The Legal News.

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LAW REPORTS.

Mr. James L. High contributes a very interesting article on "What shall be done with the Reports?" to the current (June) number of the *American Law Review*. Mr. High, like most people, is impressed by the appalling accumulation of precedents, and the inability of the profession to keep pace with them. He sets out by quoting from Lord Coke's Preface to 9th Reports, "My chief care and labour hath been, for advancement of truth, that the matter might be justly and faithfully related; and for avoiding of obscurity and novelty, that it might be in a legall method and in the Lawyer's dialect plainely delivered, that herein no authority cited might be willingly omitted or coldly applied; no reason or argument made on either side willingly impaired; no man's reputation directly or indirectly impeached; no author or authority cited, unreverently disgraced; and that such only, as in mine opinion should hereafter be leading cases for the publike quiet, might be imprinted and published." Law reporting has long since ceased to be restricted to "leading cases for the publike quiet," and the result, as we shall presently see, is an accumulation which in view of the shortness of life and of man's active career, is apparently unassailable. The last century is accountable for by far the greater portion of the mass. Take the United States for example. A century ago there was not a single printed volume of judicial decisions. Kirby's Connecticut Reports and Hopkinson's "Judgments in the Admiralty of Pennsylvania," both published in 1789, compete for the honor of being the pioneer volume. And the celebrated Story, speaking of so late a period as 1801, says: "There were scarcely any American reports, for the whole number did not exceed five or six volumes, to enable the student to apply the learning of the common law of his own country, or to distinguish what was in force from what was not." Kent, author of the Commentaries, in 1826, estimated the bulk of English and Irish reports at 364 volumes. But in 1839, the United States reports alone filled 536 volumes. A few years later (1845) Wallace gives the entire number of reports at 1608, adding, however, "But *dum loquimur*, alas! the bookseller's boy opens the door, with an armful of new volumes, most of them from the Western States—the west of the Western—where the sturdy stroke of the woodman must yet be resounding in the tribunals of justice." But what is this compared with the statement which Mr. High lays before us, brought down to April 1st, 1882, embracing all known volumes of law reports in the English language:

United States, State and Territorial Courts	2,678
" " Federal Courts	266
England	1,433
Scotland	246
Ireland	165
Canada	164
India	186
New Brunswick	20
Australia	17
Mauritius	15
Nova Scotia	13
Cape of Good Hope	11
New Zealand	8
Jamaica	5
Sandwich Islands	3
Prince Edward Island	1
Newfoundland	1
Total	5,232

The above is exclusive of all digests, periodicals and similar publications, some of which are very comprehensive. Thus, the English *Jurist* comprises 55 volumes; the *Law Journal* reports 60 volumes; the *Law Times* reports 43 volumes, and the *Weekly Reporter* 29 volumes. These and similar works would probably swell the total to 6,000 volumes. And of this ponderous mass Mr. High says: "These reports are of practical and daily use in all the courts. Text writers consult them in the preparation of their treatises, counsel cite them in their arguments, and judges rely upon them in their decisions. No great law library is complete without them, and they form the working tools of their trade to the busy hive of toilers in the great workshop of the law." Mr. High appears to think that a great many of these volumes might be dispensed with, especially the reports of courts of original jurisdiction. "Their existence," he says, "may, perhaps, be ascribed in part to the ambition of *nisi prius* judges, desirous of seeing their decisions in print, and in perhaps a larger degree to the enterprise of publishers, ambitious to extend the list of their publications." Mr. High seems to forget that the latest reports will always be the most valuable, and in fact the solution of

