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PRIVILEGE OF THE ACCUSED.

In the case of *Blackwell* v. *State*, a case tried before the Georgia Supreme Court in December last, and reported in 3 Crim. Law Mag. 393, the privilege of the accused not to give evidence against himself was expressly extended to the point of not requiring him to do anything that may serve as evidence against himself. Blackwell was on trial for murder; the tracks and signs indicated that the assassin had but *one leg*. A witness, testifying as to the impressions made on the ground, was asked by the Court: "How much of his leg has the prisoner had cut off?" Answer—"I don't know, Sir. I just know he is one-legged—I can't see." Here, by order of the Court, the prisoner stood up, and showed his leg, and then the witness answered: "His leg is cut off below the knee." The Supreme Court held this to be error, observing: "Let it be borne in mind that a most material and important part of the testimony against the prisoner was the character of the track and signs made the night of the murder by the one who, in the dark, approached the house where deceased was, and fired the fatal shot that caused her death. The track and signs indicated that the assassin had but one leg, but the character of the other print upon the ground depended materially upon the character of the amputation of the other limb, and it, no doubt, was to establish the correspondence between the amputated limb and the signs on the ground as testified to by the witness, that influenced the Court to order the prisoner to make profert of his limb to the witness testifying, and necessarily to the jury." This seems to be going rather far, for it may be asked whether the jury in the discharge of their duty have not a right to see the prisoner, without their view being obstructed by intervening desks, chairs, or other articles, and whether the place of amputation of the prisoner's leg is not a fact which they may be allowed to observe as well as the color of his hair, or the fact that he has lost an arm, &c.

LOCAL JURISDICTION.

In the case of *Richelieu & Ontario Navigation Co. & Durnford*, the Court of Queen's Bench sitting in appeal (Monk & Ramsay, JJ., not sitting) has unanimously affirmed the right of the local legislatures to exact license fees on the sale of liquors on board of steamers navigating the St. Lawrence. The pretension of the company was that being a federal corporation, and their steamers plying between places in different provinces, the local legislature had not the right to compel the payment of license fees. The decision follows *Parsons & The Queen Ins. Co.*, (*ante*, p. 25) and other cases.

NEW PUBLICATIONS.

NOTED FRENCH TRIALS—IMPOSTORS AND ADVENTURERS, by Horace W. Fuller. Boston, Soule & Bugbee, Publishers.

In this little work some of the *Causes célèbres* of France are presented in English dress, and in the style of easy narrative. The book is evidently intended for a wider circle than the profession, but it will also be of interest to lawyers, especially those who practice in the Criminal courts. The cases included in the present volume are "The False Martin Guerre; The Woman without a Name; Collet; The False Dauphins; The Beggar of Vernon; The False Caille; Cartouche; and Mandrin."

The narratives have all the attraction of the most sensational class of literature, but are based upon the official records. The work is issued in a popular form and will no doubt have a wide circulation.

THE EARLY JURIDICAL HISTORY OF FRANCE.

[Conclusion, from p. 168.]

The Ecclesiastical Law of France, therefore, at the period above mentioned, although it recognised the Papal Canon Law, comprehended the parts only of that system which had been received by the Gallican Church, under the sanction of the Sovereign, expressed in letters patent, or implied from immemorial usage. No Papal constitution, decree, decretal, epistle, rescript or bull, no canon or decree of any Council of the Church œcumenical, national or provincial, had, at that time, or afterwards, in France the effect of Law, until published by the Clergy in their respective Dioceses; and

such publication (even of a constitution relating to an article of faith) could not be made without the Royal authority and permission.(1) Even the decrees of the Councils of Trent (admitted to have been legally convened) were not recognized to be Law, their publication not having been authorized by the Sovereign; and to give effect to many of its dispositions, which it was thought proper to adopt, they were enacted in the Royal Ordinances.(2)

The Royal Ordinances, with the law of nature and of nations, and the Ecclesiastical Code, so far as it was sanctioned by the Sovereign, may be considered as the common or universal Law of France; but the remaining part of the municipal Laws of her several Provinces or Districts were very dissimilar. In the Pays de Droit Ecrit, which were those Provinces in which the Roman Code, by the especial favour of the Sovereign, had been permitted to remain, and was declared to be in force, that system obtained to the exclusion of the Customs; (3) while in the others, and particularly in the Vicomté of Paris, the Customs obtained, to the exclusion of the Roman Law, which, in these Provinces, or Pays de Droit Coutumier, was of no force, and was considered only as a system of written reason. It was long, indeed, a disputed question in the Jurisdictions of the Vicomté of Paris, whether recourse was not to be had to the Roman, as to a positive Law, for decisions in unforeseen cases for which no remedy was provided by the Custom; but it was ultimately settled that such recourse ought not to be had, and that the judges were not bound to decide by it. (4)

I feel that I have already trespassed upon your time, yet before I conclude, as the subject upon which I have the honor to address you appears to allow it, I cannot but solicit your attention to the actual state of the study of the Law in Canada.

