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LIBEL.

In his address to the Grand Jury, at the opening of the Queen's Bench term, Montreal, Mr. Justice Baby referred to the subject of libel as follows:—

Parmi les crimes que je vous ai énumérés, il y en a qui exigent de ma part quelques remarques. Vous avez dû être frappé, depuis un certain temps surtout, de la fréquence des délits de la presse. Presqu'à chaque terme de cette cour vous êtes appelés à prendre connaissance d'un ou deux cas de libelle, et dans celui-ci, d'après mes informations, le nombre en sera encore plus grand.

Tout le monde sait parfaitement que le journal est appelé à jouer, et de fait, joue un grand rôle dans l'univers civilisé. Il enseigne au peuple ses obligations et lui fait connaître ses droits; il l'éclaire sur les dangers qu'il peut courir, forme l'opinion, la dirige, réprime les abus, indique les remèdes auxquels il faut avoir recours lorsqu'il y a défaillance quelque part dans l'ordre moral ou politique; le journal exerce, en un mot, une immense influence sur la société.

Chacun doit être heureux de soutenir et faire prospérer dans les mesures de ses moyens les feuilles publiques qui ne s'arrogent pas plus de droits que les individus ne sauraient s'en arroger, d'après la loi. Mais d'un autre côté, si la presse, au lieu de se renfermer dans le cercle de ses attributions, cesse de s'occuper des questions d'ordre public, du redressement des torts publics, de l'instruction du peuple, oublie sa belle mission pour s'attaquer, sous prétexte d'intérêt public, aux simples particuliers, les recherche, fait connaître à la multitude leurs défauts, leurs faiblesses, met à nu et dépeint en couleurs plus ou moins fausses la vie intime des individus et des familles, donne asile et circule ces cancans, ces calomnies dommageables, jetées sur la rue le plus souvent par les lâches et les envieux, et semées ensuite de tous côtés par les langues envenimées des oisifs de toutes sortes, alors ce grand bienfaiteur, je dis, devient une immense *nuisance*; il est d'autant plus terrible et dangereux que ses dires libelleux vont de nos jours partout où l'électricité et la vapeur parviennent.

Mais la rétractation, dit-on, répare le mal, cicatrise la blessure que l'on peut avoir causée. Je voudrais qu'il en fût ainsi. Il est difficile cependant d'adopter cette manière de voir. Vous n'êtes pas de cette opinion, j'en suis bien convaincu, messieurs. La rétractation est souvent pire dans ses effets désastreux que l'article incriminé l'est lui-même. On a hâte d'écrire que les choses ne sont pas telles qu'elles ont été rapportées, que l'on en demande excuse à la personne offensée, mais le tout est si et tellement bien entortillé—car, voyez-vous, on craint de passer pour mal renseigné—que le lecteur de bonne foi qui, en lui-même, avait tout d'abord fait sa part de l'exagération, se dit maintenant qu'il y a bien quelque chose de vrai au fond, car il n'y a pas de feu sans fumée, et ceux qui croient tout ce qu'ils lisent dans un journal, et le nombre en est considérable, et qui ne verront jamais cette rétractation, peut-être, restent sous l'impression que l'individu dont il est question demeure sous le coup qui lui a été porté.

Il est connu qu'il y a une certaine classe de lecteurs qui aime le scandale, qui raffole des situations équivoques, se nourrit d'émotions malsaines, qui se rit, en un mot, des malheurs, des chagrins des autres, de la honte dont une presse éhontée peut couvrir des citoyens respectables.

