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THE JUDGE OF THE OTTAWA DISTRICT.

We had barely time in our last impression to allude to certain charges of a grave character urged against Mr. Justice Lafontaine in the House of Assembly by Mr. Wright, the member for Ottawa County. Since that time we have received what appears to be a revised version of Mr. Wright's speech printed in the Ottawa *Citizen* of August 1st, and also a copy of the petition, published in the same paper of August 10th. We confess that the charges contained in these papers are so serious that it is with some hesitation we reproduce them, unaccompanied by a word of explanation from the judge attacked. This hesitation, however, is diminished by observing that the petition bears date more than two years back, and does not appear to have called forth any reply from the judge during all that time.

The matter came before the House on the 25th of July, when Mr. Wright moved: "That the entry in the Journals of this House, on Friday, the 17th March, 1865, relative to the petition of Mr. Aylen and others, of the District of Ottawa, praying for an investigation into the conduct and acts of the hon. Aimé Lafontaine, Judge of the Superior Court in and for the said District, be now read."

Mr. Wright said: "When it becomes necessary to arraign before the High Court of Parliament one who from the very nature of his office, should be above suspicion, I cannot but ask, in the performance of a most painful duty, for the indulgence of this House. It is within the knowledge of the House that a number of petitions have been presented to it, praying for an investigation of the official conduct of Mr. Justice Lafontaine, and preferring charges of the most serious character against him. These petitions have been signed by a large majority of the gentlemen practising at the Bar of the District, who stake their personal and professional reputations on being able to prove the truth of their allegations. They have been signed by a number of respectable and influential gentlemen residing in the County which I have the honor to represent, and, as they state, with a full knowledge of the facts. The charges contained in these petitions are clear, precise, and unequivocal, and it is due, both to Mr. Justice Lafontaine and to the petitioners, that these charges should receive the most careful examination. If they can be substantiated, then is Mr. Justice Lafontaine unworthy to sit any longer on the Judicial Bench. If, on the contrary, they can be proved to be false and calumnious, then on the heads of the petitioners must lie the infamy.

"It is alleged that Mr. Justice Lafontaine, before his elevation to the bench, and while acting in the capacity of Agent for the sale of Crown Lands, embezzled large sums of the public money, and that in consequence many persons have incurred serious losses, and all confidence in his integrity, and in his administration of justice has been destroyed. It may be said that this House cannot take cognizance of offences committed before his elevation to the bench. But it should be remembered, that if the statements of the petitioners can be substantiated, the evil which he did as Crown Lands Agent lives after him as Judge, not only in the serious losses incurred by individuals, but in destroying public confidence in the administration of justice, in trailing the honor of the Judiciary in the dust, and in teaching men to despise and hate those things which they should most reverence and honor. It may be necessary to explain this more fully to the House. Mr. Justice Lafontaine officiated for many years as Agent for the sale of Crown Lands, before his elevation to his present distinguished position as Judge of the Superior Court of Lower Canada. He had almost perfect and entire control of the sale of Crown Lands in Hull, Eardley, Wakefield and many other Townships. Practically his theory as to the best mode of managing the Crown Lands, was, that when sales were made the Agent should pocket the amount. I hold in my hand a statement signed by A. Russell, Esq., of the Crown Lands Department, which proves this to be the case. In almost any other country, a different result would have followed from the practical working out

of a theory which, however much it may benefit the individual, is supposed to be opposed to the interest of the great masses of society. In England the other day, when the highest legal functionary in the realm was supposed in some slight degree to have sullied the brightness of his escutcheon—he was forced by the pressure of public opinion to resign. Well, this agent for the sale of Crown Lands was active to a certain extent in his vocation, for he disposed of large portions of the Crown Domain, but as he forgot to return the monies, and neglected in many cases to make returns of any kind, it so fell out—it is alleged—that his successor disposed of some of these lots to other parties, so that the original purchasers were defrauded not only of their money but of the land. These men are possessed by a not unreasonable curiosity to understand how it came about that they were thus defrauded. They know the man who has despoiled them, but they do not see him in what they conceive to be his proper position. They do not see him clad with the variegated garb of the out-laws of society, but clothed in the judicial ermine. He smiles upon them blandly from the bench. These men are placed in a singularly cruel position. They cannot appeal to the courts of law, for the man whom they would arraign sits in the judgment seat, and therefore it is that, having no other recourse, they appeal to the justice of this House.

"Apart from the sins of omission and commission with which Judge Lafontaine has been charged with being guilty, there is the fact, which is notorious, of his utter incompetency. So patent are his deficiencies, that Judge Lafontaine and his decisions have become a mockery and a byword throughout the whole length and breadth of the district of Ottawa. That district is somewhat peculiarly situated. Owing to its configuration and to its peculiar resources and trade, there is induced within its borders a class of active, adventurous, enterprizing, but at all times reckless men, who sometimes require to be restrained by the strong arm of the law. Under these circumstances a judge should take the lead in making the laws understood and respected. He should be a man of energy and firmness of character; one whose decisions would be received with respect, and whose personal character would inspire confidence. Such a judge, in such a district, would be of incalculable benefit to the country. Unfortunately, we have a man who is the very reverse of this ideal. Timid in his instincts, indolent in his habits, knowing that he is an object of contempt and derision, and conscious that he is deserving of the last measure of contempt, he plods doggedly on, biding his time, and awaiting that avenging Nemesis which sooner or later is sure to overtake him. His decisions are a mixture of the grotesque and the horrible. I was present at one trial for murder, presided over by Mr. Justice Lafontaine, and I trust that I may never again witness such a scene. The prisoner was a miserable cripple—one, unfortunately, whose antecedents did not weigh in his favor when the balance for life and death came to be struck. The offence had been committed only a few days before the trial, and the popular mind was consequently strongly excited against the unhappy man. Repulsive in appearance—ignorant almost to idiotcy—he was one to whom, from his very helplessness, the utmost impartiality should have been manifested. Against him was arrayed one of the most brilliant orators and accomplished lawyers in the country. The counsel for the defence, although they did all in their power, and I am satisfied did all that men could do to save the life of the unhappy man, yet labored under singular disadvantages. The Court House was filled by an excited crowd strongly prejudiced against the prisoner. It was evident to every intelligent observer that the man was surely doomed—that one man only stood between the unhappy prisoner and eternity, and that man was the presiding judge. A clear analysis of the evidence—a calm exposition of the facts of the case—a charge such as we have a right to expect from a British judge in a British colony, might have saved the life of the unhappy man. I never shall forget the thrill of horror and disgust which ran through my heart when that charge was actually delivered. The last plank was struck away; the man was as surely doomed as though the last office of the law had been performed. It must be

evident that it is time a change should take place, that if the allegations contained in the petitions are correct, this man is neither morally nor intellectually qualified to perform the duties of an office which requires such a union of rare qualities to enable its occupant to discharge those duties properly; that the interests and personal safety of 60,000 of Her Majesty's lieges are of too much importance to be entrusted to one so evidently unworthy of the trust; that the interests of humanity and of all classes of society demand that the charges contained in this petition should receive the most thorough investigation; and, if they can be sustained, that this man should be deprived of his office."

The petition to which Mr. WRIGHT alluded bears date, District of Ottawa, 14th June, 1864, and sets out that "the conduct of the Hon. A. Lafontaine, in connection with the Crown Lands, and the administration of justice in the District of Ottawa, has been characterized for years by such gross neglect of his duties, by such dishonesty and corrupt practices, as have destroyed all confidence in his integrity and efficiency as a Judge, and seriously impaired the public confidence in the Courts over which it is his duty to preside." The petitioners had long abstained from denouncing his conduct in this respect, "in the hope that those whose peculiar duty it is to watch over the administration of justice would take cognizance thereof," and it was only "by the last excess of disorder, and when the administration of justice has in many cases been entirely stopped by the conduct of the said Aimé Lafontaine, and by the loss and absence of the records and registers of the Courts of Justice through his neglect," that the petitioners had been moved to pray the House to do justice in the premises.

The petition proceeds as follows:—

"In this behalf your Petitioners would premise that the Hon. A. Lafontaine, before he was raised to a seat in the Superior Court, held the following offices in the District of Ottawa:—1st. Land Agent for the sale of lots in several of the largest Townships in the district. 2nd. Prothonotary of the Superior Court. 3rd. Clerk of the three Circuit Courts at Aylmer, Lochaber and Portage du Fort. 4th. Clerk of the Crown, and 5th. Clerk of the Peace.

"As Agent for the sale of Crown Lands, the Hon. A. Lafontaine received for many years from purchasers of Crown Lands large sums of money, which he never returned to the Government, but which he embezzled and appropriated to his own use, concealing throughout the receipt of such monies by false and fraudulent returns.

