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EVIDENCE OF INSANITY.

An interesting case—*Russell & Lefrançois et al.*—was decided in the last term of the Queen's Bench, at Quebec, (Feb., 1882), in which the question was as to the mental capacity of a testator. The majority of the Court (Ramsay, Tessier, Cross, and Baby, JJ.) affirmed the judgment of Chief Justice Meredith in the Superior Court, which upheld the will. Chief Justice Dorion dissented. The following opinion was delivered by

RAMSAY, J. The late William Russell, a pilot, who had amassed a considerable fortune, for a man in his position of life, died interdicted on the 7th September, 1880. The curator to the interdict was one Austin, a notary. Lefrançois, one of the Respondents, as testamentary executor under a will of the said late Wm. Russell, executed on the 27th November, 1878, sued the curator to account. To this action one of the nieces of Russell, Elizabeth Russell, intervened in her quality of legatee under a previous will of her late uncle, executed on the 8th Oct., 1878, and also in her quality of heir-at-law to her said uncle, and set up that (1) her uncle was of unsound mind when he made the will of the 27th November, and that he so made it under the undue influence of Julie Morin, a woman who had been married to him, and was living with him as his wife, but who was really wife of a man called Robitaille. (2) That the will was void in so far as regards the disposition to Mme. Robitaille if he believed her to be his wife, and that it was void, as being contrary to good morals, if he knew she was not his wife. (3) That the will was not made in conformity with the law.

The first of these grounds alone deserves serious consideration. Article 831, C. C., gives full power to every one of sound mind to alienate his property to any person capable of acquiring and possessing, with the only exception that the dispositions and conditions be not contrary to public order or good morals. This, evidently, does not refer to the bequest to a mistress or to a concubine, but to dispositions or conditions which depend on the doing of something or leaving something undone contrary to good morals Again, if Russell believed Mme. Robitaille to be his wife, the bequest would be good even if she were not, as there is no doubt as to the person to whom the bequest is made. Error as to the person is of no importance unless the individuality be the determining reason of the contract; or in the case of donations, when the quality of the person is the sole determining cause. Mackeldy Brs. ed. p. 200. There are numerous passages in the Dig., recognizing the principles involved in these rules. D. xxxviii, 5, *l.* 48, §3. D. vi. 1, 5, §4. In the present case he gives his property to his wife, Julie Morin, and there can be no doubt, therefore, as to the person. He did not give her his property because she was his wife.

The technical objections to the will do not appear to have been pleaded.

We therefore come to the real question—the state of Russell's mind on the 27th November, 1878.

Cases of this sort always present considerable difficulty in appreciating the evidence, but I do not think there is much to be gained by elaborate commentaries on evidence consisting chiefly of opinions of persons more or less interested in the issue, or partizans of one party or the other. Nothing is more easy than, in a case like this, to make a brilliant exposition of one side that seems to leave nothing to be said on the other side, except, perhaps, it be to arrive at a totally unsound conclusion. All one has to do is to bring into strong relief some facts, and to subordinate all the others in order to transform an eccentric old man into a raving maniac, or the reverse. In this way I might easily insist upon the character of Russell as explanatory of his eccentricities, of his conduct of his own affairs during the time of his alleged insanity, that the intervening party who attacks the will claims under a will made on the 8th of October, 1878, six days after the execution of a deed which is relied on as the chief indication of Russell's folly, of his determined design to leave his money to his wife when under no conceivable influence but that of his own will. If this requires to be done, it has been done from different points of view with much more effect than I could hope to produce. It seems to me that we have to take the evidence as a whole, and before we can reverse the decision of the Court below, we must be prepared to say that on the 27th November, Russell

was insane. It is idle to confuse the question before us with the complex idea of age, ill-health, intemperance and liability to be influenced, for there is no evidence whatever that either Julie Morin, or anybody in her interest, exercised any influence over him whatever. We may presume that Julie Morin spoke to him about his will, but we do not know it. The only time he seems to have spoken to her about how his property was to be left was before making the will of the 8th October, and then his niece was in the house and probably might have been present. At any rate, Julie Morin either consented to the change, or her influence did not control the testator. The evidence only discloses a fragment of the conversation between the deceased and Julie Morin, from which nothing conclusive one way or other can be gathered.

