The Legal News.

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OBJECTIONABLE FACTUMS.

The Supreme Court of Louisiana, on the 4th instant, took special notice of a brief filed by counsel in a case of *Levine* v. *Mitchell*, and made an order expunging the offensive document from the files of the Court. Chief Justice Bermudez, according to the report in the New Orleans *Times-Democrat* of Dec. 5, referred to the brief as being "in tone and substance highly indecorous," and as "an unmitigated attack upon the laws, the jurisprudence, the practice and the judicial system of the State." "It assails and denounces, in the most unacceptable terms," he added, "the application which the highest Court of the country has successively, for a long series of years, made of those laws under that jurisprudence and under that practice." The case in New Orleans is not singular, though the offence in that instance seems to have been unusually aggravated. Similar complaints are not infrequently heard elsewhere. But it must be added that, if this be a grave offence, the members of the bench are themselves not always blameless, for everybody knows that criticism by one Court of the reasons and arguments of another Court, or even by one Judge of the reasons and arguments of another Judge of the same Court, is sometimes more vigorous than deferential.

HOLOGRAPH WILLS.

The Code of California, like our own, provides that a holograph will must be entirely *written* by the testator (C.C. 1277). Under this provision a question came recently before the Supreme Court, (*In re Estate R. C. Rand*), whether a paper, portions of which were printed on a stationer's blank, was properly admitted to probate as a holograph will. The printed portions were merely such formal words as might be used in wills generally, and it was strenuously urged that even if these were rejected, the portions of the paper which were written by the deceased should be admitted to probate. The Court rejected this pretension, observing: "The legislature has seen fit to prescribe forms requisite to a holograph will, and these forms are made necessary to be observed. . . We should thereby (by adopting the pretension above stated), in effect, change the statute, and make it read that such portions of an instrument as are in the handwriting of the deceased constitute a holograph will."

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

Quebec, Dec. 7, 1882.

Dorion, C. J., Monk, Tessier, Cross & Baby, JJ.

Pouliot, Appellant, & Cadorette, Respondent.

Inducing a non-voter to vote—Evidence required to prove offence.

This was an action under 37 Vic. c. 39, s. 74, by respondent against appellant, accusing him of having induced one Joseph Despres *alias* Joseph Couillard Depres, to vote at an election for a member to serve in Parliament, he the said Joseph Despres not being a voter. Appellant was condemned to pay a fine of $200 or to be imprisoned six months.

Sir A. A. Dorion, C.J., said the offence laid to appellant's charge is a misdemeanour by statute, and therefore he can only be found guilty on evidence that would be sufficient to convict him of a misdemeanour. The evidence must be conclusive. The Court cannot judge by inferences, except those which constitute a legal presumption. In this case we do not find there is evidence of this sort. Two persons of the same name, uncle and nephew, one an old man, the other a young one, were on the roll of cotisation. The name of one only was on the voters' list, and there is no doubt it was intended to be the name of the nephew that was on the voters' list. Dr. Dion told appellant that the uncle was a voter, and asked him to go and get him to vote. Pouliot saw the uncle, who said he was not a voter, and never had voted. Pouliot asked if he would vote if he showed him that his name was on the list. The old man said he would, although he never had voted. Pouliot then got the voters' list, and reading the name asked him if that was his name. The old man said it was, and believing he had a vote, agreed to go to the poll if Pouliot would accompany him. Sometime after, the uncle went with Pouliot to the poll, obtained a ballot-paper and voted. After he went in to vote some

one said to Pouliot that the nephew and not the uncle was the voter, and that the uncle had no right to vote, but this was after the voting, and after Pouliot had any communication with the man. It had been said that Pouliot was present at a previous election just four months before, and that what passed then must have informed him that the uncle had no vote. I do not think this proves anything. The voter rejected was not the uncle but his tenant; Pouliot may not have heard what passed, and he may very well have forgotten it if he did hear it. Examined as a witness, Pouliot swears he did not know that the uncle was not a voter, and that he did not know of the existence of the other man. I find two cases decided by Mr. Justice Blackburn, (now Lord Blackburn) in the Gloucester election case, not unlike this one, in which the learned judge declared the evidence insufficient, and more particularly in face of the fact that the person accused had denied on oath having the guilty knowledge alleged.

