was authorized to appear, before he can recover costs. *Désaveu* in such case is not necessary.—*Felton* v. *Asbestos Packing Co.*, 7 Q.L.R. 265.

Trade—Agreement not to carry on business.—Jugé (1), que la convention, dans l'intérêt du commerce d'un autre, de n'en pas faire un à son compte, n'empêche pas de se mêler de celui d'un tiers et de l'aider et favoriser; qu'elle est une limite à la liberté individuelle qui ne peut pas s'étendre au-delà des termes de la stipulation, et qu'elle diffère essentiellement de la vente d'un fonds de commerce ou d'un achalandage qui, comportant garantie d'éviction et de trouble, ne permettrait pas au vendeur de faire le même commerce ou de se mêler de celui de même espèce que ferait un tiers. (2) Que l'obligation de tirer sur le stipulant les bons que l'obligé pourra consentir ne peut pas être invoquée par la société qu'a subséquemment formée le premier, ni même par lui s'il ne peut pas les honorer autrement qu' avec les biens de la société.—*Bertrand* v. *Julien*, 7 Q.L.R. 268.

River—Dam—Indemnity—Prescription.—Jugé (1), que le statut, qui permet l'exploitation des cours d'eau en y construisant des écluses, crée une servitude légale sur les terres sur lesquelles ces écluses font refluer les eaux. (2). Que la prescription de deux ans ne peut pas être opposé à la demande de l' indemnité. (3). Que cette demande doit être poursuivie devant les tribunaux ordinaires, que l'expertise mentionnée dans le statut n'est possible que du consentement des deux parties, et qu'elle n'a aucune autorité judiciaire. (4). Que l'indemnité, étant le prix de la servitude, est due par celui qui l'a exercée, et que la vente subséquente du moulin et des écluses ne décharge pas celui qui les a construits de l'obligation de la payer.—*Breakey* v. *Carter et al.*, 7 Q. L. R. 286.

GENERAL NOTES.

THE London *Law Times* of October 29th says:—"Two familiar faces will be missed by the Bar on the opening of the Courts—the faces of men not kept from their work by ill-health, but removed by death. Mr. Joshua Williams, Q.C., one of the most remarkable real property lawyers of the present century, and Mr. Clarkson, Q.C., the most accomplished admiralty lawyer of his day, are dead—the former at the age of sixty-eight, the latter in the prime of manhood."