The Legal News.

VOL. II. FEBRUARY 1, 1879. No. 5.

EMPLOYEE'S ACTION AGAINST EMPLOYER.

[Concluded from p. 37.]

To the employees, however,—the instruments by whom a part of the business is to be carried on,—the employer may be regarded as saying (in railway cases), "I wish to employ you to discharge for me, and under my direction, a part of the duty of a common carrier. I will undertake one part of this duty, and I want you to undertake another, so that between us we shall discharge the whole duty of a common carrier as to third persons, and I will pay you so much for your part of the performance." Employees who enter the employment on these terms cannot claim that the employer is a carrier with regard to them, while they are in their respective posts of duty under the employment. With respect to them he is an employer, and nothing more; and to enable him to act as a carrier to third parties, the cooperation of the employees at their various posts is needed. In this sense, it may be said that the employer is one part of a common carrier, and each employee is another part; but neither is to the other a common carrier complete, and neither owes to the other, therefore, the duties of a common carrier.

The same principle holds good in any other employment. As a general thing, the employment delegates to the employees the performance of a part of the duty owed by the employer to third parties. Each employee is privy to this delegation to himself and his fellows. He cannot, therefore, with any propriety claim to occupy toward the master the position of a stranger, to whom the duty is owed by the master as an entirety. The master will still owe the employee certain duties, but they cannot be the same duties which he owes to a stranger. These duties, whatever they are, will spring largely from the particular relation; and it will not generally be difficult to say, from the nature of the case; what duties are fairly undertaken by the employer toward the employee, in the contract under which the relation is inaugurated. Thus, where one employs others to prosecute a dangerous undertaking for him, he must see that the business is not rendered unnecessarily hazardous though any negligence of his own; or, to put the duty affirmatively, he must use reasonable diligence in the selection of suitable machinery and appliances, and in the employment of fit fellow-servants, as well as in the promulgation of safe and reasonable orders and regulations for the conduct of the business. This duty can only be defined with accuracy in a particular case by looking at the contract. If it arose solely from the rule *Sic utere tuo ut alienum non lædas*, unaffected by the contract, we should find an arbitrary standard for the condition of tools, machinery, etc., applicable to all cases, or they would have to comply with certain scientific opinions in respect to their suitability and safety for the work in hand.

A stranger may hold me to strict account for any management of my business which injures him, in the proper and orderly conduct of his own affairs. His right is, not merely to be free from injury at my hands, but generally to be let alone. He has nothing to do with my concerns, and I cannot justify any molestation or disturbance of his business or comfort on the score of economy or convenience to myself. If I cannot conduct my business without endangering him, he may contend that I ought not to conduct it at all. The employee cannot say this; for he is a party to my dangerous act. I may provide old tools, inventions which have been superseded and improved upon, appliances which are awkward and inconvenient; and if one with full knowledge of their character undertakes to engage in the business as my employee with these tools, that is the condition agreed upon between us, and I am under no obligation *to him* to provide better ones. But the injury from defective machinery *may* result from a breach of duty on the employer's part. For example: if, when the employment is entered upon, the employee is not informed of the particular condition of the machinery, he has a right to assume that the appliances are reasonably safe and fit. In such a case, the contract is silent upon this subject, and the

employee is entitled to the application of the rule *Sic utere tuo ut alienum non lædas*, as a stranger in the premises. And it is a breach of the employer's duty to him to permit an unsafe condition of the machinery, to his hazard.

But when the employee is sufficiently informed of the actual condition and danger,—and for this purpose the means and opportunity of information will generally be equivalent to actual knowledge,—the employer is under no obligation to him to improve that condition or to lessen the danger. It may be well enough, as a colloquial expression, to say that in such a case the employee "takes the risks which are incident to the employment under these conditions." He incurs them, certainly; but if by the expression it is meant that he *contracts* to bear them, and to relieve the employer from some liability which would otherwise rest upon him in regard to them, the expression seems to be improper and confusing. The employee incurs whatever risks to himself are incident to the conditions of the business agreed upon, but he does not need to make a contract for this purpose. The risks are there, and by entering the business he incurs them *ipso facto*; but he has no claim for damages against the employer, unless the latter is in some way to blame for the injury. It is not necessary to stipulate not to sue, when one has no cause of action.