The first ruling was on the case of a man named George Williams, whose vote was objected to as not being that of the George Williams who was the person really entitled to vote. It appeared that two persons of this name lived in Brook street, but that the one who voted had not come to live there until it was too late for him to be registered. Mr. Justice Blackburn said: "I am quite satisfied that he was not the man meant upon the register, but that the man whose vote has been counted was the man meant." * * * "But as to Mr. Picard (the agent) after the evidence that he has given, I cannot say that he could have been a party to his personation, because he honestly believed George Williams was the right George Williams, and I need not say it is obvious in point of law that in that case he is not a party to it."

On the same contestation objection was taken to the vote of one George Gage. The man who voted continued to occupy his father's house, the father's name being John Gage and being on the register. The son's name was not on the register. One Maslyn, said to be an agent of respondent, induced John to vote. Maslyn when called as a witness stated that he knew nothing of George Gage's father, that he did not know the voter's Christian name, and that he believed the man who voted was the person whose name was on the register. Mr. Justice Blackburn said: "If Maslyn knew that John Gage was the person who was the voter, and not George, and, notwithstanding this, sought to persuade George to go and vote instead of John, he would of course have been guilty of the offence of personating, and if his agency was proved, the seat would be forfeited. But after Maslyn's distinct oath, I cannot come to the conclusion that he is now committing perjury and was then committing felony. I must therefore hold that this case fails." The Gloucester case, 2 Omally & Hardcastle, pp. 63 and 64.

The judgment was reversed with costs, Cross, J., dissenting.

COURT OF QUEEN'S BENCH.

QUEBEC, December, 1882.

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

DORION (plff. below), Appellant, & DUFRESNE et al. (defts. below), Respondents.

Certificate of Work—Transfer.

RAMSAY, J. (dissenting). This is an action by Appellant taking the quality of *cessionnaire* of one Payton, who obtained a sub-contract from Respondents to make certain fencing on the line of the North Shore Railroad.

The *moyens* of defence of Respondents are, in effect, that Appellant is not the *cessionnaire* of Payton, and that the length of fence constructed was 589 acres and not 608, as is pretended, and that this sum is fully paid to Payton or to his legal representatives.

With regard to the second pretention, we are all agreed that it is fully proved that the length constructed was 608 acres. It is established by the certificate of the government engineer, upon whose certificate it was agreed the payments should be made. Respondents say, that the engineer Boyd is not the engineer referred to in the contract, and that the engineer was only to certify as to the quality and not as to quantity of the work. We think that the certificate of Boyd is sufficient. He was a government engineer acting for that division. This is admitted on all hands. The admission seems to cover it. The defendant Dufresne, in his testimony, admits distinctly his quality. The witnesses Vallée and Lajoie also prove it. Who

the *ingénieur en chef* may have been we know not, still less what he knew of the matter. Besides, it was not pleaded that there was no certificate of the proper officer. Secondly, it is clear that the certificate so given was to be conclusive if not attacked both as to quantity and quality.

The deed between Payton and Respondents only says that "la cloture sera sujette à l'approbation de l'ingénieur du chemin de fer et aussi de l'hon. Thos. McGreevy," &c., but there is also a clause by which Respondents agree that "toutes les conventions, charges, clauses et conditions" of the act between them and McGreevy shall apply to this deed. On referring to the deed with McGreevy, we find "that upon the certificate of the engineer aforesaid, that the work contemplated to be done under this contract *has been fully completed* by the contracting party of the second part," &c., the party of the first part will pay, &c. This is conclusive as to Respondents' pretention that the quantity of work done was not to be determined by the certificate of the engineer of the government.