the problem which bothers him, "What shall be done with the Reports?" may be left to Nature's law—the survival of the fittest. The digesters and text-writers in the United States to-day know how much or how little of the 18th century reports retains its value for present use, and so it will be a century hence. The press, be it remarked, has only, within a century, commenced its marvellous career, and it is natural that law reporting should keep pace with the general activity. It cannot be expected that reports shall contain only such leading cases as are for "the public quiet," but all that judges choose to say or write will have its local uses, and will be printed, just as parliamentary debates are printed, but the reports of to-day will have to undergo a great weeding to make them serviceable as "tools of the trade" hereafter. Everything tends to encourage and to enforce amplitude at the outset on the part of those whose office it is to keep pace with the courts. Mr. High is disposed to sigh at the change. "In the early history of law reporting," he says, "a volume of reports was of far greater relative importance than now, and more care and labor were expended in its preparation. The labor of reporting partook more of the dignity of authorship, and the volumes, as they appeared, were read and studied much as are the elementary works of the standard writers of the present day. Story is said to have examined every new volume of reports as soon as it was issued, and to have familiarized himself with every important case which it contained. Fortunate, indeed, is the lawyer, burdened with the cares of an active practice, who can now do as much even with the reports of his own State. Now, a volume of reports is but one of a long series, hardly distinguishable from the others except by number. The reporter, burdened with a mass of rapidly accumulating opinions and ambitious to keep pace with the work of his court, crowded by his publisher upon the one hand and by the court upon the other, can hardly hope to do his work with that degree of accuracy and thoroughness which was possible under the earlier system." Mr. High suggests a national convention of lawyers to formulate a system of reporting "which shall combine the elements of curtailment, repression, and exclusion;" but however desirable the end in view, the suggestion is impracticable, as appears in fact, from his own account of what is taking place in England to-day. There the judges of the highest courts seldom write their opinions, and the result is that observations are necessarily reported in shorthand, and, of course, are printed almost as fully as delivered. Mr. High instances the case of *Dublin W. & W.R.Co* v. *Slattery* (3 App. Cas. 1155) in the House of Lords. The case was brought by a widow to recover of a Railway Company, damages caused by the death of her husband, who was killed by a train. The principal point of contention was whether, when the evidence was complicated upon a pure question of fact, it should be left entirely to the consideration of the jury. Eight law lords sat upon the hearing, and each expressed his own views with more or less fullness, the result being 57 printed pages of opinion. But if eight law lords, with all their learning and experience, think it necessary to unload themselves of such wealth of erudition, how shall an individual reporter undertake to say that this part or that part is worthless, vain repetition, and unworthy of being printed? If one report is condensed, a fuller report from another hand will speedily appear to supply the deficiencies, and in fact, we find in England to-day that in spite of the authorized version under the direction of the Council of Law Reporting, the profession support three or four other independent series, which, it must be supposed, are regarded as useful checks upon one another.

In the United States, with so many legislative bodies, the number of reports is now far in excess of what appears in England. But the difficulty is being met by the publication of series of selected and condensed cases of general value. The "American Reports" is a series commenced in 1871, containing a revised edition of valuable decisions, selected from the current reports: and the "American Decisions," a series by another publisher, is designed to include all the cases of general value and authority in the Courts of the several States, from the earliest issue of the reports down to the commencement of the "American Reports." The lawyers of each State will treasure the reports of their State, and these with the general compendiums mentioned will suffice for ordinary purposes, reference to the original volumes being still possible in the great libraries upon

extraordinary occasions. Digests and indexes help to facilitate reference, and thus a mass, unwieldy at first sight, is made much more accessible than might be supposed.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, May 31, 1881.

Before JOHNSON, J.

LORANGER, Atty.-Gen. v. DUPUY.

Copartnership as assignees and brokers—Solidarity.

Persons doing business under a firm name as assignees and brokers are jointly and severally liable for the debts of the co-partnership.

PER CURIAM. The Attorney-General for the Queen brings this action to collect an account of $370.80, for printing done in the *Official Gazette*, &c., and it is directed against the defendant in part for his individual debt, and in part as being jointly and severally liable as partner with C. J. Dansereau.

The plea is, first, that the defendant contracted with Langlois, the printer, and not with the Crown; secondly, that there is no solidarity, the partnership not having been a commercial one.

Art. 1854 only creates a joint liability between partners—and not a several one, except in commercial partnerships; but the Court of Appeals held in *Ouimet & Bergevin* (22 Jurist, 265) that there was solidarity between the members of a firm of attornies. Here there can be no difficulty about the fact, as to whether this was a commercial partnership or not. The deed of partnership is here: it says in so many words that two of the partners, *i.e.*, Mr. Dupuy and Mr. Dansereau, were official assignees, and the other partner, Mr. Mainville, was a notary, and they entered into a partnership under the name of Dupuy & Dansereau, "pour exercer ensemble "l'office de syndic officiel, courtier, placements "de fonds, et administration de successions." That is to say they were not content to be merely official assignees; but they deliberately added to their business that of brokers and investment agents. I hold them jointly and severally liable. Mr. Pageau, bookkeeper in the office of the *Official Gazette*, proves the account, and there is judgment for the amount as demanded.