Est-ce pour cette classe dépravée que la loi doit être mise de côté ou demeurer lettre morte? Non. Il faut que l'honneur, la paix et le bonheur des familles soient protégés, et c'est le devoir, le devoir impérieux de tous les gens respectables de voir à ce que ce mal disparaisse bientôt. Les propriétaires de feuilles bien posées doivent le sentir eux-mêmes, j'en suis convaincu; ils doivent par conséquent exercer la plus grande vigilance sur ce qui est inséré dans leurs colonnes et voir à ce que des plumes inexpérimentées, dirigées souvent par un jugement défectueux, n'aient pas pleine liberté de détruire à volonté le caractère et la réputation de certains individus, sous prétexte qu'il est de l'intérêt public d'en agir de la sorte.

EXTRADITION.

The *Law Times* (London), commenting lately on the probability of a demand being made for the extradition of P. J. Sheridan, observed:—

"The history of the joint arrangements between Great Britain and the United States is not long. In 1794 the two powers agreed, by Jay's Treaty, to deliver up to one another fugitives charged with murder or forgery, provided the evidence of criminality was sufficient. This treaty lasted for twelve years only, and was not renewed. From the period until 1842 there were no treaty provisions as to extradition between the two powers, but it is remarkable that Mr. Clarke in his treatise upon extradition quotes the case of one Daniel Washburne (3 Wharton's Criminal Trials, 473; 4 Johnson Ch. Rep. 106), which shows that in 1819 Chancellor Kent, than whom there is no higher authority upon American law, held that, irrespective of all treaties, it was the duty of all governments to surrender fugitive criminals, or persons charged upon sufficient evidence with criminal offences. In a later trial Chief Justice Tilghman, without going to quite the same length as his predecessor, expressed an opinion that extradition was an international duty which between neighbouring nations was of almost irresistible obligation. In these cases may be seen the *raison d'être* of the famous Ashburton Treaty, signed at Washington upon the 9th Aug., 1842, which still remains, as we find in Mr. Howard Vincent's treatise, the only law upon the subject of extradition between England and the United States. Amongst other crimes which are enumerated in that treaty, as being sufficient to warrant extradition, are murder, assault with intent to commit murder, etc. Mr. Clarke observes that political offences are not specifically excluded, but reminds us that President Tyler, in transmitting the bill to Congress, observed that the bill was carefully confined to such offences as all men agree are heinous, and destructive to the security of life and property, so that political offences and criminal charges arising from wars or intestine commotions might be excluded. The two most important cases which have been decided under this treaty are that of Kaine, in 1852, upon a charge of attempting to commit murder, and that of the famous murderer Muller. * * * *

The Ashburton treaty contains no negative clause. The American government does not say that it will not surrender persons charged with crimes not included in the 27th article; it only definitely promises to deliver to the British authorities persons charged with the specified offences. On the other hand, the words of President Tyler show that the spirit of the treaty does not include political offenders, to which the answer is that conspiracy to murder definite persons for political purposes is not a purely political offence; moreover, it is an offence which is regarded as heinous by the law of all civilized nations. From the history of extradition law in America, it may be concluded that the United States government has a discretion in this matter. The unsatisfactory state of the extradition laws has long been recognized in both countries, and the report of the commissioners appointed in 1878 to investigate the matter contains a proposition that amongst offences sufficient to warrant extradition shall be included all offences against person or property indictable at common law in England. Any treaty in which such a clause is present must of course be reciprocal, and the American government is not likely to fail to reflect that the present law is of considerable antiquity. Finally, if the American government felt a doubt whether it ought, on the hypothesis that it has a discretion, to exercise that discretion according to the desire of the English government, that doubt might be dispelled by these words, quoted in Mr. Lorimer's Institutes of the Law of Nations (p. 346): 'Les faits, qui réunissent tous les caractères des crimes de droit commun (assassinats, incendies, vols) ne doivent pas être exceptés de l'extradition, à raison seulement de l'intention politique de leurs auteurs."'

NOTES OF CASES.

HIGH COURT OF JUSTICE.

LONDON, Nov. 23, 1882.

LAMB v. MUNSTER.

Privilege on ground of incrimination.