"Your Petitioners would further represent that the monies appropriated as aforesaid by the said Hon. A. Lafontaine amount to a very large sum of money; and his defalcations were for the most part discovered after his elevation to the Bench, as follows: His successor in office offered for sale all the lots that had not been returned as sold by the Hon. A. Lafontaine in his agency up to the time he was appointed judge; and thereupon the parties who had purchased from the said Aimé Lafontaine produced receipts, signed by him, to the said Crown Land Agent.

"Your Petitioners would further represent that the proof of the foregoing allegations is to be found in the Crown Land Department in the receipts, returns, letters and representations of the said Hon. A. Lafontaine, as well as in the testimony of many of the undersigned who have suffered by his said appropriations; and that without having access to the said documents in the Crown Land Department, or a return thereof, it would be impossible to state the date and the amount of each sum paid and embezzled as aforesaid, or the fraudulent means adopted by him to conceal the payment thereof. *It is, however, understood that as each successive act of embezzlement is discovered, the amount is deducted from the salary* of the said Hon. Aimé Lafontaine as Judge of the Superior Court.

"As prothonotary of the Superior Court, the said Aimé Lafontaine so grossly neglected his duties that for several years after he became judge, no register of the orders and judgments of the said court for the time he held that office was to be found in the possession of his successor; and your petitioners aver, that the register which he produced so late as the 18th of November, 1863, was made up by the said Aimé Lafontaine at his private

residence after he became judge, for the purpose of concealing his neglect and mismanagement when prothonotary, and was so made false and incorrect, in order the better to attain that object, and to avoid the legal responsibility attaching to him in favor of parties aggrieved by his neglect of duty as prothonotary.

"As Clerk of the Circuit Court, the said hon. Aimé Lafontaine so neglected his duties that, up to this day, of several hundred judgments rendered therein during the time he was Clerk thereof, there is not and there never has been any register whatever in the hands of his successor. Whether or not the said Aimé Lafontaine has any such registers, your petitioners cannot affirm. If he has them he is guilty of a criminal and illegal act in keeping them. If he has them not, then he never kept any, and, as a consequence, the interest of parties to the judgments of the said court has been most culpably sacrificed by his neglect. But if he keeps them at his domicile for the purpose of making entries in them without the knowledge or consent of their legal custodian, to conceal his neglect and misconduct and thereby to escape legal responsibility towards those who are interested in the said judgments, then is he guilty of a crime of the highest nature. In any case, parties, who years ago were suitors and obtained judgments in that court, cannot execute them for the reason that executions might be, as they have already been, opposed upon the ground that there are no judgments in the court against them upon which executions could legally issue.

"There are no registers whatever in the office of the present Clerk of the Crown of the judgments, orders, or proceedings of the Court of Queen's Bench for the time the said Hon. A. Lafontaine was Clerk thereof.

"No register whatever exists of the orders, judgments and proceedings of the late Court of General Sessions of the Peace, in the District of Ottawa, for the time the said Hon. A. Lafontaine was Clerk of the Peace. And it is impossible, up to this day, to obtain from the proper officer a copy or certificate of any proceeding of a Criminal Court in the District of Ottawa during the time the said Aimé Lafontaine was Clerk of the Crown and Clerk of the Peace,—and this solely through the neglect of the said Aimé Lafontaine to keep registers of the proceedings thereof.

"Your petitioners beg further to represent that the said Aimé Lafontaine has made use of his judicial position in the District of Ottawa to conceal his neglect as Prothonotary, and thereby avoid legal responsibility to those by whom injury has been sustained through his misconduct. As Judge he has no right to hold possession of the registers of the Superior Court, which should be in the possession of their legal custodian, much less has he a right to make entries therein. To do so, for the purpose of escaping responsibility, or to conceal his own neglect, would no doubt be a forgery of the very gravest character. However, your petitioners aver that up to the 18th of November, 1863, the said Aimé Lafontaine kept and retained at his private house the registers of that Court for the time he was Prothonotary; and neither the Prothonotary nor any one interested could have access to them. At last, parties thinking there were no judgments against them, as there were none recorded in Court, began to oppose executions by oppositions, setting forth the fact. Thereupon the said Aimé Lafontaine, as Judge, took from the Prothonotary's Office nearly all the records of the Superior Court, and afterwards as your petitioners have reason to believe, recorded in the register judgments which had no existence there when the executions were taken out, to the prejudice of the said opposants."

The petition proceeds to detail various instances, in which the want of a register gave rise to oppositions, when parties holding judgments attempted to execute them. Here, however, the judge would appear to have acted honestly, for it is stated that he kept these cases *en délibéré* till he had completed the register, and then dismissed the oppositions, and very properly too, for it would seem that they had been filed in the hope that the register of judgments could not be produced—a proceeding very much like that of a tradesman who sues a person for a debt that has been paid, relying on the knowledge that his receipts have been destroyed. In November,

1863, the register was produced by the judge, the only judgment omitted (for which a blank page was left) being a judgment in a case where the record was at the time in the hands of an advocate. The petitioners hence infer that these judgments were only entered up during the twelve months preceding the production of the register, during which time Mr. Lafontaine was acting as judge.

The petition further states that "his neglect of duty, his inefficiency and incapacity have become only more conspicuous since he has been raised to the bench. It might have been expected that, considering the past, he would have laboured to efface its impression by assiduously discharging his duties—that he would, if not intelligently, at least promptly, perform the small amount of business entrusted to him. It is, however, certain that, with less to do than any other judge of the Superior Court, there is hardly a case which he has to determine in which some party does not suffer from his delay in rendering his judgments. (Some instances are here given). In short, such delays have become so provoking and injurious to suitors that the courts of justice over which he presides have become almost totally discredited as means of enforcing legal obligations. The business of the civil courts is almost entirely of a mercantile nature, and by a judge of the most ordinary legal knowledge, the judicial decisions therein could be rendered almost immediately after the hearing of the cases, as has been done when other judges have presided over the same courts. What proves moreover that these delays are merely the result of neglect and gross contempt for the public interest, is the fact that, even after they are incurred, he never or seldom gives the reasons or motives of his judgments. Without appointing a time for their delivery, he generally goes into Court when no one but the Clerk, and perchance one or two individuals are present, and then hands in his judgments, one motive usually answering for those in favor of plaintiffs, and one in like manner for those in favor of defendants.

"Your petitioners would further represent that the Hon. Aimé Lafontaine has important duties, such as the granting of writs of Habeas Corpus, the taking of bail, security, and other matters of like nature, to perform out of term at his chambers, where he seldom, sometimes not for days, attends; and when he does attend it is only for a few minutes in the morning. Parties who come to Aylmer during business hours after eleven o'clock, if they have business of this nature to transact, must send for him at their expense to his residence at a distance of nearly two miles, to notify him that there is something for him to do. In short he so manages to procrastinate everything by his delays and his absence, that it is almost impossible to transact business in which he has any function to perform.

"As a judge in criminal matters the said Hon. A. Lafontaine is still more inefficient and incapable than in any other position. He is so destitute of any knowledge of criminal law that, when even a most elementary question arises in the course of a trial, he has to go for his books and study it on the bench. In English he is incapable of explaining the most simple case to a jury, so as to be understood. In fact, he does not attempt it. In the case of Laderoute lately convicted and hanged for murder, a case which was complicated by numerous and grave questions of law and fact, his charge to the jury in English and French did not last three minutes. So it is in every case; and it is only repeating what is notorious in the district of Ottawa, that the administration of criminal law therein since he has been a judge has failed in most cases through his inefficiency and incapacity."

Mr. CARTIER objected to Mr. WRIGHT'S motion being made without notice. He was, moreover, of opinion that the member for Ottawa had not made out a case, the offences specified being committed before Mr. LAFONTAINE'S elevation to the bench, with which the House had nothing to do. If (added Mr. CARTIER) he was guilty of offences whilst Crown Lands Agent, it was the duty of the Crown Lands Department to enquire into the matter. Mr. CAUCHON then embraced the opportunity to extend the charge of incapacity to the bench in general. He said, that when so grave an accusation was made against a judge, if the judge did not think proper to ask for an investigation, it was the duty of the House, in the interest of public morality, to

go into it. There was no one practising law in Lower Canada who would not agree with him in saying, *that a large majority of the judges were incapable* in one way or another. The Lower Canada bench *was in a most lamentable state*, and he hoped, by pressing the matter on the Government, that action would be taken. After some further remarks, the motion was ruled out of order for want of notice.