The naked question is one of insanity, and this is a question open to endless speculation. With greater facility than any other question it drifts into the unfathomable regions of metaphysics, which are beyond our domain. We have no canon of sanity, we have a rule as to responsibility. Irresponsibility must be established by facts. After hearing all that has been said one way or another, I must say that I have no hesitation in expressing the opinion that the Appellant has failed to establish her pretension, and that the will of the 27th November, 1878, should be maintained. To the careful judgment of Chief Justice Meredith, I have only to add, that the evidence of Dr. Russell and of Miss Russell seem to me to stand alone in support of the pretensions of the intervening party, and Miss Russell's evidence appears to me totally inadmissible. She is directly interested in the issue, and if not nominally a party to the suit, she is its promoter. Dr. Russell's evidence is much affected by his certificate. I do not desire to say anything unnecessarily disagreeable of a gentleman occupying so highly respectable a professional standing as Dr. Russell, but I must dissent from the opinion expressed by the Chief Justice, that his certificate within the explanations given, does not affect in the least the doctor's testimony. The explanation amounts to this, that in the interest of the testator at one time, he gave his assurance, on his professional responsibility, of a fact, which, another interest arising, he declares to be untrue. It has been said Dr. Russell's certificate only declared him to be sane enough to receive money, not to bequeath it. This is a novel distinction; but really the effect of the receipt of the money was to ratify the donation by Russell. Dr. Russell's intentions may have been excellent, but I must necessarily set his testimony as to a matter of opinion, so contradicted, entirely aside. Without the evidence of Miss Russell and of Dr. Russell, there is really nothing to support the pretensions of the intervening party but gossip.

The long and able dissent of the learned Chief Justice compels me to extend my remarks beyond the limits I intended, in order that it may not appear that the majority of the Court has over-looked any point in the case. It is to be observed that the ground taken by the Chief Justice is very different from that taken at the argument. Mr. Cook's contention was, that Wm. Russell being insane on the 2nd of January, it must be presumed that the insanity began some time previous to that, and went back at all events to the 27th November, but not to the 8th October, for his client claims under a will of that date. It is impossible for her to pretend that she claims under a will made by a person she knew to be insane. But this doctrine of a presumed insanity prior to interdiction is totally untenable in law. If it were to be admitted, the first question would be as to how far back it extends. The doctrine of the law is that sanity is presumed until insanity is established, unless there be interdiction, and then the presumption is in favor of insanity; but it is only by interdiction that the burthen of proof passes from the party alleging the insanity to the party denying it; and this must be as true when dealing with an act done the day before the interdiction as of an act done a year before.

Akin to this doctrine of the plaintiff is the theory of progressive madness, mentioned in one of the medical books quoted by the Chief Justice. As a medical view I dare say it is very correct. One readily conceives the idea that madness does not usually declare itself in an instant. It frequently, I dare say, begins with birth. But Courts take no notice of possibilities of this sort.

The view of the case taken by the learned Chief Justice is that Russell was insane from the end of September, and this being established, it is for those who support the will to show it was made in a lucid interval. I entirely agree with this proposition if the fact were proved, but I

think it is not. In the first place it is not the pretension of Appellant, and there has been no effort to prove a lucid interval.

It is also said the will itself is a proof of insanity, and much stress has been laid on the observation of the learned Chief Justice in the Court below, that the will was cruel and *unreasonable*. Language is undoubtedly insufficient to convey ideas with perfect precision, but it is the only medium we have, and we must make the best of it. We therefore use words in many senses. Now I think when Chief Justice Meredith said the will was unreasonable, he used it in a sense totally different from that in which the writers who have been quoted use the word *déraisonnable*. He obviously meant that the will was unreasonable in this, that it was not in accordance with those dictates of reason which proceed from the highest motives. The writers on the other hand, mean by *déraisonnable*, what is *bizarre*—one of them says so in express terms. It would be *bizarre* for a Quebec pilot to leave his money to the Emperor of China, it is not *bizarre* for him to leave it to the woman he believes to be his wife, instead of to his niece, although in a sense it is cruel and unreasonable not to provide for a relative he had brought up in his house almost as his child.