An objection to answer interrogatories, which is made by an affidavit on the ground of the tendency of the answer to criminate the person interrogated, may be valid, although not expressed in any precise form of words, if from the nature of the question and the circumstances, such a tendency seems likely or probable. In an action for libel the defendant pleaded a denial of the publication, and to interrogatories asking him, in effect, whether he published the libel he stated, by his affidavit in answer: "I decline to answer all the interrogatories upon the ground that my answer to them 'might' tend to criminate me."

Held, that his answer was sufficient.

Motion to rescind an order of Watkin Williams, J., in chambers.

The action was for libel, and the defendant by his statement of defence denied the publication of the alleged libel. Interrogatories being administered asking him whether he did not publish the libel, his answer was: "I decline to answer all the interrogatories upon the ground that my answer to them might tend to criminate me." A master ordered a further and better answer; but his order was rescinded by the order of the learned judge.

FIELD, J. I think the learned judge at chambers was right, and that the answer to the interrogatories is sufficient. The point raised is important, for the principle of our law, right or wrong, is that a man shall not be compelled to say anything which criminates himself. Such is the language in which the maxim is expressed. The words "criminate himself" may have several meanings, but my interpretation of them is "may tend to bring him into the peril and possibility of being convicted as a criminal." It is said that a man is not bound to do so. There have been various authorities on the question how the point is to be raised. Suppose a witness in the box declines to answer a question. He is asked why? He answers: "Because it may tend to criminate me." But the judge tells him that he must go further and swear that he believes the answer will tend to criminate him. He answers, "I do not know, but I believe it may do so." The judge tells him that he must go further and say that he is advised that the answer may tend to criminate him. He perhaps replies, "I have no one to advise me in whose advice on the subject I should trust." Then it becomes the duty of the judge to look at the nature and all circumstances of the case and the effect of the question itself, to see whether it is a question the answer to which will really tend to criminate the witness. If he said, "I think it may," or "it may," or "it might," or "I believe it will," or "I am advised it will;" I should not regard the form of words, but look to see whether answering would be likely to have or probably would have such a tendency to criminate, and bearing in mind the cardinal rule that a man shall not be compelled to criminate himself, I should almost prefer a man to be careful and say the answer might tend to criminate, and I should be slow to commit him to prison for not doing that which the law says he is not bound to do. In this case the tendency to criminate is evident. The statement of claim charges the defendant with the publication of a false and malicious libel, the remedy for which is either by action or indictment. It would be competent to the plaintiff, after having got an answer to the interrogatories, to indict the defendant for libel, and the answer might establish the very first step the prosecutor would have to prove.

I do not think the authorities lay down any principle on which this application for a further answer can be rested. In *Fisher* v. *Owen*, 8 Ch. Div. 645, the point was only whether the question could be put, and there are many, amongst whom is Brett, L. J., who think it is a mistake to allow a man to refuse to answer on the ground that his answer might tend to criminate him, for this reason, that although a learned judge may regard the answer without being influenced by it, yet on the interrogatories and the refusal of the defendant to answer them being read to a jury, who are asked whether they can doubt that the defendant really did what he was asked about, they would at once find that they did. In *Allhusen* v. *Labouchere*, 3 Q. B. D. 654, 662, Brett, L. J., doubts whether the equity doctrine is perfectly applicable to the courts of common law. But as the Lord Justice says: "That however is past controversy, and the question has been settled by the Court of Appeal." A decision of Lord Hatherley when Wood, V. C., was cited, and Mr. Woollett produced a case in which there were the same words as those under discussion, but I find in the cases that the learned judges used words such as "will," "may," or "might," indifferently, without laying any stress on the verb. I think there is no substance in the objection to the present answer, and that it is quite sufficient. It is very desirable that the rule should be in favor of the principle of law.