It is deeply to be regretted that a charge of such magnitude against a judge of the Superior Court should be treated with so much apparent levity. The character of the whole bench suffers by these accusations against one whom his colleagues are in courtesy still bound to style their brother, and who continues to receive the title of *honourable*. We do not know how far Mr. LAFONTAINE's delinquencies may have been magnified by personal animosity, but that there is too much truth in the charges is testified by the following, from the Montreal *Gazette*, Aug. 10: "A return, signed by the Assistant Commissioner of Crown Lands, shows that Judge LAFONTAINE is a *defaulter*, in his late capacity as a Crown Land Agent, to the amount of $6,413 92."

It may be true that the charges against Judge LAFONTAINE, in his judicial capacity, are to some extent vague and general, but that does not alter the intolerable fact, that the administration of justice in an important district is in the hands of a *defaulter*, from whose decisions, in a large class of cases, there can be no appeal.

Contrast with this painful state of things the disinterestedness apparent in the two following paragraphs from the London *Times* of July, sent to us by a correspondent:

"As Chief Baron Kelly has been for a long period of his career associated with Suffolk, some of the leading inhabitants of Ipswich proposed to give his Lordship a public welcome on his entrance into the town next week as one of the Judges of Assize on the Norfolk Circuit. On Thursday, however, a letter was received from the Chief Baron to the effect that, after consulting with his colleague on the circuit (Chief Justice Erle), he considers that it is the duty of Her Majesty's Judges to avoid, where it is possible, even the semblance of a desire to seek or to accept any public mark of popular favour while engaged in the exercise of their judicial functions. At the same time, the Chief Baron desires that his sincere thanks may be conveyed to such of his friends in town and country as had proposed to confer upon him this public mark of respect."

"Mr. Napier has declined to accept the office of Lord Justice of Appeal in Ireland, and for reasons which do him the highest honour. If we are rightly informed, a letter from Mr. Napier will be read in the House of Commons this evening, in which, while expressing his own opinion and that of many friends that his infirmity is not such as to disable him from the discharge of duties which consist almost exclusively in the examination of written documents, he declares that he is unwilling his appointment should afford the slightest ground for a suspicion that justice will not be adequately administered, and accordingly declines the high office which Lord Derby had offered for his acceptance."

It is by such acts of watchfulness, and concientiousness, that the English Bench has secured to itself the respect of the people.

FACILITIES FOR RENDERING JUDGMENTS.

It is well known that for several years the business of the Court of Queen's Bench, sitting in Appeal, has been greatly impeded by the necessity of having a majority concurring in the judgment present at the rendering of it. Re-hearings have frequently been ordered, sometimes in consequence of the death of one of the members of the Court, and at other times owing to a judge having obtained leave of absence. Almost every term, moreover, a number of cases are retained *en délibéré* for three months longer, merely because one of the majority is absent. Last term, for instance, it was intimated that the Court was prepared to dispose of every case before it, but for the unavoidable absence of one of the judges. It was suggested at the time that a measure enabling an absent judge to transmit his decision in writing, such written opinion to have the same effect as though he were present and pronounced it, would be highly desirable. A bill, with this object in view,

was accordingly introduced by Mr. CARTIER, and has received the sanction of the Legislature. The act also provides that a judgment of the Court of Review may be rendered by a single judge. We give the text below.

CAP. XXVI. An Act to facilitate the rendering of judgments in the Court of Queen's Bench and Superior Court for Lower Canada.

[*Assented to* 15*th Aug.* 1866.]

Whereas it is expedient to facilitate the rendering of judgments in the Superior Court and Court of Queen's Bench in Lower Canada, in the cases hereinafter mentioned: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. No change in the personal composition of the Superior Court or of the Court of Queen's Bench, by the appointment of any Chief Justice, Puisné Judge, or Assistant Judge thereof, or the death, resignation or removal to another Court of any Chief Justice, Puisné Judge or Assistant Judge thereof, shall be held to make it necessary that any cause which had theretofore been heard in review, or in error or appeal, should be reheard merely in consequence of such change, provided there be a sufficient number of judges who have heard the cause to give judgment therein.

2. Whenever any cause in the Superior Court, either in the first instance or in review, or any cause in appeal or error in the Court of Queen's Bench, has been heard by any Judge or Assistant Judge either alone or with other Judges, and before the rendering of the judgment founded on such hearing, such Judge or Assistant Judge is removed to another Court, or is appointed Chief Justice, or a Judge of the same or of another Court, or obtains leave of absence, such Judge, or Assistant Judge, may nevertheless sit in judgment in such cause as a Judge of the Court, and either alone or with other judges as the case may be, as if no such event had happened.

3. Whenever any cause in appeal or error has been heard by all the Judges or by a quorum of the said Court of Queen's Bench, and at least three of the Judges who heard the same are present in Court, and ready to proceed to judgment in the cause, then if any Judge who heard the cause, and would have been competent to sit in judgment therein, be prevented by sickness or other cause from being present, but has addressed a letter to the clerk or deputy clerk of the Court, containing his decision in the cause, agreeing in or dissenting from the judgment of the majority of the Court, and signed by him, or has or had, in testimony of his concurrence therein, signed a written decision drawn up to be delivered and delivered by any other Judge or Judges, such Judge shall be reckoned as if present for the purpose of rendering judgment in the cause, and the decision so transmitted or signed byhim shall be of the same effect as if delivered or concurred in by him in Court; and such decision may be so transmitted or signed by a Judge who has been removed to another Court, and who would be competent to sit and give the decision in person, under section two.

4. Whenever any cause in the Superior or Circuit Court has been heard in review by three Judges of the Superior Court, and at least one of the Judges who heard the same, is present in Court and ready to proceed to judgment in the cause, then if any Judge who heard the cause and would be competent to sit in judgment therein, be prevented by removal to another Court, sickness or other cause from being present, but has addressed a letter to the Prothonotary of the said Court, containing his decision in the cause signed by him, or has or had in testimony of his concurrence therein, signed a written decision drawn up to be delivered and delivered by a Judge so present, such Judge shall be reckoned as present for the purpose of rendering judgment in the cause, and the decision so transmitted or signed by him shall be of the same effect as if delivered or concurred in by him; and such decision may be so transmitted or signed by a Judge who has resigned or been removed to another Court, and who would have been competent to sit and give his decision in person under section two.

5. The foregoing provisions shall apply as well to interlocutory as to final judgments.

6. Nothing in this Act shall prevent the Court from ordering a rehearing in any cause if notwithstanding the provisions herein made, they deem such rehearing requisite.

7. The word "Judge" in this Act includes the Chief Justice, or Assistant Judge of the Court, unless the context requires a different construction.

A PRISONER IN THE HOUSE OF ASSEMBLY.

We are accustomed to hear of honourable members being taken into custody by the Serjeant-at-Arms, but the arrest of a stranger within the precincts of the Legislative buildings is of such rare occurrence, that we may be excused for noticing the facts of the case at some length.

On the evening of the 31st July, during a debate, Mr. HOLTON rose in his place, and stated that a grave assault had been committed within the last four minutes upon the person of a member of the House, Mr. J. B. E. DORION, the member for Drummond and Arthabaska, by Mr. *Elzéar Gérin Lajoie*. After some discussion respecting the proper course to be adopted, it was decided that the statement of the member assaulted should be heard before the Speaker issued his warrant.

Mr. DORION then made the following statement:—"I had occasion to go to the library about three quarters of an hour ago (half past 10, P. M.) I was taking some books from the library when I was called on by Mr. *Elzéar Gérin Lajoie*, editor of *Le Canada*, published in Ottawa, who requested me to take a seat which he had just occupied in a corner of the library. I refused to take the seat he had just occupied, but sat down on a stool which was next to him. He commenced a series of questions about an article which appeared in *Le Défricheur*, of which I am the proprietor. After a few words of explanation with regard to the article which appeared in that paper, he became very much excited, and used very abusive language towards me. I cannot exactly recollect the words. They were very impertinent and insulting. As I did not wish to carry on conversation of that description, I rose up from my seat to leave him alone, whereupon he began an attack upon me, by striking me in the face with his closed hand. I protected myself as well as I could. He struck me several times with his closed hand in the face and on the head, until some of the parties who were in the room, took him away, and prevented him from doing me any further injury."

After this statement, the Attorney General West, and other members, stated that the Speaker had a perfect right to issue his warrant immediately. Mr. CAUCHON, however, maintained that in similar cases previously, the matter had been discussed in the House before making the arrest. On motion of Mr. Attorney General MACDONALD, it was then ordered, that Mr. Speaker do issue his warrant to the Serjeant-at-Arms, authorizing and requiring him to take into his custody, *Elzéar Gérin Lajoie*, for the assault committed by him upon the Honorable Member for Drummond and Arthabaska, and bring him to the bar of this House forthwith.