We may recapitulate the objections to this theory of a contract for exemption, as they appear to us. It requires us to assume a contract to avoid an assumed liability. We think there is in fact no such primary liability. We think there is in fact no such contract for exemption. And if there were such primary liability and such contract for exemption, we think the contract would be void as against public policy and without consideration. The legal view of the case seems to us to be, that the servant does not show sufficient facts to constitute a cause of action, for one necessary fact to support such an action is the violation of some duty owed by defendant; and it does not appear, in such a case, that there has been any duty violated.

Another class of cases will be found, where the employee is injured by machinery, etc., which has become defective by use, the defect being known to both employer and employee. The employer owes the employee a general duty to maintain the machinery, etc., in as good condition as he found it at the outset; it becomes impaired by use, and is more dangerous. It is a breach of his original duty under the contract, for the employer to permit the machinery to remain in this more dangerous condition; yet, if the servant continues to use it in this condition, he cannot recover. Why? Some authorities say, because he contracts to take the risk. We have already stated the objections to this theory, as they appear to us.

Another ground has been suggested, viz., contributory negligence. It is in one sense contributory negligence in a servant, under any circumstances, to put his hand to a machine which he knows to be unsafe: but this is equally negligent, and contributes equally to the injury, where he has complained to his employer, and has been promised an amendment of the defect. The mere complaint and promise do not lessen the danger until the promise has been performed. Yet it is generally agreed that for a reasonable time after such complaint and promise the employee may continue to use the dangerous machine, and if he is injured by it he may recover.

The whole ground of these distinctions seems to be covered by a glance at the employer's duty.

We start with the natural and reasonable duty of the employer to maintain his machinery in as safe a condition as the servant finds it at the outset. This is the basis of their understanding. The employer violates his duty in this regard by permitting a deterioration in the condition of the machinery to go unheeded. But if the servant has knowledge of it, and makes no complaint, he assents to the modification of the employer's original duty in this regard. He waives its performance. *Volenti non fit injuria.* One cannot stand by and acquiesce in his own injury, with a view to recovering damages for it. On the other hand, if he complain to the employer, it is a protest against the breach, and a notice that he will not waive the performance of his duty. If, after such protest, the breach is still left unmended, the employee may decline to continue his work under these more hazardous conditions; and if discharged, he may recover for wrongful

missal. He cannot be forced to accept the more dangerous condition in place of the one agreed upon. Yet, if he choose, he may waive the breach, acquiesce in the modification of the master's duty under the original contract, and continue in the employment under the contract as modified.

In this respect, the contract of service is like every other contract. The rules which govern parties in regard to the performance of their reciprocal duties under contracts, and the methods of redress for the violation of such duties, will be found under their appropriate heads, and they will be found to cover this contract as well as any other.

Thus far we have found the principle sufficient, that, to support an action for damages, an employee, or any other, must show the injury to have been caused by a violation of some duty owed by defendant to the plaintiff.

In a subsequent article we shall endeavor to apply this principle more particularly to the cases of injury to one employee from the act of another in the same service; and, afterwards, to consider the measure of damages in these cases.

In the course of this reasoning we have purposely abstained from the citation of authorities. The theory suggested seems to be more in harmony with the best actual adjudications than any other, but it cannot be denied that there are many authorities to support the doctrine which we have criticised; and as our sole ambition is to find a rule which shall be reasonable, and stand the test of argument, it has seemed better not to rest the rule upon authority which might be met with equally respectable authority against it.—A. B. Jackson in *Southern Law Review*.

CONTRACTS MADE BY AGENT OF LUNATIC WITHOUT NOTICE.