The only act which indicates want of prudence and forethought on the part of Russell is his giving away his half-built house. But it is to be observed that he was very ill, that he had still to expend a great deal of money to finish it; he had lost money, which caused him much annoyance, and under these circumstances it does not seem to me to be a conclusive proof of insanity that he sacrificed a possible gain for relief from anxiety and risk.

I don't think his offers of furniture and other things, or his declarations of poverty amount to anything. Miserly people constantly express despair at losses which to others less sane would appear trivial. Still less do I consider it a sign of folly that he should have left $2,000 to be distributed in charity, instead of leaving it to his poor relations.

It has also been said that the evidence of his sanity is negative, and therefore not as convincing as the evidence of his insanity. I understand that if A swears he saw B in the street and C swears he did not see him, the evidence of A is not contradicted by that of C, and the fact is proved that B was in the street; but that is not parallel to the case in point. If I swear that I did business with A and he showed no sign of insanity, it may be called negative evidence, but it is a negative pregnant. It is as though I should swear he appeared to me sane. I swear to the existence of reason and in so swearing I swear as positively as he who swears to its absence. There is one piece of evidence which has been insisted on as showing Russell's intelligence on one hand, and on the other as showing his insanity. A country *curé* of his acquaintance and four of his friends engaged in building a church, came to see Russell in order to borrow money for the completion of their work. Their property was already mortgaged quite up to its value. They talked with Russell two hours, and they had to leave without being able to say whether he had money to lend, or whether he would lend it if he had it. He referred them to his notary. Here, says appellant, is a complete proof that Russell's mind was entirely gone. I may say this was not the impression at the time on the *curé* and his friends. Nor do I think it is the fair inference to draw. It is a well known artifice of money-lenders to affect to have no money in order to enhance its value. Those who have no personal experience of this method may have learned it from the comic writers. Again, I daresay, Russell was a good Catholic, and probably he did not like to tell a friendly *curé* point-blank that his material security was not worth sixpence, and that he attached very little more to the moral one, which, he was evidently expected, to take in exchange. His notary could save him from a seeming discourtesy, and he sent his visitors to be dealt with *en règle*.

Some allusion was made to the case of *Close & Dixon*. It was an action to set aside a will on the ground of insanity of the testator, and there begins and ends the resemblance between that case and this one. What the party wishing to uphold the will had to prove was a lucid interval, that is, the burthen of proof was reversed. In the *Close & Dixon* case, the insanity and the malady which caused it were proved beyond a doubt; and the medical testimony further established that from the condition the testator was in, an interval of lucidity sufficient to enable him to be able to dictate a will was next to an impossibility.

I am to confirm.

DUPUY & DUCONDU.

The real issue in the case of *Dupuy & Ducondu*, was as to whether in a deed of sale of a mill, four arpents of land and certain Crown timber limits, in recognition of a promise of sale, which deed of sale contained a special warranty grammatically applicable to the property sold as well as to the limits, there being no such warranty as to the limits in the promise of sale, the warranty was binding as to the limits, and whether it should be read as applying to them.

By the nature of the contract conceding Crown timber limits there is no warranty; and there was no new consideration for the special warranty. The Court of Queen's Bench held, that the *titre-nouvel*, under the circumstances, must be read subject to the conditions of the original document, and that the warranty was not binding.

The Supreme Court (Henry & Gwynne, JJ., *dis.*, Taschereau, J., not sitting) held that the warranty was binding.

Pothier says in deciding a very analogous case :—"Le tiers détenteur d'un héritage hypothéqué à une rente ne devant, pour éviter le délai, s'obliger à la rente que tant qu'il est détenteur, si, par l'erreur du notaire, (comme il arrive assez souvent), il était dit purement et simplement qu'il s'oblige à la rente, il serait néanmoins présumé s'y être obligé seulement pour le temps qu'il serait détenteur."

"Il y a plus, quand même le titre nouvel porteroit formellement qu'il s'est obligé à la continuation de la rente pour toujours, et tant qu'elle auroit cours, *on présumeroit encore favorablement que ces termes se seroient glissés par erreur, et par style de notaire, parce qu'on croit difficilement qu'un homme ait voulu s'obliger à plus qu'il ne doit, à moins qu'il ne parut quelque cause pour laquelle il aurait augmenté son obligation, et se serait ainsi obligé à payer la rente indéfiniment, et tant qu'elle aurait cours.* Puta, s'il avoit reçu quelque chose pour cela, qu'on lui eut remis des arrérages. C'est le sentiment de Loyseau, Liv. 4, ch. 4, 15 and 16." Tr. des Hyp., ch. ii. Art. iii., p. 444, 4to Ed. Pothier.