Loranger & Co. for plaintiff.

Lareau & Lebeuf for defendant.

SUPERIOR COURT.

MONTREAL, May 31, 1882.

Before JOHNSON, J.

THE MUTUAL FIRE INSURANCE CO. OF JOLIETTE v. DESROUSSELLES et vir.

Husband and Wife—Mutual Assurance—Application and Premium Note.

PER CURIAM. The defendant is a wife *séparée de biens*, and the action is brought to recover from her some assessments under a contract of mutual assurance. She pleads a variety of things, among the rest a demurrer, which was dismissed, and an amendment was made in the declaration. The only point insisted on at the hearing was that the application for assurance and the premium note were given for her by her husband without authority, to which it was answered that she accepted the policy and had the benefit of it at all events. Argument plausible and authority grave were offered, and I have considered the point, and also looked at all that is in the record, and I find that the defence, under the circumstances, amounts to nothing. This man who signed as "*procureur*" was really *procureur*, not special for that particular purpose,—that would not be necessary in an act of administration such as this,—but he was *procureur* before that, and his procuration in this instance was acknowledged by the acceptance of what it had effected—by the defendant herself. As to the hypothec, it makes no difference; it was not stipulated; it was a hypothec operated by law. It is impossible to read this man's evidence without seeing that the defence set up is not in good faith. Judgment for plaintiff for amount demanded. The case of *Jodoin & Sicotte*, in review, a few months ago, is exactly in point.

Church, Chapleau, Hall & Atwater for plaintiff.

Lacoste, Globensky & Bisaillon for defendant.

SUPERIOR COURT.

MONTREAL, May 31, 1882.

Before JOHNSON, J.

ROBERT v. LAURIN.

Ferry—Liability of proprietor for property carried.

The proprietor of a ferry boat is not liable as a common carrier for an accident to a horse driven on board and not placed in his exclusive charge, unless it happen through his fault alone.

PER CURIAM. This action is against the proprietor of a ferry, to get damages, that is to say the value of a mare killed on board the ferry boat, or rather dying in consequence of injuries received there. The plaintiff, in his declaration, treats the case as one of liability, on the principles applied to common carriers of freight. He alleges that he put his property into the defendant's hands and under his care, and that the defendant did not put the mare and the carriage she was harnessed to in a safe or proper place; and by that means the animal was injured and died.

The plea admits the ownership of the ferry, and the embarkation of the mare and waggon, and alleges the mare was unharnessed, and put in a proper place; but that she was horsing and excitable, of which the plaintiff gave no notice, and she began to kick and back, and got hurt on the point of the shaft of another waggon; and that the accident was mainly due to this, and to the plaintiff's own neglect to stand by the mare and hold her, as was customary. Besides this, it is pleaded that the hurt the mare got was serious, and required care, instead of which she was driven four leagues after landing.

The first thing to look at is, what was the relation between the ferryman and the customer? Is this the case of unrestricted liability as common carriers in relation to a bale of goods? At the hearing I expressed a strong opinion that it was not such a case; and I have since seen no reason to change my opinion. On the contrary, I find it supported by authority. But before stating what I conceive to be the principles to govern this case, I must try and ascertain what are the facts to which they are to apply. In the present case they are to be found in comparatively small compass, as there are only eighteen witnesses examined, and their depositions merely cover 274 pages, which, however outrageous it may appear to persons unacquainted with the modern abuse termed *enquête au long*, is moderation itself compared to some of the cases I have had to deal with. The only facts of importance possible to eviscerate from this *enquête* are that the mare had been taken out of the shafts, but still had her harness on. There was a horse in front of her, and a waggon and horse just behind her. The horse in the waggon behind her was a very small one, and the shaft stuck out in front of him. The horses were what the witness Aubry, who was on board, calls *bloqués*, that is huddled together, and in the opinion of this witness, they were packed in a dangerous manner. The people belonging to the boat usually unharnessed the horses and placed them where they pleased. Whether they did so in this case is uncertain. Some of the horses, however, one at least, was still harnessed. The mare kicked up behind, and the shaft of the waggon in rear ran into her, making a dreadful wound, and she died some days afterwards. The driver of the mare that day was young Robert, who was sitting with Aubry in the waggon, when the accident happened; and Aubry says if he had been holding the mare's head at the time he could not have prevented the occurrence. It was the habit for the owners of the horses to leave them where they were placed, and to get together and talk.