The appeal in *Drew* v. *Nunn*, 40 L. T. Rep. N. S. 671, which stood over for some time in order that a satisfactory principle might be framed, touched upon a point in the law of agency upon which there is a dearth of authority. The action was brought to recover the price of goods supplied by the plaintiff to the defendant's wife. The defendant, when sane, gave to his wife an absolute authority to act for him, and practically held out to the plaintiff that he had given his wife that authority. The defendant afterwards became quite insane. Under these circumstances the wife ordered the goods in question from the plaintiff, who supplied them without notice of the insanity. The defendant was for a time confined in a lunatic asylum, but upon recovery was discharged. The present action was brought after his recovery. The defence set up was, that the authority he gave his wife was determined by his subsequent lunacy. Mr. Justice Mellor refused to leave to the jury the question, whether or not, when the goods were supplied, the income received by the wife was sufficient for the maintenance of herself and her family, and directed the jury to find for the plaintiff for the amount claimed. An order *nisi* for a new trial on the ground of misdirection was made by the Court of Appeal. On behalf of the defendant it was argued that lunacy operates as an absolute revocation of the agent's authority, and that the contracts of lunatics are void or voidable, according to whether or not they have been executed or partly executed. The authorities are not numerous. In *Molton* v. *Camroux*, 4 Ex. 487, a lunatic purchased certain annuities for his life of a society, which, at the time, had no knowledge of his unsoundness of mind, the transaction being in the ordinary course of the affairs of human life, and fair and *bona fide* on the part of the society. The Court of Exchequer held that, after the death of the lunatic, his personal representative could not recover back the premiums paid for the annuities. The ground of that decision was, that where a person apparently of sound mind, and not known to be otherwise, enters into a contract which is fair and *bona fide*, and which is executed and completed, and the property, subject matter of the contract, cannot be restored so as to put the parties in *statu quo*, such contract cannot afterwards be set aside either by the alleged lunatic or those who represent him. On appeal it was affirmed (4 Ex. 67) by the Exchequer Chamber.

Where the assignee of a bankrupt was removed, and a new one appointed, it is doubted (in *Stead* v. *Thornton*, 3 B. and Ad. 357,) whether a party having money in his hands, which he received on account of the bankrupt's estate in the character of agent to the late assignee,

would be liable for money had and received to the use of the new assignee; but Mr. Justice Parke held that, inasmuch as the former assignee had been insane, when the money was received, such receiver was liable, for he could not be the agent of an insane person, and therefore held the property as a mere stranger. This ruling was upheld by the full court.

The marriage of a lunatic during the continuance of his lunacy is void. Thus Mr. Justice Blackstone, in his well-known Commentaries, says: "A fourth incapacity is want of reason, without a competent share of which, as no others, so neither can the matrimonial contract be valid. It was formerly adjudged that the issue of an idiot was valid. A strange determination! Since consent is absolutely requisite to matrimony; and neither idiots nor lunatics are capable of consenting to anything; and, therefore, the civil law judged much more sensibly when it made such deprivations of reason a previous impediment, though not a cause of divorce if they happened after marriage. And modern resolutions have adhered to the reason of the civil law, by determining that the marriage of a lunatic, not being in a lucid interval, was absolutely void."

Sir John Nicholl applied those principles in *Browning* v. *Reane*, 2 Phil. Ec. Ca. 69, where administration of the effects of a wife was refused to the husband on the ground that his marriage was invalid by reason of his wife's mental incapacity.

Lord Tenterden ruled, in *Brown* v. *Jodrell*, 3 C. & P. 30, that no person, in defending an action, can be allowed to stultify himself; hence the defendant in the case, which was an action for work and labor, was not allowed to set up his own insanity as a defence, unless it could be shown that the defendant had been imposed upon by the plaintiff in consequence of his mental imbecility.