(1) Hericourt, Lois Eccles. vol. 1, p. 105, col. 2 and vol. 1, p. 98, and col. 1 and 2, p. 100, col. 1, and p. 105, col. 1 and 2. Dict. Canon. verbo "Canon." et Droit Canon. Lacombe, Rec. de Jurisp. Canon, introd. p. 1 and 2.

(2) Hericourt, Lois Eccles. vol. 1, p. 99, col. 1 and 2.

(3) Ferrière, D. D. verbo "Pays de Droit Ecrit."

(4) Ferrière, D. D. verbo "Pays de Droit Ecrit." Dumoulin, des Fiefs, introd. No. 106 and 109. D'Agues-seau, vol. 1, p. 156, L. C. Dénizart, vol. 5, p. 674. Ferrier Gd. Com. vol. 1, p. 18 and 19, No. 1, 2, 3, 4, vol. 1, p. 6, Discours Préliminaire. Le Prestre Cent. 3, cap. 85, p. 675, which cites an ordinance of Philippe le Bel, declaring France not to be governed by the Civil Law.

The experience of many ages and of many countries seems to have shown, that the elements of science are best inculcated by public lectures—rightly conducted they awaken the attention of the student, abridge his labour, enable him to save time, guide his inquiries, relieve the tediousness of private research, and impress the principles of his pursuit more effectually upon his memory.(1)

The Student of Law in Canada has no assistance of this description; he toils alone in an extensive field of abstruse science which he finds greatly neglected, and therefore too hastily deems to be despised, and, discouraged from the commencement of his labours, he is left to his own exertions, and is compelled to clear and prepare the path of his own instruction, almost without aid of any kind.

Would not an effort to relieve him in this arduous and solitary task, as one among the first fruits of this Society, be highly worthy of its views and character? And is it too much to say, that a Public Institution which would enable those who intend to pursue the profession of the Law to lay the foundation of their studies in a solid scientifical method, and afford them more ample knowledge of the peculiar system of jurisprudence by which we are governed, would be productive of great and lasting benefit, not merely to the student, but to the public at large?

It is not, however, my intention, upon the present occasion, to press this subject any further. The system to which I have just alluded is one of real merit, it is built upon the soundest foundations of natural and universal Justice, approved by experience, and is most admired by those who know it best. Its claims to notice are therefore so apparent, that I shall indulge myself in the hope, that the influence of this Society will soon be exerted for the establishment of some Institution of a public description, in which the Law may be taught as A SCIENCE—a science which, though hitherto neglected, is of the first importance to mankind, and "with all "its defects, redundancies and errors, is the "united reason of ages, the pride of the human "intellect."(2)

(1) Vide Sir James Mackintosh's Discourse on the Study of the Law of Nature and of Nations, p. 2.

(2) Burke's Works, 4to, vol. 3, p. 134.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, December 31, 1881.

Before JOHNSON, J.

BELANGER v. GAUTHIER, BOURQUE, & MOISAN; & LA SOCIÉTÉ DE CONSTRUCTION D'HOCHELAGA, and SCHILLER, *mis en cause.*

Action to annul sale—C. C. 1484—Interest of person suing for resiliation—Transfer of shares after liquidation of Building Society.

PER CURIAM. This is a case in which a large sum of money is involved, as well as very extensive interests, and perhaps some important principles. It is the case of a plaintiff asserting his right to set aside a deed of sale of the assets of a building society then in liquidation, on the alleged grounds that two of the liquidators, Gauthier and Bourque, acquired the property for themselves, acting through Mr. Moisan, who only lent his name for the purpose, each of the three being interested for one-third. The assets of this society were adjudged to Mr. Moisan for $21,000, and they are alleged to have been worth $50,000; and it is also said that the defendants conspired to run down and depreciate the assets so as to prevent a higher tender being made; and the conclusions taken are that the deed of sale of the 21st of September, 1880, be set aside as fraudulent and illegal, with costs against Gauthier, Bourque and Moisan jointly and severally, and against the society itself and Mr. Schiller, who are made parties to the case, if they should contest.