The Speaker then issued his warrant, and the arrest was made forthwith, whilst the proceedings of the House were continued, Mr. Lajoie being at the time seated in the reporters' gallery. On the following day, the Serjeant-at-Arms reported to the House, that in obedience to the Speaker's warrant, he had taken Mr. Gérin Lajoie into custody. The prisoner was then called in, and the complaint read to him by the Clerk, whereupon Mr. LAJOIE made the following statement:—

"Feeling myself grossly insulted by an article published in *Le Défricheur*, a newspaper edited by the Honorable Member for Drummond and Arthabaska, I was desirous of meeting with him in order that I might ask him for explanations upon the subject. I was yesterday evening in the library engaged in making some researches, when I saw the Honorable Member a few paces distant from me. I arose from the seat of the Assistant Librarian where I was working, and asked the Honorable Member for Drummond and Arthabaska if I might say a few words to him. He came towards the seat which I was occupying, and I offered him that seat; he preferred to seat himself on the stool beside it. I then asked what reason he considered himself to have for

insulting me in his newspaper in so odious a manner. I caused him to observe that his attack was directed against actions in my private life, a course which I had never allowed myself to adopt in respect of him. He told me that there was a misunderstanding; that if I had not attacked him in his private life, and he acknowledged that I had not attacked him in his private life, I had treated him very unjustly in respect of his actions in his public life. I replied to him that if I had attacked his public life, if I had judged them more or less severely, it amounted to a matter of opinion. He quoted to me a fact lately published in *Le Canada* which he pretended was false, and which I would not retract. I pointed out to him that that fact had been affirmed by a newspaper published in the vicinity of the place where he resided, and that I was waiting until the discussion between them was concluded to know what ground I should take. The Honorable Member for Drummond and Arthabaska then told me that he had not seen the assertion which I mentioned to him. The conversation continued for some time, the Honorable Member acknowledging that he had attacked me in my private life and asserting that he did not regret it. I then became somewhat excited and told him that the article published in his paper was the work of a spy. He then appeared rather nervous. I then told him that I did not know whether or not he was the author, but that my words were intended to apply to the person who had written the article. I gave him to understand very plainly, how mean a thing it was to act the spy towards an adversary, or to cause him to be watched with the view of making public his most private acts. I made use of the word "spy" several times. The Honorable Member then said, "As you seem inclined to make use of language of that kind, I will withdraw." I replied immediately, "I repeat that you are a spy, and a deliberate liar." The Honorable Member then turning towards me, struck me in the face with a book which he held in his hand. I returned the blow and gave him several blows with my fists; the Honorable member also struck me several times with his hands, he even tried to kick me. In the meantime several persons came forward and interposed between us. I believe that one of these persons was a member of Parliament. I again took possession of the seat on which I had been working, thereupon the Honorable Member told me to leave the library. I told him that I would not go out as I had a right to remain and would remain there. He then told me he would have me arrested. Thereupon I expressly stated, "at all events, Mr. Dorion, I assert that you struck me first." I did not catch his reply, but I have since been told that after a moment's hesitation he said "No." There were several persons present when I used the words last mentioned. I have nothing more to add on this subject, but with the permission of the House, I would venture to complain of the treatment I received after I was taken into custody. Last night whilst I was at the bar a group of persons collected at a few paces from where I was standing, and a person, one of the group, a Member of the House, turned towards me, and threatened me, brandishing his arms and making use of exclamations unknown to the human species. I deemed myself deeply insulted by this proceeding, and have craved permission to make it known to the House."

Mr. J. B. E. DORION then made the following statement, in reference to the foregoing statement of the prisoner:—

"I wish to add to my declaration of yesterday, or in answer to the statement made by the prisoner, that I never struck him first, that I had no book in my hand at the time, that I never heard him say that I had struck him first, and that if he made such a statement I did not hear it, nor did I give it any answer. I never acknowledged that I had attacked him in his private life, and I positively state that I was in the act of leaving him when he assaulted me."

Some discussion ensued respecting what the prisoner had stated as to the use of "exclamations unknown to the human race." It appears that this referred to a remark of Mr. STIRTON, that he would choke anybody who would speak to him as the prisoner had spoken to Mr. DORION.

The question then was as to the punishment to be meted out to the offender. We extract

the following from the *Votes and Proceedings* of the House:—

"On motion of Honorable Mr. Attorney General *Macdonald*, it was *Resolved*, That *Elzéar Gérin Lajoie* is guilty of a breach of the privileges of this House.

Honorable Mr. Attorney General *Macdonald* moved, that the said *Elzéar Gérin Lajoie* be called to the bar of the House, and there reprimanded by Mr. Speaker for the said breach of privilege, and be committed to the custody of the Serjeant-at-Arms for twenty-four hours.

Honorable Mr. *Macdonald* (Cornwall) moved in amendment, that the words "custody of the Serjeant-at-Arms for twenty-four hours" be left out, and the words "the Gaol of the County of Carleton for the remainder of this session" be inserted in lieu thereof.

Mr. *Haultain* moved in amendment to the said proposed amendment, that all the words after "committed," in the said amendment, be left out, and the following words substituted instead thereof, "to the custody of the Sergeant-at-Arms during the pleasure of the House;" which was agreed to on the following division:—*Yeas*, 75; *Nays*, 25.

Honorable Mr. *Macdonald's* (Cornwall) proposed amendment, as amended, was then agreed to on a division, and the main motion, as amended, agreed to.

Mr. *Elzéar Gérin Lajoie* was then called in, and addressed by Mr. Speaker, as follows:—

"It is a power incidental to the constitution of this House to preserve peace and order within its precincts, and protect the members of it from insults and assault. This power is necessary not only to insure the freedom of action of members, but that freedom of discussion which is one of their fundamental rights.

You, *Elzéar Gérin Lajoie*, pretending a cause of complaint against a member of this House, sought him out and came within the precincts of this building, and within a part thereof, to which you are entitled to resort, not by right but by favour only, grossly insulted that Hon. Member, and concluded by violently assaulting him. For these gross breaches of privilege you have not even thought it judicious or becoming to offer any apology; you have mistaken your rights and position in reference to Honorable Members and in this building. The place in which this insult was offered and assault committed, greatly aggravates the criminality of your conduct.

Having been found guilty of a breach of the privileges of this House, in having assaulted *Jean Baptiste Eric Dorion*, Esquire, a member thereof, you have rendered yourself liable to such punishment as this House might award—and this House having ordered that you be reprimanded, you are reprimanded accordingly.

The Order of the House directs that you be committed to the custody of the Serjeant-at Arms, during the pleasure of this House."

The prisoner accordingly remained in the custody of the Serjeant-at-Arms from the 1st of August to the 15th, when the House rose. A handsome suite of apartments was appropriated to his use, and his personal comfort well attended to in other respects. The remuneration of the Sergeant-at-Arms for the custody of a prisoner is said to be $25 per day.

ACTIONS IN EJECTMENT.

A singular instance of hasty legislation is afforded by 25th Victoria, Chapter 12. According to this, the costs in actions under the Act respecting Lessors and Lessees are to be taxed according to the amount for which judgment is rendered. Now, if a plaintiff brings an action of ejectment, and also claims damages, it would seem that if he recovers $20 damages, he is only entitled to costs on that amount, though he succeeds in the demand for ejectment. In the same way, if he brings an action in ejectment and also sues for $20 rent, he will only get costs on $20 if he succeeds in both demands; but if he brings an action for ejectment only, then he is entitled to costs according to the annual rent. Vide *Noad and Smith* reported in the present number. In this case it was contended by the defendant that inasmuch as the costs are to be taxed according to the amount of the judgment, and the judgment awarded no sum at all, therefore he should either be condemned to pay no costs at all, or at most only costs of

the lowest class. This is all he would have had to pay if he had been condemned to pay one or two months rent, why then should he be subjected to the costs of an action for the whole annual rent, because he happened to have paid up all the rent? There is evidently an inconsistency here, which has not been removed by the Code of Procedure. We are of opinion that the judgment confirmed by the Court of Appeals was the only judgment that could reasonably have been rendered, so far as this point was concerned, but the amending act, 25th Victoria, evidently requires reconsideration.

THE NEW REGISTRATION DUTIES.

By an order in Council, the new tariff of duties imposed under the "Act to provide a fund towards defraying expenses incurred for matters necessary to the efficiency of the Registry Laws," is to come into operation on the 1st of October next. The tariff is the same as published 2 L. C. Law Journal, p. 28, and the duties are, until further orders, to be paid in money, the amount received by every Registrar to be by him accounted for and paid over to the Receiver General immediately after the close of every third month, to be reckoned from the 1st of October next.

LEGAL APPOINTMENTS.

The appointments, already noticed, of Judge MEREDITH as Chief Justice of the Superior Court, and of Judge BADGLEY as a *puisné* judge of the Court of Queen's Bench, have now been officially announced. Mr. Assistant Justice MONK has also been appointed a judge of the Superior Court. The Hon. CHARLES ALLEYN has been named Sheriff of Quebec.