The facts in *Tarbuck* v. *Bispham*, 2 M. & W. 2, were that A. kept cash with B., a banker, the balances to his credit being stated from time to time in a pass-book. A became lunatic, but the account continued to be kept with his family, and in the pass-book, the entries in which were in B.'s handwriting, a balance was stated to the credit of A. The action was brought by the administrator of A.'s estate to obtain a just account of such deposits pursuant to an order of the Court of Chancery in a suit between the different members of the lunatic's family, the object being to ascertain whether the payments made by the defendant banker were made *bona fide* for the benefit of the lunatic's estate, or by collusion with any other members of his family. Mr. Justice Coleridge directed a verdict for the defendant on the ground that the Statute of Limitations was a bar to the recovery of the first balance, inasmuch as it was not shown that the lunacy of A. existed at the time of that settlement of accounts, and that as to subsequent balances they were causes of action on the footing of accounts stated; whereas, in order to state an account, there must be two parties of sane mind. Upon the argument of a rule for a new trial on the ground of misdirection, Baron Parke observed that there was no evidence of any accounting with the lunatic; if with anybody, it was his agent, or one of the family; but a lunatic is not competent to appoint an agent. The rule was refused.

The decision of the King's Bench in *Baxter* v. *The Earl of Portsmouth*, 5 B. & C. 170, may be compared with that in *Brown* v. *Jodrell*. Between the years 1818 and 1823 the defendant had hired carriages of the plaintiff, and had incurred a debt for which the present action was brought. It was proved that the carriages were constantly used by the defendant, and were suitable for a person of his rank and station. For the defence evidence was given that by an inquisition dated the 28th February, 1825, taken under a commission of lunacy, it was found that the defendant then was, and from the 1st January, 1809, continually had been, of unsound mind, and not sufficient for the government of himself. Chief Justice Abbott ruled that, as the articles hired were suitable to the station and fortune of the defendant, and as the plaintiff at the time of making the contract had no reason to suppose him to be of unsound mind, and could not be charged with practising any imposition upon him, they were entitled to the verdict. In support of a motion for leave to enter a nonsuit, it was argued that the cases do not warrant any distinction between actions for necessaries and other actions. The Court refused the rule.

The question raised in *Read* v. *Legard*, 6 Ex. 636, was, whether an action can be maintained

against a husband for necessaries supplied to his wife during the period of his lunacy. At the trial it was urged that the plaintiff could not recover, inasmuch as the liability of a husband for goods supplied to his wife depended solely on her authority as his agent to pledge his credit, and that, as the lunacy of the defendant rendered him incapable of delegating any authority to an agent, he was not liable. Baron Martin overruled the objection, expressing his opinion that the authority arose out of the relation of husband and wife. This ruling was supported by the full court. "The true principle," said Chief Baron Pollock, "seems to be, that when a man marries, he contracts an obligation to support his wife, and in point of law he gives her authority to pledge his credit for her support, if circumstances render it necessary, she herself not being in fault. That authority is not revoked by the husband becoming insane, and certainly it would be very hard if the husband could claim the whole of his wife's property, and those who act for him recover it from her, and yet the wife have no claim, or any one to support her." Baron Alderson stated the true foundation of the liability, namely, that by contracting the relation of marriage a husband takes on himself the duty of supplying his wife with necessaries, and if he does not perform that duty, either through his own fault, or in consequence of a misfortune like lunacy, the wife has, by reason of that relation, an authority to procure them, herself, and the husband is responsible for what is so supplied.

The House of Lords decided, in *Howard* v. *Digby*, 2 Cl. & F. 634, that although satisfaction of arrears of pin money cannot be presumed against a lunatic wife on the ground of her consent or acquiescence in her husband's retainer of them, yet there may be a presumption against her of satisfaction by reason of payments made by her husband in discharge of her debts, to the payment of which pin money is applicable, and that a lunatic is liable for money paid to his use for necessaries and the like, as a person of sound mind.