It is a pity it was not the sentiment of the Supreme Court, as it is that of Loyseau and Pothier, and as it is the suggestion of reason and equity. Of late we have heard it whispered that French Canadians were alone eligible to the Supreme Court, as representing Lower Canada, and that this was necessary for the protection of the French law. It is a rule naturally popular with the favored class, independent of any idea of necessity, although it is an administrative truce of more than doubtful respectability. It is somewhat curious to note that, in this case, the principle of the civil law should be recognized by two judges, one from Halifax the other from Ontario, while it was totally ignored by one of its specially appointed protectors. Immoral compacts cannot have good results. Figs cannot be gathered from thistles. R.

LIABILITY OF TELEGRAPH COMPANIES.

The case of *Watso* v. *The Montreal Telegraph Co.*, noted in the present issue, presents an interesting question as to the liability of telegraph companies. As in the case of *Bell* v. *The Dominion Telegraph Co.* (3 L. N. 405), the action was brought by the person to whom the message was addressed. In the *Bell* case, however, the telegram was never delivered at all; in the *Watso* case an error of transmission was complained of. In the *Bell* case, the fact that the message was not repeated did not affect the result, because it was failure to deliver, and not an error of transmission, that occasioned the damage. In each case the Court found that the company was in fault, and that the limitation of liability was not valid.

The decision in these cases rests upon articles of our Code, but it is interesting to notice that the jurisprudence in the United States is in effect similar. In a case quite recently decided by the Supreme Court of Ohio, *Western Union Telegraph Co.* v. *Griswold* (reported in the last issue of the *Albany Law Journal*, p. 190), the Court bases its judgment squarely upon the principle that immunity from liability for loss occurring through negligence cannot be validly stipulated. The holding of the Court is to the following effect:—While a telegraph company may, by special agreement, or by reasonable rules and regulations, limit its liability to damages for errors or mistakes in the transmission and delivery of messages, it cannot stipulate, or provide, for immunity from liability, where the error, or mistake, results from its own negligence. Such a stipulation, or

regulation, being contrary to public policy, is void. It was also held that where, in an action against the company for damages resulting from an inaccurate transmission of a message, such inaccuracy is made to appear, the burden of proof is on the Company to show that the mistake was not attributable to its fault or negligence.

Another point of some interest arose in the Ohio case. The plaintiffs' agent sent to them from Woodstock, Ontario, a message in these words: "Will you give one fifty for twenty-five hundred at London. Answer at once as I have only till to-night." The Court instructed the jury that the message was not in cipher or obscure, within the meaning of a stipulation in the agreement under which the message was sent that the company "assumed no liability for errors in cipher or obscure messages." The Supreme Court held that the instruction was correct. It may be remarked that in this Ohio case, the message was written on a blank form of the Montreal Telegraph Company precisely similar to that used in the *Watso* case.

THE SEAMEN'S ACT, 1873.

In our last issue (p. 74) we published the dissentient opinion of Mr. Justice Ramsay, in the case of *Clarke & Chauveau et al.*, criticising the Seamen's Act. The Chief Justice also dissented, and seeing that a Bill is now before Parliament to amend the Act in question, it is important that the observations of the honorable President of the Court should be made public. We are able this week to give the opinion in full:—

Sir A. A. DORION, C.J. This appeal is from a judgment denying a writ of prohibition to restrain the Judge of Sessions of the Peace, at Quebec, from executing a conviction by which he has condemned the appellant to be confined for five years in the provincial penitentiary, for having gone, on the 9th of September, 1880, he being armed, on board of the ship "Cavalier," without the permission and consent of the master.

The appellant was tried and convicted, in his absence, under "The Seamen's Act, 1873," (Canada), on the following summons:

CANADA:
Province of Quebec, *District of Quebec*, CITY OF QUEBEC. } POLICE COURT.