In Upper Canada, Mr. DEACON, of Perth, has been appointed County Judge of the County of Renfrew; Mr. EDWARD HORTON has been appointed Deputy Judge of the County Court for the County of Elgin; and Mr. LAWRENCE LAWRASON, Police Magistrate for the City of London.

LAW JOURNAL REPORTS.

COURT OF QUEEN'S BENCH,

APPEAL SIDE.

June 9.

NAUD, (Defendant in the Court below) Appellant; and SMITH, (Plaintiff in the Court below) Respondent.

Ejectment—Costs—25 Vic. c. 12, sec. 1.

Held, that in an action of ejectment, where no rent or damages are sued for, the costs will be taxed according to the amount of the annual rent.

This was an appeal from a judgment rendered by the Court of Review at Montreal (1 L. C. Law Journal, p. 67,) on the 30th of September, 1865, confirming a judgment by *Loranger*, J., at Sorel. The action was brought by Elizabeth Smith to eject the defendant from premises occupied by him in Sorel, for holding over for more than three days after the expiration of the lease. The plea was to the following effect: that in January, 1865, the defendant asked the plaintiff whether she would renew the lease for another year on the same terms, viz. £36 per annum, and that the plaintiff answered that she would let him remain for £40. The Circuit Court for the District of Richelieu, holding that the defendant had not established his plea, sustained the plaintiff's action, and condemned the defendant to pay full costs. This judgment being inscribed for revision at Montreal, was confirmed in every respect. The defendant appealed from these decisions on the following grounds:

1st. That the judgment of the Circuit Court bore date 14th April, 1865, whereas the action was not instituted till the 4th of May, 1865.

2nd. That by section 4 of chap. 40, C. S. L. C., ejectment actions shall be "instituted in the usual manner in the Superior or Circuit Court; and the annual value or rent shall determine the jurisdiction of the Court." But by the amending act, 25 Vict. cap. 12, sec. 1, "actions under this act shall be instituted in the Superior or Circuit Court, for the amount of rent or damages sued for."

It was hence contended by the defendant that there no longer existed legal dispositions

as to the manner of instituting actions in ejectment only, and as to the jurisdiction of the Court before which they should be brought, when the term of the lease had expired, and when all the rent had been paid. It was further pointed out by the defendant that 25 Vic. cap. 12, sec. 1, states that "the costs shall be allowed and taxed in accordance with the amount for which judgment shall be rendered." Now here the judgment awarded no amount at all, and nevertheless the defendant was condemned to pay full costs of suit. If he had owed a month's rent, $12, he would only have had to pay costs as of the lowest class, and because he owed no rent he was placed in a much worse position, and condemned to pay costs of an action for $144.

DUVAL, C. J. The judgment in this case is confirmed.

Meredith, Drummond, and Mondelet, JJ., concurred.

Lafrenaye & Bruneau, for Appellant.
A. Germain, for Respondent.

GIBSON, *et al.*, (plaintiffs *par reprise d'instance* in the Court below) Appellants; MOFFATT, (defendant in the Court below) Respondent; and YOUNG, (Intervening party *par reprise d'instance*) Respondent.

Practice—Declaration on Saisie-Arrêt—*Special Answer—Promissory Note.*

Egan and *Moffatt* having been in copartnership, under the firm of *William Moffatt & Co.*, and *Egan* having subsequently entered into copartnership with other parties under the firm of *John Egan & Co.*, by an agreement in July 1855, *Moffatt* agreed with *John Egan & Co.*, to assume all the liabilities of *William Moffatt & Co.*, to pay the sum due *Egan & Co.* in four instalments, and to give security, on condition that he should be allowed to cut timber on certain timber limits of *Egan & Co.* He subsequently cut timber without giving security, and the timber was transferred to the firm of *Symes & Co.*, which had made advances to him. *Moffatt* paid *Egan & Co.* the first instalment of the above-mentioned debt by two notes, one for £1500, which *Egan & Co.* paid away to a third party, and one for £800, which *Egan & Co.* placed to the credit of *William Moffatt & Co.* *Egan & Co.*, having, by *saisie-arrêt* before judgment, seized the timber cut as in the possession of *Moffatt*, and having sued for the whole debt:

Held, that *Egan & Co.*, having paid away the note for £1500 to a third party, could not sue for the debt for which it was given till they produced the note.

2. That *Egan & Co.*, having carried the note for £800 to the credit of *William Moffatt & Co.*, could not withdraw it from that account without the consent of *Moffatt*.

3. That the plaintiffs, not having alleged the insolvency of *Moffatt* in their declaration, could not base a right to sue for the whole of the debt on such insolvency; and that the allegation of his insolvency in their special answer could not avail to supply the deficiency in the declaration.

4. That the right to sue for the whole of the debt could not be based on the alleged fraud of the defendant in transferring the timber to *Symes & Co.*, unless such fraud had been alleged in the declaration, the allegation of fraud in the affidavit alone being insufficient.

The judgment appealed from in this case was rendered by *Lafontaine*, J., in the Superior Court at Aylmer, on the 16th of December, 1863, dismissing an action together with a *saisie-arrêt* before judgment, by which the plaintiffs John Egan & Co., now represented by the appellants, claimed from William Moffatt the sum of £7678 17 8, for which they attached as belonging to, and in the possession of the defendant, 2,500 pieces of red pine timber. The judgment set aside the attachment and maintained the intervention of George B. Symes & Co., (now represented by Young, the surviving partner) who had intervened to claim the property of the said timber, as having purchased it from the defendant William Moffatt.

The nature of the contestation will be sufficiently explained by the remarks of Mr. Justice Meredith.

MEREDITH, J. In order that the observations to be made upon the points in controversy in this cause may be understood, it is necessary to give an outline of the transactions, in which the difficulties now to be adjudicated upon originated.

On the 25th of January, 1851, by a notarial deed, a copartnership was formed between John Egan, one of the plaintiffs in this cause, and John Supple, under the firm of John Supple & Co., for the manufacturing of timber

on the River Du Moine, a tributary of the Ottawa. Supple and Egan carried on business together, under the said agreement, until the autumn of 1853, when, with the consent of Egan, Supple transferred his interest in the copartnership of Supple & Co., to the defendant William Moffatt. The exact terms upon which Moffatt took the place of Supple do not appear; but that Moffatt did take the place of Supple, and carry on business in connection with John Egan, under the firm of Wm. Moffatt & Co., for nearly two years, is beyond doubt. The respondents strenuously contend that under this copartnership, Moffatt acquired an undivided half of the timber limits on the River Du Moine held in the name of Egan & Co., but such is not the case. All that the copartnership of William Moffatt & Co. had was the right to work upon the limits which belonged to Egan.

On the 13th July, 1855, an agreement was entered into between John Egan & Co. and William Moffat, by which the latter assumed, upon certain conditions, the whole of the liabilities of the firm of William Moffatt & Co. to John Egan & Co. That agreement is of great importance in the present case, I therefore give it at full length:

"It is hereby mutually agreed between William Moffatt of Pembroke and John Egan & Co. of Aylmer, to the following effect: the said William Moffatt hereby agrees and binds himself to assume all the liabilities against the business of William Moffatt & Co., as traders on the River Du Moine; to pay or cause to be paid to the said John Egan & Co., in four annual instalments, the actual sum due the house up to this period, with the legal interest thereon; and furthermore to relieve John Egan & Co. from all responsibility, whatever there may be, either as to debts or otherwise; the claim of John Egan & Co. being £8,500, or whatever it may be over when the balance is finally settled; and to relieve John Egan & Co. from certain bills which John Supple of Pembroke now holds, which he obtained when selling out his interest in the concern.—It is further understood that as part of the security which is to be given to John Egan & Co. for their claim and interest in the business of William Moffatt & Co., the property of his father, Alexander Moffatt of Pembroke, is to form part—say to the extent of £4,000, the balance to be covered by some other satisfactory security which may be given at the period when the whole transaction is closed—say in one month from this period. John Egan & Co. will on their part give their interest in the limits connected with the company, as marked on a plan of the River made from actual survey; also the timber and every thing connected with the estate. Thus done and passed at the city of Quebec this 13th day of July, in the year of our Lord, 1855, in presence of the subscribing witnesses."