After taking time to consider their judgment, the Court of Appeal, in *Drew* v. *Nunn*, came to the decision that the judgment of the court below should be affirmed. Lord Justice Brett considered two questions: first, whether the insanity of a principal puts an end to the authority of the agent; secondly, who is liable where the authority of the agent has been held out to a person dealt with who had no notice of the principal's lunacy. His Lordship was unable to derive any satisfactory conclusion from the authorities, but in his opinion such insanity does put an end to the agent's authority. "Such lunacy," urged his Lordship, "puts an end to the authority of the agent, and if any agent acts for his principal after such lunacy is brought to his knowledge, that agent would be doing a wrongful act both to the principal and the person with whom he dealt, and he would be liable to any person with whom he so acted for the principal." Upon the second point the conclusion arrived at, was that a person who deals with the agent without knowledge of the principal's lunacy has a right so to deal, and the lunatic is bound by having held out the agent as having authority. Lord Justice Bramwell was not prepared to say that every state of insanity effected a revocation of authority; and Lord Justice Cotton would express no opinion as to the general effect of insanity where there has been no commission of lunacy, but agreed with the rest of the court in this case, which will be a leading authority upon the questions with which it deals.—*Law Times*, (London).

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, January 31, 1879.

MACKAY, TORRANCE, JETTÉ, JJ.

[From S. C. Iberville.

WILSON v. THE GRAND TRUNK RAILWAY CO. OF CANADA.

Accident on Railway—Burden of proof—Contributory negligence—Customs officer on duty.

MACKAY, J. This is a motion by the defendants for a new trial. In the declaration the plaintiff says he was in the service of the Government, and as Customs officer earned a liberal remuneration, and on the 21st November, 1876, while in the actual discharge of his duties, had occasion to cross the line of railway "on the public highway crossing thereof

at St. Johns," and while on the highway crossing he was by the defendants' misconduct struck by a locomotive engine of defendants', propelled against plaintiff from behind, without plaintiff seeing or having warning, and he lost his left arm, was sick six months and prevented from working for that time. The plaintiff alleged that defendants were bound to comply with all the requirements of law to prevent accidents, to sound the whistle, and to keep the bell ringing, &c., but did not do either, and that the railway crossing was unprotected by gates or fencing, in flagrant violation of law. That plaintiff, a married man, is disabled from earning his livelihood; and $6,000 damages were claimed.

The plea is to the effect that the accident was not caused by acts, omissions or negligence of the defendants, but by the plaintiff's own fault, &c. Another plea alleges that the engine and locomotive were in their proper place, the locomotive moving slowly, and the bell ringing; that plaintiff was not struck at the crossing, but while unlawfully standing upon the railway track, and that he was carelessly walking on the track, and contributed to the injury, and the accident would not have happened had he exercised due care.

The case was tried before a jury, and the plaintiff got a verdict for $5,000. There is now before us the defendants' motion for a new trial.

From the record we see that in November 1876, the plaintiff met with the accident alluded to on the railroad track at St. Johns. His left arm was lacerated and the bone of it fractured, and the arm had to be removed. We cannot but sympathize deeply with him, yet we must not lose sight of justice. We have to deal with the case as it is before us, in all its aspects and as regards both parties. We have to consider all that is in issue. When the accident happened, was the plaintiff as he says on the public highway crossing? No such thing. He was walking on the railway track, between the rails, his back towards the locomotive that was advancing towards him from the turn table building. He had just issued out of the freight office of the Vermont Central; he crossed to the railroad track and was struck before he had reached the crossing. He was shoved along by the locomotive to the crossing. Plaintiff was struck at about the fifth or sixth tie from the crossing. Even Nicols admits that where the plaintiff was picked up was not where he was first struck. Plaintiff might have made for the crossing by a safe footpath from the office of the Vermont Central; Tenny, witness for plaintiff, says so. Tenny was at the crossing at the time of the accident, and has to say that plaintiff was struck not on the crossing, but on the railroad track between the rails. So suddenly did plaintiff, issuing from the office, get upon the rails, that the accident was unavoidable, say some of the defendants' witnesses. The rails were clear when the locomotive started from the engine house. Were the locomotive bell ringing and whistle blowing at the time plaintiff was struck? There is conflict of proof about this. Were there gates at the highway crossing? No; but what of that? Absolutely nothing. Had there been two or any number of gates there they could not have prevented the plaintiff being struck on the railroad track, at a distance from the crossing. Had plaintiff right to be on the track as he was? Certainly not. It is said that he was a Custom House officer on duty. This can't help plaintiff. A Custom House officer on duty had no right, issuing from that office, to go to the railroad line, and walk along the track, to get to the highway crossing, when, as his own witness says, "Plaintiff could have proceeded directly from the door of the office to the public crossing, without crossing the track." The plaintiff was walking on the track in clear violation of the Railway Act. It is nonsense to say that his duty called upon him, on leaving the Vermont Central Office, to make for the railway track, and walk along it to get to the public crossing at the highway, rather than to take the safe path from the office. Yet, if plaintiff had not held this unreasonable doctrine he would not have suffered. He still says that he had right to be where he was, and so the jury has found; yet their holding so is because of their finding (contrarily to overwhelming proofs) that plaintiff was struck on the public crossing. (See the 3rd and 6th findings.)