We have, therefore, only to examine the other point, as to whether Appellant has any title to enable him to recover from Respondents. His title is based on the transfer of the assignee to him of the whole estate, save one item, dated the 29th May, 1879. This deed was not signified to Respondents. Were they obliged to take notice of it? If so, did Appellant's letters to them affect the question, and were they entitled to make the declaration on the *saisie arrêt*? I think by the assignee's title Dorion was seized of the estate of the Insolvent and defendants were held to know it. If, however, the defendants had been misled by plaintiff's letters of January, 1878, it might have justified them in dealing with Payton as though he were still owner of his estate—that is to say, Appellant would be estopped from claiming on the deed of transfer by the assignee. But I do not think that the letters were of a nature to mislead or that they did mislead Respondents, and this for two reasons. First, they were written in January, 1878, and the title from the assignee transferring the estate to Dorion was not passed till May, after the judgment of the Court confirming the discharge of the Insolvent. Besides, in the former of these letters Dorion told Gerin he was the *cessionnaire* of Payton. He did not then deceive him on that all-important point. Second, in January, 1879, a correspondence between the agent of Respondents and Mr. Dorion took place, in which Mr. Gerin, the agent, wrote to Appellant, offering him a note for $1,000, to be accounted for when the first contractor should give them an "*état définitif*". It will be observed that this letter was written in answer to a demand for "un règlement immédiat de l'affaire Payton". It was after this that the Respondents acknowledged as *Tiers-Saisis* to be indebted to Payton without giving any notice to Dorion. They alleged he knew of the *Saisie Arrêts*. This is not very probable, and it is not proved. I would therefore reverse the judgment and award Appellant the full balance due on the cost of the 608 arpents or acres of fence.

BABY, J., concurred in this dissent.

DORION, C.J., said that the Court was agreed as to the extent of the work, and that the certificate of Boyd was conclusive until contradicted both as to the extent of the work and as to the quality. The letters of the 12th and 22nd January, 1878, were inexact, and were of a nature to mislead Respondents. The judgment will therefore be reversed, and judgment will go for Appellant for the cost of 19 acres of fencing, with costs.

COURT OF QUEEN'S BENCH.

QUEBEC, December 7, 1882.

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

VEILLEUX, Appellant, & LANOUETTE, Respondent.

Slander—Reconciliation, Evidence of.

Although the presumption of reconciliation in a case of slander is, as a general rule, favorably received, it is not so where the slanders complained of are atrocious, and dictated apparently by persistent malice.

RAMSAY, J. Action for verbal slander. The injuries alleged are of a very atrocious kind, and they are very well proved, as also the motive which induced the respondent to have recourse to the violent abuse of the appellant complained of. It seems the respondent was practising as a medical man in the parish of Gentilly, and that the appellant's son having been recently admitted to practice, settled in the parish of Gentilly, where his father resided and held

several offices of trust. He was Clerk of the Commissioner's Court, Agent of the Fabrique, and Secretary-Treasurer of the Municipality. Respondent, fearing the professional competition of appellant's son, conceived the idea of attacking the father's character, and by so doing to deprive him of his means of subsistence, and thus compel the son to leave the parish. All this is hardly denied, but it is contended that there was a formal reconciliation between the parties before the institution of the action, and that therefore the action must fail. This view was adopted by the Court below, and the action was dismissed with costs.

There can be no doubt that if an injury of this sort has been passed over at the time or pardoned, it cannot be afterwards made the subject of an action of damages. But the proof of this is on the defendant. In this case I do not think defendant has made out his plea. He has brought four witnesses to speak as to the reconciliation; but they do not agree in their story: one says that they shook hands, another that they drank together, and another that they exchanged pinches of snuff. These various demonstrations of affection are said to have taken place in the Court-room, in the Prothonotary's office, and at Dufresne's Hotel, yet persons who passed the afternoon with appellant at these different places, not only declare that no such reconciliation took place, but that the parties avoided each other in a marked manner, and that they did not even speak to each other. Again, the condition of the defendant's mind at the time he was at the Prothonotary's office on the 16th of December, 1880, was not such as to render a reconciliation probable; and the Rev. Mr. Parent tells us that up to the time of the respondent's departure from the country, he continued to attack appellant. Also, there is a feeble attempt in this action to justify certain of the attacks on defendant. It is very true that, as a general rule, the presumption of a reconciliation is favorably received, but this is not true where the slanders are of an atrocious character (2 Duneau, p. 390). I think that the slanders are proved, that they are atrocious, that they were dictated by the most persistent malice, and that the respondent has not proved his plea which in itself is violently improbable. The majority of the Court are to reverse the judgment, and to award the appellant $200 and costs of both courts.