The allegations of the plaintiff which require notice are:—1st, that the Building Society of the County of Hochelaga went into liquidation in February, 1880 (26th February), and Messrs. Gauthier, Bourque and Schiller were named liquidators; 2nd, that these gentlemen accepted the charge, and being properly authorized by the shareholders so to do, advertised for tenders at so much in the dollar; 3rd, that Moisan made a tender in his own name of 88¼ cents in the dollar, which was accepted by the shareholders by their resolution of the 7th September; 4th, that by deed of the 21st of September the liquidators sold to Moisan all the assets at 88¼ cents; 5th, that at all these dates the plaintiff was proprietor of several shares duly entered in the Society's books in the name of Jos. Limoges in trust, and Limoges on the 6th of August made a declaration that he only held them for the plaintiff, whose property they were; 6th, that the deed of the 21st September by Gauthier, Bourque and Schiller, as liquidators, to Moisan is simulated, fraudulent and null; 7th, that Moisan was a mere *prête-nom* for the real purchasers, Gauthier and Bourque, who were associated with him each for a third; 8th, that Gauthier and Bourque, being liquidators, could not by law, either by themselves or through others, acquire these assets; 9th, that the assets were sold for 88¼ cents in the dollar, making $21,000, while they were worth $50,000, which the purchasers have realized by them; 10th, that the defendants and Moisan fraudulently conspired to prevent tenders, by depreciating the value of the property and obstructing free examination of the books, &c; 11th, to the great damage of the plaintiff, who saw his shares depreciated more than one-half by the defendant's fault, and who has an interest in setting aside the deed of sale.

The three defendants, Moisan, Gauthier and Bourque, have pleaded—1st. That the plaintiff was not proprietor of shares as alleged, and no shares were standing in the books in the name of Limoges in trust. 2nd. That Limoges (in April, 1880) acquired two shares from Allard and two from Rouk, which were all the shares he ever had, and were in his own (Limoges') name. 3rd. These four shares were acquired by Limoges after the liquidation, (which was in Feb., 1880.) 4th. That tenders were asked for, and three were put in; (1) by the Montreal Loan and Mortgage Company; (2) by the Société de Construction Jacques Cartier; (3) by Moisan, whose tender was accepted by the shareholders on the 7th of September. 5th. All fraud and concert are denied, and it is averred that the liquidators furnished all the information in their power; that full value was got for the assets; Moisan has paid the $21,000 in full, and it has been distributed to the shareholders. 6th. That after paying over proceeds to all the shareholders, a general meeting was held on the 14th of February, 1881, and the liquidators rendered an account, which was accepted, and the plaintiff had notice, and took part in all the meetings.

By a second plea the defendants contend that the sale was not by the liquidators but by the society or shareholders, and the plaintiff, if he

has a case, should ask to set aside the contract between the shareholders and Moisan (7th September,) and not the deed between the liquidators and Moisan (21st September).

Then, by a third plea it is contended that there is no right of action without offering back the $21,000 paid.

The case was very ably and carefully presented on both sides. There are only three or four questions, but they are all clean cut, and though not easy of solution under all the complication of facts to which the law is to be applied, they are all nice points, arising more or less under the law, which finds expression in the Code, article 1484. The article is this: "The following persons cannot become buyers, either by themselves, or by parties interposed, that is to say: 1st. Tutors or curators, of the property of those over whom they are appointed, except in sales by judicial authority. 2nd. Agents, of the property which they are charged with the sale of. 3rd. Administrators or trustees, of the property in their charge, whether of public bodies or private persons. 4th. Public officers, of national property, the sale of which is made through their ministry." The article further declares that the incapacity cannot be set up by the buyer, and exists only in favor of the owner and others having an interest in the thing sold.