The principle of liability in such cases is not the same as that of common carriers of freight. It may be so no doubt in certain cases; but it is not so here. There must be fault proved—*faute*—against the defendant to make him liable; and it must be his fault alone. There must be none on the other side. The subject is well discussed in the case of *White* v. *The Winnisimet Company*, reported in 7th Cushing, 155. The principles there stated and applied, are not at variance with those of our own law, and they receive a better expression in relation to the particular case in hand than I have seen anywhere else. I do not hesitate therefore to be guided by them; not because American cases are always authority with us, but because the one I am citing elucidates with clear reason and logic, principles sanctioned by our own law.

The following judgment was rendered in that case: "To a certain extent, persons keeping and maintaining a ferry are common carriers, and subject to the liabilities attaching to common carriers. It would be so, if a bale of goods, or an article of merchandize was delivered by the owner to the agent of a ferry company, to be carried from one place to another for

hire. Upon receiving such goods for transportation, the ferry company stipulate to carry them safely, and subject themselves to strict liability for their safe delivery, being only exempted for losses occasioned by those acts known as 'acts of God, or of a public enemy.' The principle above stated would embrace the case of a horse and waggon received by a ferryman, to be transported by him on a ferry boat, *the ferryman accepting the exclusive custody of the same for such purpose; and the owner having, for the time being, surrendered possession to the ferryman.* But if the traveller uses the ferry boat, as he would a toll bridge, driving his horse upon the boat, selecting his position, and himself remaining on board; neither putting his horse into the care and custody of the ferryman, nor signifying to him or his servants any wish or purpose to do so; and the only possession and custody by the ferryman is that which necessarily results from the traveller's driving his horse and waggon on board the boat, and paying the ordinary toll for a passage; in such case, the ferry company would not be chargeable with the full liabilities of common carriers of merchandize. The liability in such a case would be one of a different character, and if the proprietors of the ferry were liable for loss or damage to the property, it would be upon different principles."

The judgment then goes on to show that there are certain responsible duties incumbent on ferry proprietors—such as a safe boat, competent crew, and necessary appliances, and it proceeds to use this language:—"For neglect of duty, they may be charged, but the liability is different from that of common carriers; * * *" and likens the traveller on a ferry to a traveller on a toll bridge or a turnpike road; and holds that if he do not use ordinary care and diligence, and injury ensues, the loss is that of the traveller. The judgment in *White* v. *The Winnisimet Company* proceeds to observe that the liability in such cases receives some light from the modified liability of common carriers where the owner accompanies the goods and retains a certain control over them; and it concludes as follows:—"Thus we perceive that a modification of the liability attached to common carriers occurs as the nature of the thing to be carried, and the extent of the custody and control over it by the carrier, varies. We think that the propriety of such a modification of what is certainly a very stringent rule of liability, in reference to cases where the entire custody and control of the property is not with the carrier, is quite obvious."

The evidence does not show in the present case that the entire custody of the property was with the ferryman, or the contrary. Perhaps, indeed, as a matter of common knowledge, we may all know very well the kind of custody which a ferryman exercises in such cases. I should feel I was doing violence to justice and reason, if I held that he was ordinarily vested with exclusive custody. He may be so vested, no doubt, in certain possible cases; but was there anything here in this case to take it out of the ordinary class of such cases? I think not. The owner of the horse, and the ferryman were both bound to ordinary, and reasonable care and diligence. When a ferryboat is crowded, and a horse is taken out of the shafts, and placed in a spot of ordinary safety, ought not the owner to look after his property to a certain extent? I think he ought: and here he certainly did not. The opinion of a witness, that if the owner had done his duty the thing would have happened all the same, is purely conjectural; but well-founded or not, the plaintiff must show that there was fault, and exclusive fault on the part of the ferryman. To attach such a liability as it is sought to attach here to the defendant, there should be clear evidence. It is impossible to say here who put the waggon, which was a cause of the injury, where it was. It is equally impossible to say from the evidence whether the mare kicked, and so caused the injury to herself, or whether the waggon ran forward and hit her before she kicked. I do not enter into the question of the treatment of the animal after the wound, which of itself might be important—the case appears not to require any further grounds of decision than those I have mentioned. If I saw there was fault on both sides, I should, of course, make each party pay his own costs; but I must be exact, and under the evidence, I see no fault in the defendant. Therefore the action is dismissed with costs.