Sir A. A. Dorion, C.J., said the slanders were of a most atrocious character, and the motive for the malice displayed was quite evident. The respondent therefore deserved the condemnation to pay damages. But he thought the reconciliation was sufficiently proved, and therefore that the judgment of the Court below should be confirmed.

Judgment reversed, the respondent condemned to pay $200 and all costs. Dorion, C.J., dissenting.

COURT OF QUEEN'S BENCH.

QUEBEC, Dec. 7, 1882.

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

CLOUTIER, Appellant, & BLACKBURN, Respondent.

Slander—Charge of Intemperance—Privileged Communication.

RAMSAY, J. Action for damages for slander. The appellant is charged with having accused respondent specially, "d' avoir prélevé trente louis au lieu de dix-huit louis et d'avoir mis la balance dans sa poche," "d'avoir fait de l'argent avec la dite cotisation," and there is an innuendo. Also "*qu'il buvait trop pour bien remplir sa charge*," "*qu'il était toujours ivre.*" The defendant admits that he used these words, "M. Blackburn boit trop, cela l'empêche de remplir bien ses devoirs de sécretaire-trésorier; il a prélevé sur la municipalité des montants plus élevés que ceux que le conseil de la paroisse l'avait autorisé à prélever," but he pleads that he used these words without malice, in his own interest and in the performance of the duties of his office as municipal councillor. If he so used these words, and he can show he had reasonable cause for so doing, they are within the limits of a privileged communication. The only evidence that seems to me to attribute to the defendant stronger words than he admits to regarding the cotisation is that of Edouard Cauchon and Charles Lessard. What Cauchon says is very indirect. He says he would not pass for a *voleur* in place of plaintiff, which may fairly be intended simply to say, if some one is to pass for a thief it shall be the person who got the money instead of me. It is purely hypothetical, and amounts to this, "I won't pass for a thief."

Lessard's statement is not explicit. He asked defendant if he had said that Blackburn put the money in his pocket. He avoided affirming what his suspicions might fairly be, and answered, "Je me suis aperçu qu'on était joué." This is not an indication of malice, and it certainly does not prove that the words attributed were used by Cloutier.

Considerable irregularities, each small in itself, are established, but that were evidently destructive of any good administration, and if the mayor attributed them to drink, having once found him in his bed nearly drunk at 2 p.m., along with what was said, I don't think his indiscretion was great. There is no evidence of positive malice or ill-will, except what may be presumed to arise from the parties being of different political opinions. I am not prepared to admit that to the numerous advantages of popular elective institutions, we are to add this one, that a difference of views as to a candidate is to furnish a presumption of malice.

The judgment is reversed with costs.

COURT OF QUEEN'S BENCH.

QUEBEC, December 7, 1882.

MONK, RAMSAY, TESSIER, CROSS & BABY, JJ.

COTÉ, Appellant, and SAMSON, Respondent.

Opposition for ten cents — Discretion of Court— Appeal.

A judge of the Superior Court exercises his discretion wisely, in setting aside an opposition to a seizure, based on the fact that the costs had been taxed erroneously ten cents too high,—and a judgment in Review, reversing such a judgment in first instance, will be reversed in Appeal. (Tessier, J., dissenting.)

COURT OF QUEEN'S BENCH.

QUEBEC, December 7, 1882.

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

REYNOR et al., Appellants, & THOMPSON, Respondent.

Right of accession—C. C. 434, 435.

This case gives rise to a question of some interest to holders of timber licenses and to settlers on Government lands. Appellants were settled on several lots of Government land. They had paid the price, $653.10, and were only to pay a sum, not then determined, for occupation. No patent or location ticket issued. This was in July, 1879. In December, 1880, respondent obtained a license to cut timber covering these lots. Appellants cut a quantity of timber manufactured into logs, and drew it to the *jetée* where it was seized by respondent. The Court below held the seizure good, and condemned the appellants to deliver up the wood or to pay respondent the value of the logs, $1,249.45.