The interest alleged by Belanger is that at all the dates mentioned in the declaration he was proprietor of four shares standing in the society's books in the name of Jos. Limoges in trust, and that Limoges in August declared he only held these shares for Belanger, the plaintiff, whose property they were. The evidence shows that Limoges never had more than four shares. He got two from Allard on the 10th April, and two from Rouk on the 21st April—in both instances, therefore, after the affairs of the society were in liquidation. They all stood in his own name and not, as he asserts, in trust for another. Two of these shares he subsequently transferred to Alexis Brunet. Then, on the 6th August, 1881, nearly six months after the complete dissolution of this society and the surrender of the charter, Limoges made a declaration that he held these shares for Belanger. There is nothing about it in the transfer book; it was probably closed, for at that time there were no longer any shares to transfer; they had been refunded, as far as the price of the assets went, by the payment of a final dividend, and there was no longer any capital divided or held in shares, nor any company in which to hold them. The account of the liquidators had been rendered and accepted, and Belanger himself was perfectly aware of it. The operation of sec. 26 of the 42 & 43 Vic. c. 32, as completely putting an end to the existence of this society under these circumstances is, I think, quite conclusive. Then, if Limoges had had any interest it must have been a most infinitesimal one, for he had already got 96 cents, and if by any possibility he could have got four cents more by any management, however skilful, that would only have come to $4 on his two shares of $50 each.

But taking Limoges' pecuniary interest as an appreciable one, and sufficient for such a case as this where the judgment asked for would subvert the whole work of liquidation, derange considerable and settled interests, and give great trouble and annoyance to a number of respectable people who have received their money, and are apparently quite satisfied;—supposing, I say, Limoges ever to have had an interest to the possible extent of $4, where is the interest of Belanger, the present plaintiff? No transfer in the books; no legal transfer in my opinion, in any other way; and even if there was a transfer, or even a form of transfer, or an attempt at one by this declaration without notice to any one—still there was nothing transferable left; no surviving shares after the death of the company; everything gone and accounted for; all the assets turned into cash which had been paid over, and liquidators finally discharged. But there must be something more than mere interest, mere pecuniary interest: there must be a clear right of action; there must be the injury, the *eventus damni;* not only a pecuniary stake, if I may so speak, but a substantial injury done by the act which the Court is asked to stigmatize as fraudulent, or prohibited, before any one can come here and say; these liquidators have done so and so: it was fraudulent, it was prohibited. They may have done all the fraudulent and prohibited things in the world, without being accountable here to any but those who have suffered by them. Now I will not go into the facts at any length as regards the alleged keeping off other bidders and all that. I will only say that the very decided effect on

my mind of the evidence is to show that all was fair and above board, and done with the perfect knowledge of the plaintiff himself. There is not a shadow of reason for imagining that any higher tender than Moisan's would have been made. The others were lower, not because of any deceit on the part of the liquidators that I can perceive. They were lower because nobody could see his way to giving anything more than Moisan gave; and the reason he gave so much was undoubtedly because the liquidators had heavy interests to protect — being owners of five-sixths of the stock. But if he had not tendered, and if his tender had not been accepted, it is obvious that the shareholders and creditors must have got less, however the unsuccessful bidders may be disappointed at not making the profit they expected by getting the assets at a lower figure.

On no apparent ground, then, has the plaintiff here any interest, or any right to bring this action. He never owned a single share, and he never could have suffered the slightest injury to his interests, if he had. The question of the proper and precise effect of the prohibitions of the law as regards persons not charged to sell, but buying, under the circumstances that these liquidators did, is no doubt a very interesting question. Whether it reaches those who have no control over the terms of sale, and who acted as the officers merely of the proprietary, who themselves settled the terms of sale, all that, I say, is very important, no doubt; but it will be time enough to discuss it when some one shall present himself having an interest and a right to bring these questions before the Court.

Action dismissed.

Longpré & Dugas for plaintiff.
Pagnuelo & St. Jean for defendants.

COURT OF REVIEW.

MONTREAL, May 31, 1882.

MACKAY, JETTÉ, BUCHANAN, JJ.

MONTAGUE v. THE GAZETTE PRINTING CO.

Libel—Jury trial—New trial for misdirection.