To MICHAEL CLARKE, of the City of Quebec, in the District of Quebec, labourer; whereas, information on oath hath this day been laid before the undersigned Judge of the Sessions of the Peace, in and for the city of Quebec, for that you, on the ninth day of September instant, at the harbour of Quebec, in the district of Quebec, unlawfully did go on board the ship or vessel the "Cavalier," whereof Mathew Jackson was and still is master, the said ship or vessel being at a quay or place of her discharge, to wit: at the quay called "Ellis Wharf," in the city and port of Quebec, without the permission and consent of the said Mathew Jackson, master of the said ship or vessel, the said Michael Clarke not being an owner, agent of owner or consignee of the said ship or cargo, or any person in the employment of them, or any officer or person in Her Majesty's service or employment, harbour master, deputy-harbour master, health officer, custom house officer, pilot, shipping master or deputy shipping master, the said Michael Clarke being armed at the time of committing the said offence against the form of the statute in such case made and provided.

Whereby and by force of the said statute, you, the said Michael Clarke have, on conviction of your said offence, incurred a penalty of imprisonment in the penitentiary for a period of five years.

These are therefore to command you, in Her Majesty's name, to be and appear on the fourteenth day of September instant, at ten o'clock in the forenoon, at the Court House, in the said city of Quebec, before me the said Judge sitting at the Police Court therein, or such Justices of the Peace in and for the said district, as may then be there, to answer to the said information, and to be further dealt with according to law.

Given under my hand and seal, this twelfth day of September, in the year of our Lord one thousand eight hundred and eighty-one, at the said city of Quebec, in the district aforesaid.

(Signed,) ALEXANDRE CHAUVEAU,
J. S. P.

Section 86 of the Act, which is the only one bearing on the conviction, is as follows:— [The section is given *ante* p. 74.]

The French version of that section, in reference to the constable or peace-officer, into whose custody the offender shall have been delivered, reads as follows:—"Lequel devra le conduire devant un juge de Cour de Comté, un magistrat stipendiaire, un magistrat de police ou un juge des Sessions de la paix, *pour être jugé suivant les dispositions du présent Acte.*"

The first part of this section, concluding with the words "at the time of committing the offence," makes it an offence punishable by not less than two nor more than three years' confinement in the penitentiary for any person not being one of those specially excepted, to go on board a *merchant ship* without the permission and consent of the master or person in charge

of such ship, and by five years, if such person be, at the time, armed with any pistol, gun, firearm, or offensive weapon; but it does not state before what tribunal the offence shall be tried. The last part of the section authorizes the master or person in charge of the ship to take the offender into custody, in order that he may be brought before a Judge of a County Court, or a stipendiary magistrate, or Judge of the Sessions of the Peace, *to be dealt with according to the provisions of the Act.*

This last provision has evidently been taken from section 13 of the Consolidated Statutes of Lower Canada, ch. 55, and a similar provision is in the Imperial Act, 17 and 18 Vict., ch. 104, s. 237. It does not give to the officers named the authority to try the persons so brought before them, but suggests that there are other dispositions made in the Act for that purpose. The Consolidated Statute, and the Imperial Act just referred to, the first in sect. 16, and the second in sect. 518, both contained provisions to that effect, but there are none in the Seamen's Act of 1873; section 114 merely applies to the recovery of penalties, and to the imprisonment to which the offenders may be liable in connection or in addition to a pecuniary penalty, which is the sense in which the word penalty is there used, and the jurisdiction in those cases is given to any Justice of the Peace. It cannot be supposed that the legislator intended to give to any single Justice of the Peace, all through the country, the right to try and condemn, to five years' imprisonment, any person who by accident or otherwise might go on board of a ship without having first obtained the permission or consent of the master, when by sect. 87, it is provided that a smaller offence can only be tried by a County Court Judge, stipendiary magistrate, police magistrate, or Judge of Sessions.

This last section (87) has been invoked to show that the intention was to subject to the same mode of trial the offences committed under section 86. If such was the intention, then why was not the same form of expressions used? and why is it that in the three sections, 86, 87 and 89, dealing with cognate offences, a reference to the trial only is made in the first, the mode of trial is provided in the second, while no mention of it is made in the third? It cannot admit of a doubt, that under the 89th section a person can only be convicted by a jury. If the contention of the respondents was well founded, we would arrive at this singular result, that an offender could not be sent to jail for sixty days, under section 89, without being tried by a jury, while for an offence of the same character he might be sent to the penitentiary for not less than five years by a County Court Judge or a Judge of Sessions under section 86. The whole of these clauses, as well as sect. 114 seem to require revision, in order to make them consistent.