STEPHEN, J. I am of the same opinion. I entirely agree with my learned brother. In every case the principle itself has to be considered, and it would not be well to lay down any kind of strict rule as to the particular form of words in which persons are to be compelled to express their opinion as to whether or not the answer to questions would criminate them. When the subject is fully examined, it will, I think, be found that the privilege extends to protect

a man from answering any question which "would in the opinion of the judge have a tendency to expose the witness, or the wife or husband of the witness, to any criminal charge." Stephen's Dig. of the law of Ev., (3d ed.), art. 120, p. 121. That is what I understand by the phrase "criminating himself." It is not that a man must be guilty of an offence and say substantially, "I am guilty of the offence, but am not going to furnish evidence of it." I do not think the privilege is so narrow as that, for then it would be illusory. The extent of the privilege is, I think, this: the man may say, "if you are going to bring a criminal charge, or if I have reason to think a criminal charge is going to be brought against me, I will hold my tongue. Prove what you can, but I am protected from furnishing evidence against myself out of my own mouth." I do not think the cases cited go any further than this, viz., that the court which has to decide must be satisfied on the oath of the witness that he does object on that ground, and that his objection is *bona fide*. In *Reg.* v. *Boyes*, 1 B. & S. 311; 30 L. J. (Q. B.), 301, a case not cited in argument, but a somewhat remarkable one, a man called as a witness on an information for bribery refused to answer any question as to his knowledge of the defendant, on the ground that by answering he might criminate himself; a pardon under the great seal was thereupon handed to the witness, who still refusing, was compelled by the judge to answer. This ingenious point was taken, viz., that the pardon was not pleadable to an impeachment by the House of Commons, and that Boyes when he refused to answer after the pardon was handed to him did so under the belief of an impeachment to which the pardon would be no answer. Cockburn, C. J., says: "It was contended that a bare possibility of legal peril was sufficient to entitle a witness to protection; nay, further, that the witness was the sole judge as to whether his evidence would bring him into danger of the law; and that the statement of his belief to that effect, if not manifestly made *mala fide*, should be received at conclusive. With the latter of these propositions we are altogether unable to concur." But he goes on to say that "the court must see, from the circumstances of the case and the nature of the evidence which the witness is called to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer," and also that the danger must be real and appreciable. That is on the whole the principal authority for my view of this case, that a man is not to be forced to answer any question if the witness swears that the answer "may" or "will," or "would" endanger him (I care not for the form of words in which he expresses it), and in the opinion of the judge the answer may, not improbably, be of such a nature as to endanger him. The defendant in the present case is asked whether he has published a libel, and has refused to answer on the ground that it "might" endanger him, and I think that a person who wished to annoy him and cause expense might endanger him, and I cannot say it is an improbable contingency. Having regard to the authority I have cited, it seems to me that a man may say, "I think the answer would tend to criminate me," meaning thereby 'would tend to bring a criminal prosecution against me for a crime of which I am in fact innocent, but of which I might on the facts be very probably accused."

Order affirmed.

COURT OF QUEEN'S BENCH.

MONTREAL, May 27, 1882.

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

THE CONSOLIDATED BANK OF CANADA (claimants below), Appellants, and THE MERCHANTS BANK OF CANADA (contestants below), Respondents.

Guarantee—Amalgamated Bank cannot take advantage of bond given to one of the banks consolidated.

Held, that a guarantee given to a Bank which afterwards was amalgamated with another Bank, did not bind the guarantors towards the consolidated Bank.

RAMSAY, J. This case comes up on the contestation of a claim on an insolvent's estate. The City Bank accepted a letter of guarantee from two gentlemen, who thereby bound themselves jointly and severally to and in favour of the said Bank, for the full payment of such notes of two firms which have been, or hereafter may be, discounted by the Bank, thereby making themselves and each of them "as fully liable and bound for the same as if each of them had individually made each and every

of said notes." Later, the City Bank and the Royal Canadian Bank became amalgamated by act of Parliament, under the name of the Consolidated Bank of Canada, and the new Bank, believing itself protected by this letter of guarantee, continued to discount the paper of the firms therein named. The drawers became insolvent, as also the gentlemen who signed the letter, and the claim by the Bank was on the estate of one of the signers. This claim respondent contested by saying the letter of guarantee was to the City Bank and not to the Consolidated Bank, and, therefore, it does not apply. The argument is that *cautionnements* are to be strictly interpreted. But, it is answered, the City Bank has not lost its identity, and at any rate this is not *cautionnement*, but a joint and several obligation.