MACKAY, J. The plaintiff sues for $5,000 damages, for an alleged libel, printed in the *Gazette* on the 26th July, 1881. The article is set out in the declaration. It is headed "The Rinfret Swindling Case," and stated that an arrest had been, the day before, of a man surmised to be an accomplice of Rinfret in his nefarious schemes, the name of the accused being John Montague (meaning the plaintiff.) Montague, the article said, "was arrested at the suit of Mr. John Watkins, &c. He is charged with having given bogus orders, and obtained from Mr. Watkins a commission thereon, to which, of course, he was not entitled. The accused, it appears, has been engaged in several occupations, amongst them being that of canvasser for the Sovereign Life Assurance Company, from which position he was suspended on Wednesday last on account of suspicions entertained by the officials. He was also, it is said, formerly employed by Messrs. Rothschild & Brothers, of New York. After a short service he was discharged on account of alleged irregularities much similar to that of which he is now charged. The extent of his operations with Watkins as yet known are small, but it is probable that further developments may increase them to a considerable extent. After being locked up for some time, bail was offered and accepted in his behalf."

The declaration alleged that plaintiff was discharged by the magistrate on the day fixed for the preliminary examination, the charge being unfounded. That the Rinfret swindling case was the case of a man who had been arrested on charges of forgery and of extensive swindling transactions, and looked upon as a forger and swindler, of all which he pleaded guilty, but with which plaintiff was not connected, nor did he know Rinfret, and defendant's article was headed so as to lead people to believe that plaintiff was an accomplice and confederate of Rinfret.

The defendants plead, first, the general issue, and a special plea alleging that the publication was made without malice and solely in the public interest; that the defendants obtained the matter referred to from the public court records and from other sources deemed trustworthy; that on being threatened by plaintiff with this suit the defendants immediately published an apology, begging him to consider the offending article as never having been written; that, notwithstanding the apology, the plaintiff on the next day instituted the present suit. The defendants did think that, perhaps, they had caused plaintiff an injury which they were

anxious to repair, "but defendants say that the allegations of the article are true," and they go into special allegations of the truth of each charge, and charge that the plaintiff had been guilty of obtaining money by false pretences in New York from Rothschild & Co, and plaintiff had been engaged in criminal practices obtaining money under false pretences; that the public is interested that such dishonest practices should be disclosed in order that the public and employers should be protected against plaintiff; that plaintiff has suffered no damage.

There is a special answer by the plaintiff, by which plaintiff alleged that the matter set out in the article complained of did not appear in any public Court record; that the only accusation ever made against plaintiff was by Watkins, wherein he accused plaintiff of having embezzled $1.20, which complaint Watkins declined to prosecute, and withdrew, and the complaint did not contain any other of the matters referred to in the article complained of; and the complaint never was but an *ex parte* statement · that the apology referred to was really no apology, couched as it was, and plaintiff could not receive it as an apology; besides the defendants by their plea retract it, but renew in a more aggravated form all the false and malicious statements of the article complained of; that all the accusations in the said plea contained are false, and constitute no defence, but are an aggravation of the injury done to plaintiff; that moreover the charges are vague, and do not formulate any specific instances of wrong-doing on plaintiff's part, which would give him an opportunity of refuting the same, and defendants' publication was not in the public interest, but unjustifiable, &c.

The parties consented to a trial by jury and a general verdict, and upon the trial the jury unanimously found for the defendants.

Now, we have motions, one by plaintiff for a new trial; the other by defendant for judgment on verdict. The motion for a new trial is founded upon the fact of illegal evidence having been admitted, legal evidence having been excluded, misdirection of judge upon points of law. This is stated in three different ways in the motion, and at great length. And because the charge as a whole constitutes a misdirection by the judge upon points of law; because the plaintiff was taken by surprise by evidence led by defendants to establish particular charges against plaintiff not set forth in the pleas.

As regards misdirection by the judge at a jury trial, our code makes it cause for a new trial, and, by a particular article, orders that this question of misdirection shall not be judged but upon the notes of the judge filed of record, and when the party objecting has caused his objections to be entered therein. This is equivalent to bill of exceptions that used to be, and the judge is to certify as to what and how he charged.

The objections made by plaintiff and noted by the Judge as having been made against his charge in this case are two. Upon the first, and the Judge's ruling complained of by it, we are unanimously of opinion that there has been no misdirection, and we need not dwell upon this part of the case.

Upon the second, the learned judge reports that he said: "The law of this country is not different from that of England in a great many respects. As regards the public rights and liberties of the subjects of the English Crown, they would always be h ld by me to be the same, in respect of the right to discuss public events, here as in other parts of the Empire. If the jury had sufficient proof that the defendant published the statement complained of about this man, all the particulars of which were public, and known and elicited in a Police Court, and that they did so fairly, and with the sole desire to inform the public of the truth, without any injurious intent, then they ought to find for the defendant."