But let us suppose that under the last part of section 86 a judge of the Sessions could try the offenders therein mentioned, his jurisdiction would be limited to the case of persons arrested by the master or person in charge of the ship, and brought before such judge of Sessions. It could not be extended to other cases, as jurisdiction cannot be given by inference. The appellant would not come under the category of the cases mentioned in that section, for he has neither been taken into custody nor brought before the judge of Sessions; he was merely charged of the offence by a summons issued under the summary proceedings Act, 32 and 33 Vict., cap. 31, s. 1, and what is more extraordinary, he was convicted in his absence.

The French version has been relied upon to sustain the conviction, but it adds nothing to the English text, and if it did, I presume that, for obvious reasons, in a criminal matter, the English version should prevail, unless it were shown to contain some evident mistake.

If leaving the statute, we examine the complaint and summons on which the conviction took place, we find that there is no offence charged. It is not stated, in the terms of the law, that the "Cavalier" was a merchant ship, nor that the appellant was not in the employ of *either* of the persons excepted from the operation of the enactment, nor that he had no leave from the person in charge of the ship, but merely from the master, without saying that the master was in charge of the ship, at the time, nor that the appellant was armed with or carried about his person a pistol, gun or firearm or offensive weapon, a description of which should have been given in the complaint.

In a mattter like this, where the punishment can not be less than five years, I am not dis-

posed, even if I felt that I was permitted by law to do so, to extend, by way of interpretation and by doubtful inferences, the jurisdiction of the judges of the Sessions of the Peace, so as to deprive any accused from the invaluable privilege of being tried by his peers, especially when I find that in England, where these laws are administered by men well versed in the practice and with the principles of the criminal law, an advantage which we do not always possess here, the penalty for similar offences under the Act already cited, is three months' imprisonment, and the extreme punishment which a stipendiary magistrate can in any case inflict is a penalty not exceeding £100 or imprisonment for a period not exceeding six months. (17 & 18 Vic., c. 104, s.s. 237, 518 & 519.)

If the legislature wishes to abolish the trial by jury in any particular case and to leave the citizens to be tried by an exceptional tribunal, especially when their liberty for such a period as five years may be in jeopardy, it must say so in clear and unmistakable terms;—and I shall not deem it my duty to assist in such a work by any decision which is not clearly justified by the very letter of the law. I find no such justification in this case, and I would therefore have allowed the writ of prohibition on both grounds: 1st, that the Judge of Sessions had no jurisdiction under the Act, even if the offence had been properly stated; and 2nd, because, as I read the complaint, there is no offence charged. However, as my learned colleague on my left (Mr. Justice Ramsay) and myself are alone of that opinion, the judgment of the Court below will be confirmed.

NOTES OF CASES.

CIRCUIT COURT.

MONTREAL, January 31, 1882.

Before JETTÉ, J.

WATSO v. THE MONTREAL TELEGRAPH CO.

Telegraph Company—Error in transmission of message—Action by receiver of telegram.

A telegraph company is responsible to the receiver of a telegram for damages caused to him by an error which occurs by the negligence of an employee in the transmission of an unrepeated message; even where the sender of the telegram writes it on a blank form on which is printed a condition that the company will not be responsible for mistakes in the transmission of unrepeated messages.

The plaintiff, Samuel Watso, of Pierreville, claimed $10 damages from the defendants under the following circumstances: On the 3rd August, 1881, he received from Montreal through the defendants the following telegram:—"Send us per express to Port Huron, Michigan, ten dozen hats at $5. Answer. (Signed) Dominion News Co."

The plaintiff immediately sent the hats as directed, but when he wished to collect the account therefor, the Dominion News Company stated that they had offered only $4 per dozen, and it appeared that this was the case, and that it was through an error of the agent of the Telegraph Company at Pierreville that the $4 had been changed to $5. The plaintiff, therefore, was obliged to accept $40 from the News Company instead of $50, and he claimed the difference, $10.

The defendants pleaded that they had never entered into any contract with the plaintiff, who was the receiver of the message, and that they were not liable towards him for any damages.