There is nothing in the wording of the statute to help us over this difficulty. The rights and property of the two banks are transferred to the new. But the rights are evidently only those existing at the time of amalgamation, about which there is no question in this suit. Under the authorities of the English law the case appears to be very clear, that for no equitable consideration can one party take advantage of a guarantee given to another. So where a bond is to one and he forms a partnership with another, the co-partnership cannot take advantage of the security. "Where there is the least difference between the condition and the breach, the surety will not be bound," says de Guy, C. J. "It is not Wright's money that is unaccounted for, but the money of Wright & Company," said Gould, J., in the same case. *Wright & Russell*, 2 Wm. Blk. 934. And where a partner retires the remaining partners cannot take advantage of the bond to the old firm; *Strange & Lee*, 3 East, 484. This rule was adopted in a case in this Court; *Henault & Thomas*, 1 Rev. Leg., 706. Nor can a partnership after it becomes incorporated take advantage of a bond to the old partnership; *Dance & Girdler*, 1 & B. P. new cases, p. 34.

The case of *Metcalf & Brown*, 12 East, 404, cited on the other side, avowedly turns on the interpretation of the terms of the bond, and refers to *Barclay & Lucas* as being defensible on the same ground. In *Pease & Hirst* there was a joint and several note payable to order to give credit to A. at a certain banking house, and it was held that the note being payable to the five members of the banking-house or order, and being evidently intended to be a continuing security, the makers were liable upon it, notwithstanding a change in the members of the banking-house. All the old cases are to be found in Watson on Partnership, p. 112. My copy is of a very old edition, but the cases are to be found Chap. III. Also Collyer § 613, where it is admitted that *Barclay & Lucas* is no longer law.

But it was contended that the rule of the civil law is somewhat different, and we were referred to Pothier, Obl., 385. But I think that authority supports the principle of *Metcalf & Brown*, namely, that if the security be to representative persons it passes to their successors, and I cannot see that it indicates any substantial difference between the civil law and the English common law. So far as the question under consideration goes, article 1935 C. C. seems to be absolutely conclusive.

But another consideration was pressed upon our notice in reply. It was argued that this was not a bond of surety, but that it was an actual joint and several obligation of Messrs. Mulholland & Baker along with Bartley & Co. and Cleghorn & Co., to be parties as promissors on their notes.

It is difficult to realize this distinction or its effect if once established. Mulholland was certainly not one of the promissors; he was not a party to the note (2344 C.C.) His contract not being a principal one, but an accessory contract, I cannot understand that it can be other than a *cautionnement*. Pothier, Tr. de nantissement, No. 1. He must either be a principal or a *fidejusseur*, Pothier, Obl., 365. But even if there were room for a distinction, or that we could hold Mulholland as party to a note he had not signed, of what use would it be to appellants? It would amount to this, that Mulholland was bound to pay paper discounted by a bank which did not exist, that is, he was bound to do something on a condition which never did or could happen.

In appellant's factum there is an appeal to equity. There is no equitable question to be considered between appellants and respondents I am to confirm.

MONK, J., dissented.

Judgment confirmed.

Ritchie & Ritchie, for Appellants.

R. Roy, Q.C., Counsel.

Lacoste, Globensky & Bisaillon, for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, January 25, 1883.

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

STEPHEN et al. (defts. and incidental plffs. below), Appellants, and WALKER (plff. and incidental deft. below), Respondent.

Mitoyen wall—Recess made therein.