The motion for new trial is founded on some eighteen reasons. Misdirection by the Judge at the trial is charged; the findings of the jury on material points are said to be con-

trary to the evidence, and there are other objections, as for instance, excess of damages. The Court here is of opinion that the defendants are entitled to have the verdict against them set aside, and to have a new trial.

Before proceeding further it may be well to state some law. The burden of proof was on plaintiff. His having received an injury on defendants' land, or even from the defendant, is not enough. Sec. 12, Sherman and Redfield, 3rd edition, of 1874. Plaintiff has to show violation by defendant of duty. If plaintiff have proximately contributed to the injury complained of, so that but for his co-operating fault the injury would not have happened, he cannot recover. Sec. 25, S. and R.; also Sourdat, No. 660. If by ordinary care plaintiff would have avoided the injury he cannot recover. Sec. 29, S. and R. If danger is near, extraordinary care must be taken to guard against it. No recovery can be had for injuries suffered by one who, without looking carefully along the track of a railroad, walks across it or along it, and is run over by a train. Sec. 40. Walking along the track of a railroad where it is not running upon a highway is culpable negligence. Sec. 487. Statutes ordering bell ringing and whistling are only for the benefit of persons travelling on the highways, and cannot be made ground of an action by one injured while walking along the track of a railroad. Sec. 485; and so per Lord Selborne in the last case he was dealing with. (Albany Law Jl., p. 73.) Sec. 488 *a*, S. and Redfield. The statutes giving a right of action to persons injured by the neglect of a Railroad Company to ring a bell at a highway crossing do not confer such right of action irrespective of the injured person's own negligence. One whose own fault has contributed to his injury cannot take advantage of these statutes; nor is defendant's omission to ring a bell any excuse for plaintiff's omission to look up and down the track. It is culpable negligence for any one to cross the track of a railroad in full view, or hearing, of an approaching train, or without taking precautions to ascertain whether a train is approaching, and as a general but not invariable rule it is such negligence to cross without looking in every direction to make sure that the road is clear. Sec. 488. Upon such law, and upon the facts proved, we are unanimously of opinion that the findings of the jury ought substantially to have been for the defendants. With great respect to the learned judge who presided at the trial, we think he ought not to have charged as he did, leaving to the jury as it were the question of whether the plaintiff while traversing the railway was in execution of his duty, that if he was not, he was to be treated as any other individual, implying, as it seems to this Court, that if the jury found plaintiff in execution of his duty, he was to be held as in his right walking where he was. We think that the learned judge ought to have charged that in his opinion, in any aspect, plaintiff was not where he had right to be. The plaintiff has himself to blame for the accident. He had no right to be where he was when struck. He contributed to the injury he complains of. Danger was near him from the moment he got upon the railroad track, and getting on to such a dangerous roadway, the plaintiff was bound to use his eyes, and take care. He did not look about, behind and before him. Had he looked, he would not have been hurt. He has been guilty of culpable negligence; the proofs are clear. We grant the new trial for the 2nd, 4th, 6th, 13th, 15th, 17th and 18th reasons. The 6th claims that the verdict is unsupported by proof, and contrary to law and evidence; the 18th claims that plaintiff contributed to the accident, and the defendants, therefore, ought to go free.

E. Carter, Q. C., and *L. H. Davidson* for plaintiff.

George Macrae, Q. C., for defendants.

SUPERIOR COURT.