By another plea the defendants alleged that the message, being unrepeated, was sent subject to the condition printed on the form used, viz., "it is agreed between the sender of the "following message and this Company, that "the said Company shall not be liable for "mistakes or delays in the transmission or "delivery of any unrepeated message."

The defendants denied that there had been negligence on their part, and claimed that they were not responsible.

The plaintiff cited the following authorities:—Bell v. Dominion Telegraph Co., 3 L. N. 405; Redfield on Railways, No. 131; Civil Code L. C., Arts. 1053 & 1054.

JETTÉ, J., maintained the action, on the ground that there had been fault and negligence on the part of an employee of the Company, and under the articles of the Code which had been cited, the defendants were responsible for the damage caused thereby to the plaintiff.

Judgment for Plaintiff.

J. G. D'Amour for the plaintiff.

H. Abbott for the defendants.

COURT OF QUEEN'S BENCH.

MONTREAL, September 23, 1881.

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

WILSON (plff. below), Appellant; and THE GRAND TRUNK RAILWAY CO. OF CANADA (deft. below), Respondent.

Damages—Personal Injuries—Verdict of Jury—New Trial.

Where the verdict of the jury is supported by evidence, although such evidence be, in some respects, contradicted by other testimony, the verdict of the jury, based on their appreciation of the evidence, will not usually be disturbed.

The appeal was from a judgment of the Court of Review, Montreal, ordering a new trial. See 2 Legal News, pp. 45-47, for judgment of the Court below.

The appellant, by his action, claimed $6,000 damages for personal injuries sustained by him, by being struck by a locomotive on the respondents' railway. The jury found for the appellant, $5,000 damages; but the Court of Review set aside this verdict as being contrary to the evidence. The plaintiff appealed.

In appeal, the judgment of the Court of of Review was reversed, Cross and Baby, JJ., dissenting, and the verdict was maintained. The registered judgment sufficiently explains the grounds of reversal:—

"The Court, etc. . . . .

"Considering that the findings of the jury in this cause are supported by the direct and positive testimony of several disinterested and unimpeached witnesses, that the appellant was struck as alleged in the declaration by a locomotive engine of the respondents while he was crossing the railway track at the public railway crossing over Jacques Cartier street in the town of St. Johns, P.Q., on his way from one railway office or freight shed to another, in the discharge of his duties as a Custom House officer; that he was so struck through no fault or negligence on his part, but through the fault and negligence of the employees of the respondents, who neglected to give the necessary warnings by sounding the whistle and ringing the bell as they were by law bound to do.

"And considering that, although the evidence so given was, in some respects, contradicted by the testimony of other witnesses, it was within the exclusive province of the jury to weigh such evidence and to find the special facts which formed the subject of their enquiry, according to their own conclusions as to the credit they attached to the testimony adduced before them;

"And considering that the jury could not be misled by that portion of the charge of the Judge presiding at the trial, to which objection has been taken by the respondents;

"And considering that there is error in the judgment rendered on the 31st of January, 1879, by the three Judges of the Superior Court sitting in Review, at the City of Montreal, and by which the verdict of the jury was set aside and a new trial was ordered;

"This Court doth reverse the said judgment of the 31st of January, 1879; and proceeding to render the judgment which the said Superior Court should have rendered, doth reject the motion of the said respondents for a new trial; and adjudicating on the motion of the appellant for judgment on the verdict of the jury, doth condemn the said respondent to pay to the appellant the sum of $5,000, with interest," etc.

Judgment reversed.*

E. Carter, Q.C. (with him *L. H. Davidson*), for Appellant.

Geo. Macrae, Q.C., for Respondent.

* The case is now before the Supreme Court of Canada.

GENERAL NOTES.

Lord Coke says that Moses was the first reporter of law.

The legislature of Ontario passed an Act during the last session, intended to enable municipalities to found free libraries, and maintain them in an efficient condition, by levying a small rate. It will be interesting to learn to what extent municipalities will avail themselves of the provisions of this law.

There is a curious case in Fortescue's Reports, relating to the privilege of peers, in which the bailiff who arrested a lord was forced by the Court to kneel down and ask his pardon, though he alleged that he had acted by mistake, for that his lordship had a dirty shirt, a worn-out suit of clothes, and only sixpence in his pocket, so that he could not believe he was a peer, and arrested him through inadvertence.