Were all the particulars set forth in the article complained of public? Had they been elicited in a Police Court? If we could answer in the affirmative we would be against the defendants' second objection; but we are forced, considering the article's caption, "The Rinfret Swindle," and its long comments, or narrative, about plaintiff's former employments and engagements, to answer in the negative to the questions proposed.

Under these circumstances we find that there has been misdirection, and therefore we grant the plaintiff's motion to set aside the verdict and for a new trial, and the motion of defendant for judgment upon the verdict is rejected.

New trial granted.

Doherty & Doherty for plaintiff.

Macmaster, Hutchinson & Knapp for defendants.

COURT OF REVIEW.

MONTREAL, May 31, 1882.

JOHNSON, TORRANCE & RAINVILLE, JJ.

[From S. C., Beauharnois.

BOURDON v. PICARD et al.

Procedure—C. C. P. 118—Furnishing correct copy of writ to defendant.

JOHNSON, J. There are several defendants in this case, and among them two who appeared and pleaded *exceptions à la forme* grounded on the allegation that true copies of the writ of summons had not been served upon them as required by law. The writ was signed in due course by Mr. Baudry, the Prothonotary, and the copies served upon these two excipient defendants were certified by the plaintiff's attorney; but he certified that the writ had been signed not by the Prothonotary, but by Mr. Brossoit, the plaintiff's attorney, that is to say, the copies served said on the face of them "signed, T. Brossoit, plaintiff's attorney," instead of "signed, J. U. Baudry, Prothonotary;" and then came the signature of the plaintiff's attorney, saying that was a true copy, whereas, and of course, it was not true that the original writ had been signed by the plaintiff's attorney, for it had, as a matter of course, been signed by the prothonotary; and Her Majesty's writ could not have issued from her Court signed by anyone else. So the extent to which these two defendants could possibly be misled or misinformed did not reach to the body or to the exigency of the writ itself, but only to the fact as to who was the person who had signed the original writ. Whether such an evident and insignificant mistake as this could, under any circumstances, be successfully set up by exception to the form, the Court will not now discuss. However this may be, the plaintiff came forward and in one case made two motions: 1st. to be allowed to serve a correct copy, and secondly, to correct and amend the error in the copy served. In the second case he moved only to correct the copy in which the error as to the name had been made. The judgment of the Court in the cases of both these defendants maintained the *exceptions*, and denied the plaintiff's motions; and the plaintiff inscribes as well against the judgments which had the effect of dismissing her action, as against the interlocutory judgments on the motions. The judgment which maintained the exceptions and dismissed the action, was of course a final judgment, and brings before us the incident of the motions to amend and to serve correct copies.

We are unanimously of opinion to reverse these final judgments, and also the interlocutories, and to grant the motions of the plaintiff. We consider Art. 118 of the Code of Procedure decisive of the whole matter: "If the copy of the writ or declaration is incorrect, or different from the original, the plaintiff may, upon leave of the Court, and on payment of costs, furnish the defendant with a correct copy." This is precisely what the plaintiff did here, and his motions ought, in our opinion, to have been allowed. There is a case mentioned in the 3rd vol. Rev. de Leg., *Montmigny* v. *Tappin*, decided in the K. B., A.D. 1820, in which it was held that if the defendant appears, the non-service of the copy of the declaration will only authorize the defendant to move for a copy, and the right to plead should date from the service of such copy. I can find no full report of that case; but it is cited in the note to Art. 118 in Mr. Foran's Code de Procedure, and also in Stephens' digest; and the reason of that decision would seem to apply here. We were appealed to by the learned counsel for these two defendants to preserve intact a strict and unreasoning adherence to forms which he assured us prevailed in his district. We are not aware that the practice in that district is in this respect different from any other of the districts included for purposes of review in the District of Montreal. We take this case as if it had occurred in Montreal, and we apply to it the principles laid down by Pigeau, Proc. Civ. du Chatelet, vol. 1, p. 161. We have to consider the abuses known to have arisen from delays thus obtained, and which may in some instances even cause the acquisition of prescription. We adopt Pigeau's language, and we say that it is the "*impossibilité de répondre qui est le seul motif que les ordonnances supposent à celui qui argumente d'une nullité.*" We find also under the Louisiana Code, that in amendments which are merely formal, the defendant is not allowed further time to answer.

Judgment reversed, and plaintiff's motions granted; costs in both Courts against defendants.