The parties are owners of contiguous properties on the east side of Notre Dame street, occupied as *restaurants*.

RAMSAY, J. This litigation began by a suit on the part of respondent to compel appellants to close a door which had been opened by them into a common passage leading to the back yards of the properties respectively owned by the parties appellant and respondent. This action was met by an incidental demand on the part of appellants, calling on respondent to fill with *verre dormant* a door opened by him into the passage, to pull down a wall built by him, and to restore a *mitoyen* wall in which he had cut a hole in order to extend his window frontage on Notre Dame Street.

The merits of these various pretentions must be judged by two deeds,one passed in 1800 and another passed in 1832. It has been contended that the second of these deeds completely avoided the former, and makes the rule by which we must be guided. I cannot concur in this view. It seems to me that the two deeds must be read together, and that the former one is only affected by the latter, in so far as they are incompatible. I think, then, that the second deed, by which appellants secured the *mitoyenneté* of the western gable of respondent's house, did not give him any greater rights in the passage than he had before, and therefore, that his opening a door into the passage was an infringement of the rights of the respondent. So far, then, the judgment appears to me to be correct.

Then, as to the question of the glass door opened by respondent, the Court below has condemned respondent to put in *verre dormant*, and there is no appeal from this decision, so we have only to discuss this question in so far as regards the right of respondent to open a door there at all. On this point I am with respondent. I don't think the door on the slant is any violation of the *acte* of 1800. There is nothing in the *acte* of 1832 which touches the matter.

Then, as to the building a wall in the place of the gate-way contemplated in the *acte* of 1800, I do not think appellants can complain of this. The right to make gate-ways was a mutual stipulation for the convenience of each of the parties to the deed, and therefore the right may be abandoned by either at his pleasure. It did not require any stipulation to permit either party to build a wall in the line of the slant, for it is a common law right.

Last, we come to the hole made by respondent in the wall. That is clearly illegal. Respondent could not do this without a demand to appellants to allow him to do this work, and, on his refusal, taking the precautions required by the Code(519). We are therefore to reverse so much of the judgment as affects the interference with the *mitoyen* wall, and to condemn respondent to restore the wall to its former condition within six months of the service upon him of the judgment in this case. Respondent must pay the costs of this appeal.

The judgment is as follows:—

"The Court, etc.

"Considering that there is no error in so much of the judgment appealed from, to wit, the judgment rendered by the Superior Court sitting at Montreal, on the 30th day of June, 1881, as condemns the appellants on the principal action, doth confirm the same;

"And considering that as regards the incidental demand, it is established that the respondent has made or caused to be made a recess in the thickness of the *mitoyen* wall between his premises and those of the appellants, and this without the consent of appellants, or, in default thereof, and, on the refusal of the appellants so to consent, without causing to be settled by experts the necessary means to prevent the new works from being injurious to the rights of others;

"And considering, therefore, that there is error in the judgment dismissing so much of the incidental demand as refers to the opening of the said recess by respondent, doth amend the said judgment by setting aside so much of the said judgment on the incidental demand as refers to the said recess only, confirming the said judgment as regards the incidental demand for the rest;

"And proceeding to render the judgment the said Court ought to have rendered regarding the said recess, doth order the said respondent, plaintiff and incidental defendant in the Court below, within six months of the service upon him of this judgment, to restore the said *mitoyen* wall to the same condition in which the said wall was prior to the making of the said recess, with costs of this appeal against the said respondent. (Tessier, J., dissenting.)"

Judgment reformed.

Davidson & Cross, for Appellants.

Judah & Branchaud, for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, May 27, 1882.

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

QUINN (deft. below), Appellant, and LEDUC (plff. below), Respondent.

Dividing wall—Alleged encroachment.

The appeal was from a judgment of the Court of Review at Montreal, condemning the appellant to demolish a gable wall which, it was pretended, rested upon the wall of respondent's house, or to pay $55.46, half of the estimated value of the wall.