The Court of Appeals maintained the seizure, and condemned appellants to surrender the logs or to pay the value of the timber, not of the logs, namely, $310. See articles 434 and 435 C.C.

COURT OF QUEEN'S BENCH.

MONTREAL, NOV. 28, 1882.

MONK, RAMSAY, TESSIER, CROSS & BABY, JJ.

CHARLEBOIS et al. (defendants below), Appellants, & CHARLEBOIS et vir (plaintiffs below), Respondents.

Action to set aside deed of partition of succession— Fraud.

CHARLEBOIS (defendant below), Appellant, & CHARLEBOIS et al. (plaintiffs below), Respondents.

Action to rescind deed of sale of right of succession —Plaintiff must offer back price received.

RAMSAY, J. There are two appeals with titles almost identical. They are intimately connected but not united. They were argued together. One bears the number 123, the other the number 449.

The former of these cases is an action by one Jane Charlebois, wife of one Dosithé Allard, to to set aside a *partage* of the intestate succession of her late brother Arsène Charlebois, to which she was a party, and bearing date the 4th of November, 1870.

The action was only taken out on the 4th of June, 1879, after the marriage of Jane Charlebois to Allard. It sets up with considerable amplification that the inventory was made by the appellant Hyacinthe Charlebois, that he had all his late brother's property in his hands, that he and his brother Arsène were co-partners, under a deed of partnership which is produced, that he estimated the real estate, and in fact that the other members of the family had trusted him entirely in all these matters. That being so trusted he had taken the opportunity to

defraud and cheat his co-heirs, and particularly by representing that he had an equal share in the business as partner of his late brother, that he had not accounted for the capital invested by his brother, that he had undervalued the goods, possessed himself of the ready money and debts, and had augmented the liabilities of the partnership. As to the real estate he had fraudulently estimated it at less than half its real value. That he had affected to buy the shares of his two sisters, who had no rights, as they were civilly dead, being nuns of an order which prevented them from holding property, and that he had ostentatiously offered to give up the advantages arising from this transaction in order to induce the rest of the family to agree to the *partage* he was desirous of making. The other members, and particularly respondent, were induced by the false representations to agree to the *partage*.

It is also alleged that this inventory was not regularly made according to law, inasmuch as one of her sisters—Emelie—was a minor, and that there had been no *expertise* or curator appointed, and that therefore the whole proceeding was null, and should be set aside.

The conclusions of the action are that the inventory and the deed of *partage* should be set aside as fraudulent and null, that the appellant should be condemned to make a new inventory of the effects of the partnership, and that there should be a new inventory of the other property and effects of the succession, and a new *partage* of the whole.

The action was principally directed against Hyacinthe, who is held liable for all shortcomings, and the other members of the family are only summoned to hear the deed set aside, and to be made subject to the new inventory and *partage*.

By the judgment of the court below the plaintiff obtained the conclusions of her declaration so far as to have the inventory and *partage* of the 4th November, 1870, set aside as fraudulent and null, and a new inventory ordered.

The action is sufficiently comprehensive in general terms, and it is only to be regretted that the particular acts of fraud relied on had not been specified in detail. It is an unfortunate habit, and one not justified, I think, by the practice either in England or in France, to prove particular acts of fraud under the most general allegations. Under such a system any person reckless and desperate may sue to set any transaction aside without the least ground. However, the want of detail in the action has not been objected to, and we are therefore obliged to follow the parties through all the wanderings of the plaintiff's evidence in search of something to support the allegations.

It seems to me that there are several preliminary observations it is well to make before proceeding to consider the details.

In the first place, the minority of Emelie, and the failure to observe the formalities of law in dealing with minors' rights, is not a claim in the mouth of the plaintiff. If the minor is contented with the *partage* and by his acts ratifies it, no one else has a right to complain.