Desjardins & Co., for plaintiff.

Lacoste & Co., for defendant.

SUPERIOR COURT.

MONTREAL, May 31, 1882.

Before JOHNSON, J.

GOUGEON v. CONTANT.

Damages—Negligence—Horse running away.

The owner of a horse is not responsible for the damage caused by the animal while running away, if he proves that the accident occurred without any fault or imprudence on the part of the person in charge thereof.

PER CURIAM. This is an action of damages for injuries suffered from the defendant, who was driving a horse at a rapid rate, and came in contact with the plaintiff's carriage, in which the latter was driving his wife—the accident bringing on a miscarriage among other injuries, and the damages being laid in all at $1,000.

The plea admits the collision of the two vehicles, but denies that the defendant was driving at an immoderate speed. It then avers that the night was very dark, and that the defendant was driving along the road, two others being with him, when they came on a wheel lying on the way, which had been cast from some other carriage a short time before, and which they could not see; but which frightened the horse, and he became unmanageable, and though they saw the plaintiff's carriage in front of them, which had stopped at the toll-gate, they could not pull up in time; but ran right on to the plaintiff's carriage. That they called out when they saw the plaintiff's carriage standing at the gate, and that the latter was in fault, in remaining there too long. The gist of the plea is that the horse ran away, and was beyond control; and that there was no fault on the part of the defendant.

The proof is in effect that the plaintiff stopped only one minute at the gate to give his ticket; at that moment a witness, who was in the porch of the toll-gate lodge, and saw what happened, heard the defendant call out—he was then about 25 or 30 yards off, and at the gallop, and almost immediately the collision occurred. There was a light, and a reflector on the lodge—throwing light for some distance on the road. The defendant's vehicle was upset and dragged with him and his wife seven or eight feet, and the plaintiff's horse stopped short.

The effects of this accident have been very serious; and *prima facie* there is a case against the defendant requiring answer. The evidence he adduces amounts to this: it does not vary the facts relating to the collision itself, not its consequences; but it is directed to show that the horse was a quiet one, but took fright that night and ran away without any fault on their part, though the three persons in the carriage tried to hold it; and also to show that the plaintiff might have heard them calling out, and have got out of the way of harm in time. As to this latter proposition I do not think it is fairly shown that the plaintiff was in fault in this respect. But upon the main fact that the horse which was being driven by the defendant ran away without any fault of the driver—that it was a quiet horse, but took fright at the *débris* of a previous accident lying in the road, there can be no doubt, if the evidence is to be believed.

What, then, is the rule to be applied? The article 1055 C. C. makes the owner of the animal responsible whether it be under his care at the time or under that of his servants. It is identical with the article of the French code 1385. The foundation of the responsibility is not property, but *faute*, however slight. Laurent comments upon this subject very clearly (20th volume, Nos. 625 and 626.) "Le dommage pour qu'il soit sujet à réparation doit être l'effet d'une faute ou d'une imprudence de la part de quelqu'un. C'est à ce principe que se rattache la responsabilité du propriétaire relativement aux dommages causés par les animaux. Il y a présomption de faute; mais la loi n'exclut pas la preuve contraire. Le propriétaire de l'animal ou celui qui s'en sert sont donc admis à prouver qu'aucune faute ne leur est imputable: nous entendons par cela, non seulement le cas où le fait dommageable serait un cas fortuit: sur ce point, tout le monde est d'accord: mais aussi la preuve qu'aucune faute ne peut être reprochée au propriétaire de l'animal, ou à celui qui s'en est servi, et qu'ils ont fait tout ce qui leur était possible pour empêcher le dommage."

This is the jurisprudence in France. The English rule is the same. I have referred to authority, because I find that in France the question has been controverted, and Marcadé, "*qui tranche tout*," as Laurent says, is of a different opinion. As to the English rule, see the case of *Brown* v. *Collins*, where all the cases are reviewed, reported at length in Thompson on Negligence, vol. 1, p. 65.