MONTREAL, January 31, 1879.

LA SOCIETÉ DE CONSTRUCTION CANADIENNE DE MONTRÉAL v. DESAUTELS dit LAPOINTE.

Exception resulting from improvements, C. C. 2065.

JOHNSON, J. On the first of October, 1872, the defendant bought from one Deslauriers some real estate, mortgaged to the plaintiffs for some $7,000, the defendant assuming his vendor's obligations towards the plaintiffs. On the 19th of April, 1877, the plaintiffs sued him *en déclaration d'hypothec*; and on the 22nd of October they got judgment against him in that case. On the 12th of November, the defendant made

a *délaissement* of the property; but between the judgment and the *délaissement* he took away a number of double windows and blinds. The plaintiffs then took their recourse by *capias* under the 800th Article of the Code of Procedure, alleging deterioration. This *capias* was quashed, on petition, on the ground that, the plaintiffs having only taken hypothecary conclusions, there was no personal liability. The Court of Review, without adopting the grounds of that judgment, nevertheless, quashed the *capias* because by the evidence taken under the petition for liberation there appeared to have been no concealment; and now, on the merits comes up the question of personal liability. If the evidence now of record had been given under the petition, there can be no doubt that the *capias* would have been maintained. But that is not the point now. The only question now is as to the personal liability for taking away these things, and upon that I am against the defendant. He had pleaded to the action that these windows and blinds were to be taken as *impenses* and *améliorations* made by himself, and that he had a right to take them away, and that is really the only question in the case. The learned counsel argued his case very ingeniously; but his authorities could only apply to the case of a mere *détenteur* who was neither charged with the hypothec, nor personally liable. Paragraph four of article 2065 makes this quite clear. He cannot oppose the exception of *impenses et améliorations* unless he can say that he is neither charged with the *hypothèque*, nor personally liable for the payment of the debt. Here he can pretend neither of these things, therefore his plea must be dismissed. Besides, by article 2075 C. C., the property must be surrendered in the condition in which it was at the time of the judgment. The present action is a personal one purely, for damages caused by deterioration. They are proved, and the plaintiff must have judgment.

Beique & Co. for plaintiff.

Bonin & Archambault for defendant.

GENERAL NOTES.

—Those who attend this court and courts of law, are not very good judges of the value of a horse. I remember two or three years ago I tried a cause at Cambridge. It was an action for trover for a horse. The property being clearly made out, I proposed that the defendant should enter into a rule to deliver the horse; but that was refused; and they chose to stand the verdict; upon which I directed the jury to find all the damages laid. The special pleaders, with all the exaggeration incident to them, not having any idea of the value, only put £500 into declaration; and the jury finding a verdict for that sum, the defendant paid it with all satisfaction, the horse selling afterwards for £2,200.—[Lord Chancellor Loughborough, in Newman, 3 Payne.

Compensation to Persons Wrongfully Accused.—The great reformer, Sir Samuel Romilly, once had in contemplation the passing of an act enabling criminal courts to give compensation, as will be seen from the following passage extracted from his memoirs: "What I have in contemplation to do, however, compared with what should be done is very little. It is only, in the first place, to invest criminal courts with a power of making to persons who shall have been acquitted a compensation to be paid out of the county rates, for the expenses they will have been put to, the loss of time they will have incurred, the imprisonment, and the other evils they will have suffered; not to provide that there should be a compensation awarded in all cases of acquittal, but merely that the court, judging of all the circumstances of the case, should have a power, if it thinks proper, to order such a compensation to be paid and to fix the amount of it; a similar power to that which it now has under two acts passed in the reign of Geo. II., to allow the expenses of the prosecution, and a compensation for loss of time and trouble, to the prosecutor."

—A story is told of Baron Parke which evinces a curious delight in the intricacies of professional skill. Paying a visit to one of his colleagues, a man of great intellect and attainments and a sound lawyer, who was at the time very ill, Baron Parke told his friend that he had brought him a special demurrer which had recently been submitted to the court, which was so exquisitely drawn that he felt sure it must cheer up the sick man to read it!