T. Brossoit for the plaintiff.

L. A. Seers for the defendant.

TRADE MARKS.

Mr. Desnoyers, in the Police Court, Montreal, June 1st, delivered the following judgment in the case of S. Davis vs. R. Heyneman, for alleged infringement of trade mark:

THE QUEEN v. ROBERT HEYNEMAN.—The information alleges that the informant, Samuel Davis, of Montreal, cigar manufacturer, on the 20th August, 1877, did cause to be registered in the trade mark registry office in Ottawa a certain trade mark which he was then using, and long before that had been using, consisting of the words "I like," and that such registration had been made under the provisions of the Trade Mark and Design Act of 1868. That, on or about the 31st December last, 1881, the defendant fraudulently, against the will of the informant, did mark certain cigars and cigar boxes with an essential part of the said trade mark, to wit, with the words "U like," with intent to deceive, and to induce persons to believe that the cigars and cigar boxes so marked "U like" were manufactured by the said informant, and did offer for sale and effectually did sell certain quantities of cigars so marked "U like."

The defendant alleges that the statute of 1868 concerning trade marks has been repealed by the statute of 1879, chap. 22, which enacts in section 4 that, "From and after the 1st of July, 1879, no person shall be entitled to institute any proceeding to prevent the infringement of any trade mark until and unless such trade mark is registered in pursuance of this Act." The prosecutor not having registered in pursuance of the Act of 1879, the defendant claims that he is debarred from taking the present proceeding But section 38 of the Act of 1879, which repeals formally the statute of 1868, has a provision to the effect that all registrations made under such Act shall be and remain good and valid, and all liabilities, penalties and forfeitures incurred *or to be incurred* under the same, may be sued for as if the said Act had not been repealed. It is contended by the defendant that said proviso in section 38 does not limit nor restrain the broad dispositions of section four recited, but is simply applicable to liabilities, penalties or forfeitures incurred or to be incurred between the date when the act was passed (15th May, 1879) and the said date 1st July, 1879. And in support of this pretension the defendant quotes a judgment of Mr. Justice Johnson rendered on the 28th February last in a case of *Morse* v. *Martin*.* Although there is some analogy between the present case and the one just referred to, I do not find that the ruling of Mr. Justice Johnson can apply to the present case. I am of opinion that the statute of 1868 is still operative *quoad* the complainant's trade mark, and if I had any doubt as to the question of law, I hold that it would be my duty, as examining magistrate, to refer the case to a higher court to be adjudicated upon. The evidence before me bears out the facts alleged by complainant. But, says the defendant, there is not a word to show an intent on his part to deceive or defraud; and quite a number of authorities are cited to establish that the intent must be proved as well as the material facts. The facts proved are as follows:—The complainant, who is one of the largest cigar manufacturers in the Dominion, and whose reputation is that of a first class cigar manufacturer, has for many years adopted as his trade mark for a certain brand of cigars manufactured by him in Montreal the words "I like." He has registered this as his trade mark, and has succeeded in making a good reputation for his cigars, "I like," which have become popular and in demand. The defendant, who is also a cigar manufacturer in Montreal, has adopted for his cigars the mark or trade mark "U like." There is certainly a great similarity and very little difference in sound and in appearance between these two marks. What was the defendant's intention in adopting for his cigars the mark "U like?" It seems to me that the only answer under the circumstances is: to try and pass them off as the popular cigars known by the name of "I like," the word "like" being the most conspicuous of the two, and the chances being that the generality of smokers, unless their attention was particularly called to it, would overlook the word "U," and would have their attention attracted by the word "like." However, I do not think that this is a question for the magistrate to decide, but rather one for the jury. The defendant also contends that the prosecutor is not himself using a valid trade mark, and consequently his, the prosecutor's pretended trade mark, cannot be infringed. He says that a trade mark cannot consist of mere words. He quotes several authorities in support of his pretension, which are applicable under the English Statute of 1875, but our Statute does not preclude a trader from adopting a mere name or a mere sentence as his trade mark. As to the similarity between "I like" and "U like," I believe it is sufficient to induce the public in error and to take one for the other, unless particular attention and care be taken. One of the witnesses states that another mark, consisting of the words "We like," was seen by him on cigars in Chicago some ten years ago, and the defendant claims that consequently the prosecutor himself infringes the trade mark of another. The evidence on this point is not sufficient to justify me in dismissing the complaint.

* 5 L. N. 99.