Here, then, is a case where the plaintiff has suffered loss and damage caused by the animal of the defendant, who is responsible unless he prove that he is without fault. If he proves that, the plaintiff is without remedy against him. He does prove it, and, therefore, the remedy fails; but as to the costs, what is to be the rule? The damage is the result of that for which the defendant is *prima facie* responsible. The plaintiff had a right of action presumable by law. Is he, the plaintiff, who has suffered so severely, to be mulcted in costs payable to the defendant? I think not. It is a matter by law within the discretion of the Court, to be exercised, no doubt, on intelligible principle. It would be almost equally hard if the defendant had to pay the plaintiff's costs when the right of action existing *prima facie* turns out on investigation to be unsustainable. I therefore dismiss the action without costs.

Lareau & Co., for plaintiff.

Taillon & Co., for defendant.

SUPERIOR COURT.

MONTREAL, May 27, 1882.

Before MACKAY, J.

OGILVIE et al. v. THE QUEBEC BANK.

Bill of Exchange—Acceptance—Alteration.

When a bill has been accepted and delivered to the holder, the date of acceptance cannot be altered without the consent of all the parties to the bill.

PER CURIAM. This action is for the recovery back of a sum of money paid to the Bank by the plaintiffs, drawers of a bill dated Montreal, upon one Bunbury in Ontario, which bill the Bank discounted for the plaintiffs in March, 1877.

The bill was in its body made payable at the Standard Bank, Colborne. Bunbury accepted the bill. The acceptance was consummated on the 24th of March. The Bank, defendant, was owner of the accepted bill at maturity of the acceptance as made, but omitted to present for payment to Bunbury at the place appointed for payment when the acceptance fell payable, to wit, on 11th April. After that, the defendants' agent, the Standard Bank, which had neglected to present the bill for payment, procured Bunbury to alter his acceptance, changing its date and postponing its day for payment, so that, later, a protest was made (apparently in proper time), and the plaintiffs were notified of it. After this the defendants insisted upon payment of the bill, or draft, and costs of protest, and were paid by plaintiffs, but under reserve of their rights to recover back the money, as not legally due. The present suit is for the recovery back of the money with interest from time of its being paid.

The plea denies that the Standard Bank was agent of or for the defendants, and alleges that it was agent of the plaintiffs. It goes on to describe Bunbury as largely indebted to plaintiffs before and at the drawing of the draft, and insolvent, "and if any changes were in the acceptances, or protests, which defendants do not admit, and in any event cannot be responsible for," the same caused no loss to plaintiffs, that the plaintiffs have so acted with Bunbury, since his bankruptcy, in respect of this draft that they cannot maintain this action, &c.

It appears clearly that the draft or bill on Bunbury was discounted by defendants in the course of its business; after such discount it was property of the defendants; they, towards getting paid, sent it to the Standard Bank; the Standard Bank obtained, duly, the draft to be accepted by Bunbury once on the 24th March; that acceptance afterwards matured, but no presentation for payment was made, as ought to have been; the Standard Bank, seeing that it had been negligent, procured Bunbury to alter the acceptance, so as to make it read as made on the 31st March and its time for maturity fall later; no notice was given to the plaintiffs; afterwards, when, according to the altered acceptance, the bill fell payable by Bunbury, it was presented, protested, and notice given to plaintiffs.

On the 21st of April, 1877, an attachment in bankruptcy issued against Bunbury.

At the argument several points were raised applicable to condition of things other than exists in the present case; for instance, it was argued that a bank employed to make a collection at a distance was not liable for the negligences of subordinate agents necessarily employed towards such collection; that such subagents were to be held agents of the person employing the bank in the first instance, &c. But what have we to do with such things? Here the bill or draft was never placed in defendant's bank *for collection*. Again, it was said that Bunbury, having been insolvent all the