Sometime after this arrangement had been entered into, namely, on the 8th January, 1856, an agreement was made between Moffatt and G. B. Symes & Co., the intervening parties, by which that firm agreed to advance to Moffatt £5,000 upon a lot of timber then made by Moffatt upon the River Du Moine, and to enable him "to carry on his timber operations, and to get out his timber that winter in the same locality." One of the conditions of the agreement was that the said timber should be consigned and delivered by Moffatt to Symes & Co. at their cove in Quebec, "and deposited with them as a pledge and security, lien, *gage*, for the payment of the said sum of £5,000, with interest and commission as agreed upon; and as further security, Moffatt agreed to transfer his timber limits to Symes & Co. Moffatt, who had failed to give to John Egan & Co. the security to which they were entitled under the agreement of July, 1855, after he had secured a promise of advances from Symes & Co., attempted to induce Egan & Co. to let him have a transfer of the Du Moine limits upon more favourable terms than those mentioned in the agreement of July, 1855; but in this attempt he did not succeed. In the meantime, and notwithstanding his failure to give to Egan & Co. the security to which they were entitled, he continued to manufacture timber on the Du Moine limits with the advances he had obtained from G. B. Symes & Co.

On the 22d January, 1856, as a further security to Symes & Co., Moffatt gave them a bill of sale of the timber which he had then manufactured. This timber was in the course

of the following season taken to Quebec, and delivered to Symes & Co., without any objection on the part of John Egan & Co. When sold it brought much higher prices than mentioned in the bill of sale to Symes & Co.; and Moffatt was credited for the full price, and debited with all the charges upon the timber, thus showing that the object of the bill of sale was to improve the position of Symes & Co. as regarded their security upon the timber. At the end of the business season in 1856, the balance due by Moffatt to Symes & Co. was £7305 7 4, so that the result of the year's business was highly unsatisfactory to all parties. Symes & Co. were largely in advance to Moffatt. The timber limits of Egan had been worked upon for a season without any return to him, and Moffatt found his liabilities greatly increased. Egan & Co. do not appear to have pressed Symes & Co. in any way during the business season of 1856. They probably hoped that the timber made would yield a profit, and that that profit would go to discharge their claim against Moffatt. But when they saw the result of the operations of 1856, they, with reason, became more anxious to secure their claim. Accordingly on the 20th Nov. 1856, they wrote to G. B. Symes & Co. as follows:

Aylmer, 20th Nov. 1856.

Messrs. G. B. Symes & Co., Quebec.

Dear Sirs,—Inclosed we beg to hand you a copy of our agreement with Mr. William Moffatt, which has not been carried out. The limits were worked upon last winter, and are being worked upon this: say the past season about 300,000, and the present about a like quantity. You will at once see the necessity of having this matter arranged previous to having the limits denuded of the timber. Our Mr. Egan is going to England, and is anxious, as before expressed to you, to have something done towards the settlement.

We are, dear Sirs, Your most obedient servants, John Egan & Co.

On the 11th of December, 1856, Egan & Co. served a notarial protest upon Moffatt, reciting the agreement of the 13th of July, 1855, referring to the manner in which he had cut timber upon the limits of John Egan, without giving the stipulated security, and declaring "that the occupation of the said limits and the removal of timber therefrom," caused serious loss and damage to the estate of John Egan & Co. When Symes & Co. received the letter of the 20th of November, 1856, the balance due to them by Moffatt exceeded £7,000, and a considerable part of the lumber made with their means was lying in the woods. It was not, therefore, to be expected, and, as I shall hereafter show, it was not desired on the part of Egan & Co., that Symes & Co. should, at that moment, cease to make advances to Moffatt. It appears, however, that in the following month of January, Mr. Young, a member of the firm of Symes & Co., went to Ottawa for the purpose of settling the conflicting claims of Egan & Co. and Symes & Co. upon the property of Moffatt, but the negotiations for that purpose were not successful, the cause of the failure being, it seems to me, a difference of opinion as to the number of limits to be transferred under the agreement of July, 1855. Soon after this, namely, on the 19th January, 1857, Symes & Co. took a bill of sale of the remainder of the timber that had been manufactured by Moffatt in the previous season. A delivery, as to the nature of which it is not necessary here to allude, was made, as well under this bill of sale, as under the bill of sale made in the month of January, 1856. On the 1st of March, 1857, James Connolly received instructions from Symes & Co. to go to the establishment of the defendant at Du Moine River, and take charge of the timber in question. He went up, received what he considered a further delivery of the timber from the defendant, and then, on behalf of Symes & Co., put it in charge of one Robert M'Lean, who says he remained in charge and possession of it, until it was seized in this cause at the suit of the plaintiffs, the seizure so made being under a writ of *saisie-arrêt* before judgment, in an action for £7,678 17 8, the balance of the debt due by William Moffatt & Co. to John Egan & Co., and which William Moffatt undertook to pay by the agreement of the 13th July, 1855. Notwithstanding the seizure thus made, the timber was taken to Quebec, (security having been given in the usual course,)

and the full price at which it was sold, which much exceeded that mentioned in the bill of sale, was carried to the credit of Moffatt, and all the charges upon the timber until the moment it was sold were placed at the debit side of his account, thus showing that the object of the second bill of sale, as well as of the first, was to improve the security of Symes & Co.

The action of the plaintiffs was contested by the defendant Moffatt, and the timber seized was claimed by Symes & Co. on the ground that it was in their possession at the time of the seizure, and that it belonged to them under the agreement for advances and the two bills of sale. The pleadings, as well upon the original demand as upon the intervention of Symes & Co., are exceedingly voluminous, and raise a number of questions that need not be discussed. I, therefore, shall limit myself to the consideration of those points upon the decision of which our judgment must depend. And, in the first place, with reference to the demand of the plaintiff, it is necessary to determine what, according to the declaration, is the cause of action sued upon. The defendant contends that he is sued upon the agreement of the 13th July, 1855; that, according to that agreement, one-fourth only of the debt was due when the action was brought; that that fourth had been paid by two payments, one of £1,500, and the other of £800; and, therefore, that the action must be dismissed. The plaintiffs, on the other hand, contended, in the course of the argument before us, that the action was brought to recover the debt due by William Moffatt & Co., for the whole of which the defendant was liable, irrespective of the agreement, and that the agreement was referred to merely as establishing the amount due by the defendant as a member of the firm of Moffatt & Co. Here it may be well to observe that the question as to whether the defendant was sued under the agreement or not, was one of great interest to him. If sued as a partner in the firm of Moffatt & Co., he had a right to claim indemnity, for one-half of the debt, from his partner John Egan, one of the plaintiffs, whereas, under the agreement, he had assumed the whole of the debt himself; and, therefore, if he was liable under the agreement, he could *not* make a claim against Egan.

Now, on reference to the declaration, we find that, in the first count, it formally recites the agreement, and that count most assuredly is based upon the agreement. The second count is for goods, wares, and merchandize sold, &c. But the goods and merchandize really sold were not sold to the defendant; they were sold to a firm of which he was a member, and the declaration does not allege any dealings with a firm. The third count is "for a balance which the defendant admitted to be due and promised to pay to the said plaintiff, on the plaintiffs' account rendered on the said last mentioned day to the defendant, as and for divers lumber transactions." Now the agreement certainly does admit a balance, and contains a promise to pay, but it is a promise to pay in four instalments, and that is what the defendant contends for.

That the first count is founded on the agreement is too plain to be disputed; and the defendant could not, by one and the same action, be sued as sole debtor under the agreement, and as joint debtor of the same debt, irrespective of the agreement. Any doubt, however, as to whether the defendant was or was not sued under the agreement, is removed by the factum of the appellants in the Superior Court, in which they say: "The declaration was founded upon the agreement filed by the plaintiffs, dated July 13th, 1855."

Assuming, then, as I think is the case, that the action was brought under the agreement, this brings us to the second of the pretentions of the defendant which I propose to consider, namely, that, under the agreement, there was but one instalment due, and that by two payments, the one by a note of £1,500, and the other by a note of £800, the whole of the first instalment was discharged. As to the note for £1,500, it is admitted it was paid by the defendant to the plaintiffs; that they transferred it to a third party, to whom £1,000, and no more, was paid on account of it. But as the plaintiffs paid the note of £1,500 to a third party, and have not produced it in this cause, they cannot, for the present, nor until they do produce it, sue for the debt on account of which it was given. Then as to the note for £800, the