The parties are owners of adjoining properties on Sydenham street, in St. Mary Ward. The pretension of the respondent was that the appellant's house is constructed so as to rest upon a gable wall of respondent's building, and he asked for the demolition of the wall, unless the appellant paid half the value of the gable. The first court dismissed the action, but this judgment was set aside by the Court of Review, and the appellant was condemned as prayed.

The appellant submitted that the evidence showed that he had made no use of the gable of his neighbor, and that the two walls were quite separate.

RAMSAY, J. This is one of those wire-drawn actions which has no claim to favorable consideration. The plaintiff claims from the defendant a sum of money for no real equivalent, or that he shall be subjected to a very serious inconvenience. Technically, the demand is based on the following allegations: 1. That plaintiff's wall is not *mitoyen*, but that it is built entirely on his own land; 2. That defendant used the wall so built on plaintiff's land, and supported his house upon it.

The defendant met this demand by two pleas. In the first he said, my wall is complete in itself, and I did not use your wall, which is not *mitoyen*, and which is a mere wooden structure with a shell of brick. He pleaded also the general issue.

The evidence discloses that the wall is not *mitoyen*, that though built at the foundation on plaintiff's property it hangs over defendant's property, that defendant's wall is complete in itself—that is, self-supporting, that it exceeds plaintiff's wall where it overhangs defendant's land, and that defendant, in order to cover this inequality, and, I presume, to preserve his rights, pushed his bricks above plaintiff's wall so as to cover his own line. In other words, instead of turning on plaintiff and compelling him to rebuild his wall perpendicularly, he good-naturedly suffered the slight inconvenience, probably considering that the whole matter could be set right when these temporary buildings were replaced by others of more importance. For this good-natured act he has been dragged into a suit which has lasted nearly four years, and probably put him to considerable expense and annoyance. Evidence of a lengthy and very expensive kind has been rendered necessary to establish a simple fact which plaintiff must have known just as well the day he brought his action as he does now, and which he wilfully mis-stated in his declaration in order to give himself a semblance of a right of action.

But the most curious part of the argument is that the defendant's pleas are not sufficient, because he does not specially plead that the wall of plaintiff leaned over his land. It is no matter of exception. He denies specially the alleged fact that he used plaintiff's wall, and he denies generally the necessary allegation of plaintiff that "le dit pignon est exclusivement construit sur le terrain du demandeur," and the fact alleged in such positive terms by plaintiff turns out to be not only inexact, but calculated to deceive. I cannot see why Laurent thought it necessary to make a second report, for there is no essential difference between his report and that of Bulmer and Esther, except that he tells us that defendant's wall is *accolée* to plaintiff's, and because it has no *mur de fondations*. These facts do not alter the question at all, neither does the fact, as explained,

that defendant's wall *embarque* on plaintiff's *pignon*. This being the opinion of the Court the judgment will be reversed with costs of all the courts against the respondent.

The judgment is in the following terms:—

"La cour, etc.,

"Considérant que l'appelant ne s'est pas servi du mur de pignon de l'intimé pour soutenir son mur;

"Considérant que le mur de pignon de l'intimé n'est pas exclusivement bâti sur son terrain; mais que le dit mur de pignon surplombe le terrain de l'appelant, et qu'il est en preuve que l'exhaussement du mur de l'appelant au-dessus du pignon de l'intimé n'excède pas la division des terrains des parties en cette cause;

"Considérant qu'il y a erreur dans le jugement de la Cour Supérieure siégeant en révision à Montréal le 31me jour de mai 1880, par lequel le dit appelant, défendeur en cour de première instance, est condamné à payer au demandeur, intimé, la somme de $55.46, moitié de la valeur du dit mur de l'intimé, et les dépens; et que le jugement de la cour de première instance, savoir, le jugement rendu par la Cour Supérieure siégeant à Montréal, le 30me jour de septembre 1879, était bien fondé, renverse, casse, et annule le dit jugement de la Cour de Révision, savoir le dit jugement du 31 mai 1880 et, procédant à rendre le jugement que la dite cour de révision aurait dû rendre, renvoie l'action du dit intimé-demandeur, avec frais tant en cour de première instance et en révision que sur cet appel."