Secondly, the respondent does not appear before the court in a very favourable position. She attacks the inventory and *partage* nine years after its execution, and subsequently to her having introduced a stranger into the family by a marriage, to which her relations had a good right to object. Besides this, we are told in the declaration that she had consented to the low valuation of the lands because they were going to her father and mother, and that she expected to be indemnified by the share she would receive in their succession. The object of making this admission evidently was to explain a consent which could hardly have been given through ignorance or owing to the fraud of the appellant. It was scarcely to be expected that a Court of Justice would believe that a woman who had passed nearly her whole life on and near these lands should not know their value to within 50 per cent. We, therefore, learn that not the fraud of appellant, not the ignorance of the respondent, but her calculation induced her to agree to the items of the inventory which deal with these lands. In her expectations she was not wholly disappointed, for by her father's will she had a legacy of $500, exactly the same amount he left to her sister Emelie. This will was made in 1871, the father died in January, 1874, and yet she did not complain till 1879, but took advantage of the bequest. So this story is really not true, and we cannot fail to see that whether her accusations against her brother as to other matters be true or not, they are absolutely untrue as regards these lands,

and the litigation is evidently due to the influence of the husband.

I would remark, thirdly, that she alone of all the family complains, and that she is seeking to upset the law this family has made for itself, and to which she has formally consented. Under these circumstances, not only all the proof is upon her, but all the presumptions, to begin with, are against her. Fourthly, lesion alone will not allow her to set aside the *partage*. 1012 C. C.

In spite of all this, she may be right to some extent, and she may have signed through error. Now let us examine in detail her pretentions. She says appellant was trusted by everybody, and that he made the whole inventory alone and without their participation. Now the terms of the deed before Mr. Labadie contradict this. Appellant made an inventory of the effects of the partnership and produced the stocks and other securities of his brother, which he had in his hands. I am not aware that it is even contended any of the bank shares were concealed. But there was a great point made of the cash in the People's Bank. It was said appellant appropriated this money, or a part of it, and our attention was particularly directed to appellant's evidence as a proof of his misdeeds. Now what is his story? He wanted to draw the money after his brother's death, but he was told at the bank he could not do so then. Upon this he borrowed some money from the bank, settled with his sisters the nuns, and as the family agreed to accept the bargain which appellant made with them, he credited himself with what he paid. We are now told he should have paid nothing, the nuns had no rights, they were civilly dead. If this be true, what has Hyacinthe more to do with it than the Respondent? He can't be charged with the error alone, if error there be, and if the arrangement is to be set aside, then these ladies or their *communauté* ought to be *en cause*, and there should be sufficient allegations and conclusions taken against them. But in fact, it seems, they are not civilly dead, or rather I should say, subject to civil disability, analogous, in its legal relations, to civil death. There is some doubt as to whether there are any nuns in this country in this position. I remember when the 34th Art. of the C.C. was under discussion, grave doubt was expressed as to whether there were any such disabilities in Canada, and the very guarded article of the Code was inserted to cover a possible contingency. We have had no attempt to show us that the *communauté* in question is one of those contemplated by the article. The parol evidence does not establish the pretention of Respondents, even if parol were admissible, which I doubt its being, except perhaps in the case of a *communauté* existing on an immemorial foundation. The balance of the money in the Banque du Peuple, over $2,000, is accounted for as cash in the inventory.

At the argument our attention was specially called to appellant's evidence as being conclusive against him. But so far from this being the case his evidence seems to me precisely to contradict the plaintiff's allegations. But it is urged he kept no books, he can't prove this, and he can't establish that. The answer is, the proof is not on him at all. He has got his deed, and it is for plaintiff to show that her signature to that deed was improperly secured, or that it does not bind her. Again, no presumption arises against his good faith from the fact that A. & H. Charlebois kept their accounts irregularly. This was as much the fault of Arsène as of Hyacinthe. It might possibly have been a difficulty for Hyacinthe, if his inventory had not been accepted, but now it cannot change the *onus* of the proof.

Again, we are told that the partnership being in writing the presumption is that it continued in the terms of the deed, and that this presumption cannot be rebutted by parol testimony, which is expressly excluded by the Ordinance of 1629, and that by that Ordinance the partnership should have been registered. It is perhaps no misfortune for respondent that this ordinance has fallen into abeyance. But in any case there is no difficulty as to proof. By the *partage* respondent admits that appellant's share was a half. Now she must prove that she admitted this by error. The proof, however, establishes not only that it was highly improbable that she did not know, but that she actually did know all about it, had talked the thing all over with the family, and deliberately accepted Hyacinthe's statement. There is also parol evidence establishing that the fact accepted by the *partage* was true and not fraudulent.