time, the plaintiffs cannot get damages from defendants; though the draft, placed with them for collection, was unpaid, and had, by negligence, not been duly presented for payment, after acceptance. But the draft was *not* placed with defendants for collection, and the plaintiffs are *not* suing for damages. The plaintiffs are not suing the defendants for any omissions, or negligences. They are suing simply to get back money paid under protest, and said not to have been due when paid. The plaintiffs contend that they were once discharged, and that it was not competent to the acceptor, Bunbury, and the bank to put responsibilities upon them by altering the original acceptance. I agree that after the bill had once fallen due, according to the first acceptance, the Standard Bank, defendants' agent, had no right to arrange with Bunbury, as it did, for the alteration of his acceptance for the purpose of imposing a liability upon plaintiffs. The law involved in this case is not that of principal and agent, nor of master and servant, but the law of bills and say that of principal and surety. A creditor cannot make alteration of contract with principal debtor without consent of the surety, varying materially the first perfected contract. By the law of bills the plaintiffs were discharged from liability before the altered acceptation was invented; no liability was upon them when the defendants insisted upon their paying this money now sought to be recovered back. Our Civil Code 2295 prohibits such alteration of acceptance as has been made here. Yet the defendants have made the plaintiffs pay the costs of the protest of this altered acceptance! The draft on Bunbury was against funds. Bunbury was in debt to plaintiffs. This is proved by witnesses, and may be presumed from his accepting; so the plaintiffs' draft was against effects, it may be said. Bunbury had money in the Standard Bank up to the third of April. Judgment for plaintiffs.

Kerr, Carter & McGibbon, for plaintiff.
Davidson & Cross, for defendant.

SUPREME COURT OF CANADA.

Counsel fees, Right of action for.—The suppliant, a barrister of the Province of Quebec, was retained by the Government of Canada in the interest of Great Britain, before the Commission which sat at Halifax, under the Treaty of Washington, to arbitrate upon the differences between Great Britain and the United States, in connection with the fisheries. The suppliant, by his petition, alleged that he was retained by a letter from the department of Justice at Ottawa, and there was contradictory evidence of an agreement entered into at Ottawa between the suppliant and the Minister of Marine and Fisheries as to the amount to be paid to the suppliant for his services. The judge who tried the case found that the terms of the agreement were as follows: "That each of the counsel engaged would receive a refresher, equal to the first retainer of $1,000; that they could draw on a bank at Halifax $1,000 a month while the sittings of the Commission lasted; that the expenses of the suppliant and his family would be paid, and that the final amount of fees or remuneration to be paid to counsel would remain unsettled until after the award of the Commissioners." The suppliant received $8,000, and claimed an additional $10,000 under his agreement.

Held, (per Fournier, Henry & Taschereau, JJ.), that by the law of the Province of Quebec an action will lie at the suit of an advocate or counsel against his client for professional services rendered by the former to the latter, under a contract in that behalf; and when such a contract is entered into between a counsel of the Province of Quebec and the Crown, as in this case, that a petition of right will lie to recover upon said contract, and as the suppliant had proved that there was an agreement to pay a reasonable amount, to be determined at the conclusion of the business, in addition to the amount paid, that the amount of $8,000 which had been awarded to suppliant by the judge at the trial, was a reasonable *quantum meruit* and supported by the evidence in the case.

Chief Justice Ritchie, who dissented, was of opinion that the agreement between the suppliant and the Minister of Marine and Fisheries was made at Ottawa in reference to services to be performed by Mr. Doutre at Halifax, and therefore the law of Quebec did not apply. That the right of a barrister to maintain an action for counsel fees is the same in Ontario as in Nova Scotia; that in neither Province could a counsel maintain an action for counsel fees, and therefore the suppliant was not entitled to recover.

Mr. Justice Gwynne, who also dissented, was of opinion that as in England a counsel could not enforce a claim by Petition of Right for counsel fees upon an express contract, or upon a *quantum meruit*, and by the Petition of Right Act, sec. 19, clause 3, the subject is denied any remedy against the Crown in any case in which he would not have been entitled to such remedy in England under similar circumstances by the laws in force there prior to the passing of the Imperial Statute 23 & 24 Vict. c. 34, a Canadian counsel in the case of a contract with the Crown for his advocacy, cannot enforce such contract by Petition of Right, and therefore the appeal should be allowed.

Mr. Justice Strong considered that the alleged contract to pay an additional amount of fees to the suppliant was not proved; but there was evidence that the Crown had contracted to pay the suppliant's expenses in addition to the fees paid, and for such expenses the suppliant was entitled to recover.

Justices Fournier and Henry expressed the opinion that counsel in the Dominion of Canada are entitled to sue for counsel fees.—*R. v. Doutre.*