receipt of it also is admitted, but the plaintiffs contend it was imputed on a debt due by Moffatt alone, and not on the debt now sued for. The receipt given for the two notes bears date at Quebec, 15th October, 1855, and mentions simply that they were given "on account." It appears by the account marked A, which is an extract from the books of account of the plaintiffs, that the note for £800 was in the first instance placed to the credit not of William Moffatt individually, but of William Moffatt & Co.; the entry being under date 31st August, 1855, when the financial year of Egan & Co. terminated. James Doyle, manager of Mr. Egan's estate, being asked, "How long the said £800 remained credited to Wm. Moffatt & Co's. account, before it was credited to William Moffatt's account," answered: "I state a few days, perhaps a few weeks, for both entries appear in our journal and ledger under date of the 31st August, 1855"; and he added, "Mr. Champion was the clerk who made the entry erroneously in the first place, and it was afterwards altered." Mr. Doyle was the manager of the business at Ottawa, and the note for £800 was received at Quebec, and the entries respecting it were made there, so that Mr. Doyle could not have any personal knowledge of the circumstances under which the entries respecting the note for £800 were made. Under these circumstances, it would have been well to have had the evidence of Mr. Champion, or of some other person having a personal knowledge of the circumstances to which Mr. Doyle refers. All that we know is that when the note was received by John Egan & Co., it was entered in their books to the credit of William Moffatt & Co.; that it remained at their credit, as Mr. Doyle says, "a few days, perhaps a few weeks;" that then, so far as we know, without the consent of Moffatt & Co. having been obtained, or even asked, a sum equal to the amount of the note was placed to the debit side of the account of William Moffatt & Co. with Egan, thus neutralizing the credit that had been given for the note; and then, that the note was placed to the credit of Wm. Moffatt in the account which he individually had with Egan & Co. But when, for what reason, and on what gronnds, this was done, is not proved. The defendant, Moffatt, had a deep interest in paying the first instalment due upon the agreement of July, 1855; and the fact that he gave Egan & Co. two negotiable notes amounting to £2,300, when their claim against him as an individual, (whatever may have been the nature of it,) did not then amount to £900, shows that he had in view the debt under the agreement of July, 1855. Under these circumstances it seems to me that Egan & Co., having carried the note for £800 to the credit of William Moffatt & Co., could not withdraw it from that account without the consent of Moffatt.

On the part of the plaintiffs, however, it was contended that as Wm. Moffatt & Co. were insolvent when the action was brought, the plaintiffs had a right to sue for the whole of their debt. That Moffatt was insolvent when the present action was brought is beyond doubt; but that he became insolvent after the agreement giving the credit is by no means certain. Indeed, I can see nothing to lead us to think that he had then assets sufficient to meet the claim of Egan & Co. But it is unnecessary to dwell upon this point, inasmuch as the plaintiffs have not alleged the insolvency of Moffatt in their declaration. There is an allegation of his insolvency in the special answer, but if the right of Egan & Co. to sue depends upon the insolvency of Moffatt, that fact ought to have been alleged in the declaration, and the deficiency of the allegations in the declaration respecting the cause of action cannot, in the present case, be supplied by the allegations in the special answer.

It was also contended that the plaintiffs had a right to sue for the whole amount due to them, in consequence of the attempt of the defendant, Moffatt, to fraudulently defeat the plaintiffs' claim by the pretended transfer of all the timber to the intervening parties. Upon this point it is sufficient to observe that the declaration does not charge the defendant with fraud. The appellant answers, that there are allegations of fraud in the affidavit; but that does not suffice. It is to the declaration that the defendant is called to plead, and all the allegations necessary to show that the plaintiffs had a right to sue when and as they did, ought to appear on the face of the decla-

ration. I do not, however, hesitate to say, that in my opinion Moffatt is not chargeable with fraud. His dealings with the intervening parties may, or may not, be legal, but I do not think they were fraudulent.

For these reasons, being as I am of opinion that the action is founded upon the agreement of July, 1855, under which but one instalment was due when the action was brought; and that that instalment was satisfied by the two notes, one for £1,500 and the other for £800, I necessarily come to the conclusion that the judgment of the Court below upon the controversy between the plaintiffs and the defendant ought not to be disturbed.

I now pass to the consideration of the intervention of G. B. Symes & Co. If, as I think, the action of the plaintiffs must be dismissed, then as between the defendant and Symes & Co., I think the evidence unquestionably sufficient to maintain their intervention.* I, therefore, deem it unnecessary to express my opinion upon two very important questions argued before us, the first being as to the effect of the two bills of sale in favour of the intervening parties, and the second, as to whether the intervening parties, at the date of the seizure, had such a possession of the timber as to enable them, as against third parties, to maintain their claim if they are to be deemed pledgees only.

But as, according to my view, the action of the plaintiffs must fail irrespective of the merits, I think it right to observe that although our judgment may rest upon merely technical grounds, yet that I think it meets the justice of the case, in so far as regards the intervention of Symes & Co. After the agreement of the 13th July, 1855, was entered into, it was as necessary for the interest of Egan & Co., as of Moffatt that advances should be made to the latter. Egan & Co. had extensive timber limits. Their debtor Moffatt was possessed of experience as a manufacturer of timber, but neither their timber, nor his business experience, could be turned to account without pecuniary advances. Mr. Egan, it appears from the evidence of Fitzpatrick, introduced Moffatt to Symes & Co., who during the business season of 1856, made advances to Moffatt upon the usual terms, and, if not with the express consent, at least with the full knowledge of Egan & Co. They were perfectly aware that during the winter of 1855–6, Moffatt was working upon limits held in the name of Mr. Egan, by means of the advances furnished by the intervening party. Egan & Co., without any, even the least, objection on their part, allowed the timber so manufactured, as far as it was got out that season, to be delivered to Symes & Co., in the usual course, and sold by them to meet their advances. Egan & Co. knew that if any profits had been made upon the operations of Moffatt, they would have gone to discharge his debt to them; and it was after it had been ascertained that the business of that season had resulted in a loss, that they appear for the first time, namely, by the letter of the 20th November, 1856, to have in a formal manner drawn the attention of Symes & Co., to the necessity of a settlement being made respecting the debt due by Moffatt to Egan & Co., before Moffatt took any more timber from their limits. Even in that letter they did not express any wish that Symes & Co. should discontinue the making of advances to Moffatt, and when they protested against Moffatt, they did not in express terms require him to discontinue the cutting of timber on their limits, nor did they serve a copy of the protest on Symes & Co. On the contrary, even then, after they had written to Symes & Co., saying that Moffatt had worked upon their limits during the previous year to the extent of about 300,000 feet of timber, they were most anxious that Symes & Co. should not discontinue their advances. The evidence of Mr. Fitzpatrick as to this part of the case is very important. He says that when about the 18th or 20th December, 1856, he spoke of stopping the supplies then being furnished by Symes & Co., Mr. Egan "begged of him in God's name not to do anything rash," and pledged himself "to settle everything," and "make all right" with Mr. Symes in England, adding "if you now stop everything we will be ruined, for you know that just now I am in difficulties myself." It is to be observed that this took place some months after all the timber seized in this cause had been

* As to the contract of pledge between the pledgor and pledgee, vide 2 Pardessus, Droit Com. no. 486.

cut; and that no part of that timber was cut after the date of the first letter which appears to have been written by Egan & Co. to Symes & Co., about the affairs of Moffatt, namely of the 20th November, 1856. It is true that after the date of that letter, Symes & Co. continued to make advances to Moffatt, and received from him the timber seized in this cause; but it was not to be expected, and Egan & Co., as I have already observed, do not appear to have expected that Symes & Co. would have ceased to make advances to Moffatt on their receiving the letter of the 20th November, 1856. At that time, the balance due by Moffatt to Symes exceeded £7000, and a large part of the timber manufactured from the advances of Symes & Co., was then lying in the forest, and there is every reason to believe that if Symes & Co., or some other parties, had not made advances to Moffatt, that timber would have been lost to all concerned. The course pursued by Symes & Co. was to make advances, not for the purpose of having more timber cut upon the limits of Egan, but in order to get out the timber already cut, and the whole of the timber delivered to Symes & Co. by Moffatt as well in the year 1857, as in the year 1856, did not even nearly amount to the quantity mentioned by Egan & Co., in their letter of the 20th November, 1856, as having been manufactured by Moffatt in that year alone. It may be added that as Egan & Co. allowed the timber brought down in 1856, to be delivered to Symes & Co., it is to be presumed that they thought that firm reasonably entitled to that timber; and if they had a just claim to the timber received by them in 1856, they had an equally just claim to the timber received by them in 1857.

That Egan & Co. have been losers by these transactions is plain; for their limits have been worked upon for two years without any advantage to them; but for this Symes & Co. are not to blame. They made advances in the usual course of trade, and upon the security usual in such cases, and they still appear to be unpaid to the extent of above £5,000; and if Egan & Co. had themselves continued to make advances to Moffatt, it seems more than probable that they would have lost, not only the timber which they now lose, but a part of their advances in addition. The case upon the intervention, according to my view, may be reduced to this: the advances by Symes & Co. were as much for the advantage of Egan & Co. as of Moffatt. He was allowed to have possession of the limits of Egan, and to use the advances of Symes & Co., in manufacturing timber there, with the knowledge and consent of Egan & Co., and they now cannot reasonably object to Symes & Co. having the security for which they stipulated, and which was not beyond what was usual in such cases.