By the rulings at *enquête*, and by the judgment, all this evidence was set aside. There is a *considérant* of the judgment as follows:

"Considering that the parol evidence such

as that on page 5 of the deposition of Sophie Perrier going to prove as against the plaintiffs that the female plaintiff made *reconnaissance* and declaration in favor of defendant Hyacinthe Charlebois as stated by her, Sophie Perrier, is of no force against plaintiffs, but illegal; and that defendant's plea of such a *reconnaissanee* having been, fails."

We cannot agree with the learned judge on this point. It is the plaintiff, and not the defendant, who seeks to prove beyond the deed. She is only permitted to do so because she has alleged fraud and error. But she having the right to prove fraud, by parol, how is it possible to say that he shall be debarred from repelling it by the same sort of evidence?

The other more general accusations are disproved as completely as can be expected at this distance of time. The clerks who really took stock of the goods of the grocery business, on which the inventory is to some extent based, formally deny the imputations of respondent.

We are, therefore, of opinion that the judgment in case 123 must be reversed and the action dismissed. The other case (449) has not been joined to this case, and therefore we cannot formally take notice of it in giving judgment in this case; but from a deed there filed, we learn that appellant has agreed to pay all costs in this appeal, and therefore using our discretion as to awarding costs, we dismiss this appeal without costs.

The case No. 449 is an action by Jane Charlebois to set aside a deed by which she sold all her rights in the succession of her brother Arsène to Hyacinthe. She seeks to have this deed set aside for *crainte*, error and fraud. She contends that she was intimidated by her husband, who was on the point of leaving the country with another woman, into passing this deed with the object on his part of procuring for him the money to run off with this other person; and she affirms that the money was never paid to her but to the husband.

Without entering into any general consideration of the evidence of the respondent's story, the Court is of opinion that she cannot succeed. The alleged fact that she did not get the money, but that her husband got it, is disproved. She got the money and gave it to her husband. This being the case, she cannot have the deed set aside without bringing back all she received under the terms of the deed. We think, therefore, that this action must also be dismissed, and with costs against respondent.

Judgment reversed.

St. Pierre & Scallon for Appellant.

Geoffrion, counsel.

Laflamme & Laflamme for Respondent.

RECENT UNITED STATES DECISIONS.

Compromise of suit by attorney.—The American law, unlike the English, does not empower an attorney at law to settle a pending suit without the knowledge and assent of his client. Courts in this country however are inclined to favor a compromise fairly made by an attorney, and will uphold it if good reasons can be found for it. Hence this court refused to disturb a compromise made by an attorney, with the assent of the party in interest, but without the knowledge of the plaintiff of record, the attorney's client, when the compromise was reasonable and appeared advantageous.

A. sued, as trustee of his wife, who, under the Rhode Island statutes, could at any time by her sole act assign the claim sued. A.'s attorney, without his knowledge, but with the wife's assent, compromised the suit. A waited nearly a year and then filed his petition for a trial of the case, the wife claiming to have been coerced into giving her assent, but the coercion rose only from a mortgage executed by A. and his wife:

Held, that the petition must be dismissed.—*Whipple* v. *Whitman*, (Supreme Court of Rhode Island) 13 Rhode Island Reports.

JUDICIAL CHANGES.

The letter transferring Mr. Justice Doherty to the District of Montreal is as follows:—

OTTAWA, 17 October, 1882.

SIR,—I have the honor to inform you that His Honor the Deputy of the Governor-General-in-Council has been pleased, by Order in Council, to transfer you from the District of St. Francis to the District of Montreal, and that the District assigned to you be the District of Montreal, in place of Mr. Justice Mackay, resigned, such transfer to take effect from the 2nd day of November next.

I have the honor to be,
Sir,
Your obedient servant,
ED. J. LANGEVIN,
Under Secretary of State.

The Honorable Mr. Justice DOHERTY,
Sherbrooke, Quebec.