Judgment of C. R. reversed.

Robidoux & Fortin, for Appellant.

Béique & McGoun, for Respondent.

GENERAL NOTES.

Mr. L. W. Coutlee has been appointed Deputy Attorney-General in Manitoba. Mr. Coutlee was admitted to the bar of Manitoba during Easter term, 1882, and has since practised in Winnipeg; he is also a member of the bar of Quebec, admitted midsummer 1873, a member of the bar of Ontario, admitted during Hilary term, 1875, and a graduate of McGill University, Montreal.

Some time ago a number of barbers were summoned before Police Magistrate Denison, charged, under an Act of Charles II., with shaving on Sunday. The magistrate discharged them on the ground that shaving had become an act of cleanliness and therefore of necessity. More recently three barbers of Oldham, England, for the same offence were fined five shillings each.—*Mail.*

A step of some importance was taken during the last session of Parliament towards the redemption of the national debt of Great Britain. A large amount of terminable annuities will become due in 1885, and it is proposed to replace these by others, which will extinguish £173,000,000 in twenty years. This, with the occasional reduction effected by surpluses, will probably reduce the debt in 1905 to £550,000,000. At the close of the Napoleonic wars in 1815 the national debt was only £110,000,000 greater than it is now, but the debt *per capita* was £46, against £22 now, and the annual interest charged was about 32 shillings per head of the population against 14 shillings now. In the Queen's speech at prorogation it was said: "The provision which you have made for further continuous redemption of the national debt will materially aid in the maintenance of public credit."

The London *Standard*, an independent journal, referring to the prolonged debates of the Commons, after admitting that at one time the House of Lords might be described as a mere court of registry, goes on to say: "But affairs are very different now. The relative position of the House of Lords and the House of Commons has been reversed. The House of Lords is now the abler and more statesmanlike of the two. If this be an accident, it is what may be called a durable accident, for it has lasted for some years, and shows no signs of coming to an end. And under these circumstances, any attempt to oust the House of Lords from the discharge of its allotted functions in our constitutional economy ought to meet with the instant reprobation of all impartial men."

The following is the official text of the decision in the Canon Bernard case:—"This tribunal is not competent to adjudicate upon the acts committed in America which are charged against the Canon. As regards his proceedings in Belgium, he acted in good faith and according to orders of his superiors when he carried off the treasury. This good faith is attested by the letter of Canon Bouvry, pointing out to Canon Bernard the danger of suffering the treasury to remain at Tournai, by the silence of the bishop, and by the fact that no proceedings were taken against Canon Bernard. Admitting that he allowed himself to be carried away by his zeal, still no fraudulent intention has been proved."

The election cases in Ontario have yielded a crop of humorous incidents, to compensate for their intrusion upon the summer vacation. In the Muskoka case, before Mr. Justice Ferguson, a witness stated that "he was introduced to the mysterious stranger by Edward Miller." Mr. BETHUNE—"What was the mysterious stranger?" WITNESS—"Why, he was as like him as two peas." (Pointing to Mr. Justice Ferguson.) This, we are told, excited uncontrollable laughter in court, in which the learned judge joined heartily. Counsel thought it necessary to elicit the further answer that "the stranger was not Mr. Justice Ferguson." In the East York case, before Mr. Justice Galt, a witness distinguished with some ingenuity the stages of inebriation. He admitted "that in consequence of having just seen some old friends he was a little the worse for liquor, and all that passed was said by him jokingly and in fun; he was not drunk, but just half and half, perhaps a little on the drunk end."