Duval, C. J., Mondelet, and Loranger, JJ., concurred.

A. & W. Robertson, for Appellants.

R. & G. Laflamme, for Respondents.

GIBSON, (plaintiff *par reprise d'instance*) Appellant; MOFFATT, (defendant in the Court below,) Respondent; and SUPPLE, (intervening party in the Court below,) Respondent.

Revendication.

Held, that a party cannot claim to be proprietor of the timber cut upon timber limits, while at the same time he brings an action for the price for which he sold the said timber.

MEREDITH, J. In the above case (No. 91,) in which Symes & Co. are intervening parties, the plaintiffs John Egan & Co., by a writ of *saisie-arrêt*, seized as belonging to the defendant the timber which he made during the winter of 1855–6, and pledged for advances to Symes & Co., and in this cause, the plaintiff John Egan, one of the firm of John Egan & Co., seized under a *saisie revendication*, as belonging to the defendant, the timber which he manufactured in the winter of 1856–7, and pledged for advances to the present intervening party, John Supple. The whole of the said timber, as well that seized in the cause No. 91, as that seized in this cause, was cut upon the timber limits held in the name of John Egan, and which it was intended that the defendant should acquire under the agreement of the 13th July, 1855, to which reference is made in the course of my remarks in the case No. 91. The demand of the plaintiffs in the case No. 91, is founded on that agreement; and in the present case the same agreement is the basis of the defence.

The contention of the defendant is that by the agreement of the 13th July, 1855, upon which he is sued in the cause No. 91, he agreed to pay Egan & Co., in four annual instalments, £8,500, in consideration of their transferring to him certain timber limits upon which the timber seized in this cause had been cut; that they received from him in part payment of the said sum of £8,500, negotiable paper to the extent of £2,300, on account of which there has been paid £1800, that they allowed him to enter upon and manufacture timber on the said timber limits; and that the plaintiff whilst he joins his copartners in enforcing the agreement in question, as being binding on the defendant, cannot, as he attempts to do in the present case, treat that agreement as if it were null, by exercising an unqualified right of ownership over the timber limits, in consideration of which the defendant so agreed to pay £8,500, and as already mentioned has actually paid £1,800.

The fact that Egan & Co. received from the defendant a negotiable note for £1,500, on account of which £1,000 has been paid, is not denied; and I think that the right of the defendant to have credit for the other £800 is, as I have explained in the case No. 91, also established. It is true that under the agreement of July, 1855, the defendant was bound to give security within a certain time and that he has wholly failed to give that security, and the pretention on the part of the defendant that Egan & Co. waived their right to security, by taking a part of the purchase money without exacting security, is quite untenable. I think that Egan & Co. had, and still have, a right either to enforce the agreement irrespective of security, or to cause the agreement to be rescinded in consequence of the failure of the defendant to give security; but I do not see how the agreement can be binding upon the purchaser without being at the same time binding upon the vendors and each of them; and I therefore think that Egan, whilst joining with his copartners in suing for the price of the property sold by the agreement of July, 1855, cannot, in his own name, claim the ownership of that property as if it had *not* been sold. In a word, Egan & Co. had their option: as the defendant failed to give the stipulated security, they had it in their power to cause the agreement to be treated as binding or as not binding, but they cannot treat it as binding upon one side, without admitting that it is binding upon the other, and in order to prevent misapprehension I may observe that I think Egan & Co. will have the same right after this action has been dismissed. They may, if they think fit, repudiate the agreement in consequence of the failure of the defendant to give them security, but they cannot, at one and the same time, claim the limits and also the consideration which the defendant agreed to give for those limits. According to this view, the judgment of the Court below, dismissing the plaintiff's demand, is right, and, as between the defendant and the intervening party, I think there can be no difficulty in maintaining the intervention which is not contested by the defendant.

Duval, C. J., Mondelet, and Loranger, JJ., concurred. [It was intimated by Judge Meredith that Judge Aylwin, who was unable to be present, also concurred in both these judgments.]

A. & W. Robertson, for Appellants.

R. & G. Laflamme, for Respondents.

BRAHADI, (plaintiff in the Court below,) Appellant; and BERGERON *et al.*, (defendants in the Court below,) Respondents.

Service of Declaration in cases of Saisie Gagerie—*C. S. L. C. Cap.* 83, *Sec.* 57.

Held, that under C. S. L. C. cap. 83, sec. 57, in cases of *saisie-gagerie*, it is sufficient service of the declaration to leave a copy at the prothonotary's office, and it is not necessary that the ordinary delays for service should be allowed between such service of declaration at the prothonotary's office and the return of the action.

This was an appeal from a judgment rendered by *Badgley*, J., in the Circuit Court on the 30th of September, 1865, (reported 1 L. C. Law Journal, p. 67.) The plaintiff having issued a *saisie-gagerie* for rent, the defendant pleaded by *exception à la forme*, that the usual delay of five clear days should have been allowed between the service of the declaration and the return of the writ. It appeared that service of the declaration had been made by leaving a copy for each of the defendants, at the office of the clerk of the Circuit

Court, three days before the return of the action. Judge Badgley was of opinion that this was not sufficient, and, maintaining the exception, dismissed the plaintiff's action. From this judgment the plaintiff appealed.

DUVAL, C.J. Under cap. 83, sec. 57, the service was sufficient, and the judgment must be reversed.

Meredith, Drummond, and Mondelet, JJ., concurred.*

Day and Day, for Appellant.

T. and C. C. Delorimier, for Respondents.

KELLY (defendant in the Court below), Appellant; and MOREHOUSE (plaintiff in the Court below), Respondent.

Breach of Contract.

The only difficulty in this case arose from an involved account.

This was an appeal from a judgment rendered by *Smith*, J., in the Superior Court at Montreal, on the 1st of April, 1864. The action was instituted to recover $1549, for breach of a contract made at Sorel on the 18th of March, 1863, under which the defendant was to deliver 5,000 bushels of oats to the plaintiff, after the opening of the navigation. The plaintiff paid $1300 on account, and, at the opening of the navigation, sent his boats to Sorel to receive the grain, notified the defendant that he was ready to receive it, and offered the balance of the price. The defendant, however, delivered only 550 bushels, and the plaintiff claimed damages to the extent of 10½ cents per bushel on the balance, making in all, including the amount overpaid, the sum now sued for. The plea admitted that only part of the oats had been delivered, but alleged that the plaintiff had not asked for the balance, and that his claim for damages and monies advanced was set off by a contra account of monies paid, goods sold, &c. The Court below having sustained the plaintiff's pretensions, the defendant appealed.

MEREDITH, J., dissenting. The difficulty is with respect to a payment of $1600 said to have been made to one Dixon. Should this be imputed as a payment under the Morehouse contract, or under the Dixon contract? I am inclined to believe that it was paid under the present contract.

DUVAL, C.J. I admit that there is some difficulty in the case, but Rounds, the plaintiff's agent, has sworn positively that the $1600 had nothing to do with the contract in this case. If the man has perjured himself, he must be prepared to take the consequences. We cannot do otherwise than confirm the judgment.

Drummond, and Mondelet, JJ., concurred.

J. Armstrong, for Appellant.

A. and W. Robertson, for Respondent.

DE BEAUJEU (plaintiff in the Court below), Appellant; and DESCHAMPS (defendant in the Court below), Respondent. (2) THE SAME, Appellant; and LALONDE (defendant *par reprise d'instance* in the Court below), Respondent.

Transaction—Discussion.

The plaintiff and defendant were parties to an *acte de transaction*, by which the defendant and other *tiers détenteurs* bound themselves to pay a certain proportion of the balance of a hypothecary debt due to the plaintiff by F., from whom they had purchased lands, after the amount of such balance should have been settled by the discussion of F.'s property, and application of the proceeds in reduction of the debt. The plaintiff having brought an action based on the *transaction*:—*Held*, that the proof of the discussion of F.'s property was insufficient, and that the defendant was not bound to indicate the effects to be discussed.

As these two cases present the same question, with the same proof, it is only necessary to notice the first.

The appeal was instituted from a judgment of the Superior Court, rendered by *Loranger*, J., on the 30th of April, 1864, dismissing the plaintiff's action. The facts were these:

On the 31st of January, 1821, one Filion made an obligation in favour of J. P. Saveuse de Beaujeu, *père*, for £1880, payable in four years, with a general hypothecation of his property. On the 24th of September, 1829,

* This decision supplies the hiatus which certainly existed in the Statute, as to whether in these exceptional cases, it was necessary to allow the ordinary delay between service of declaration and the return of the action.

Filion made another obligation in favor of De Beaujeu for £467, making, when added to the balance due on the former obligation, £1559, for which Filion gave a general hypothec on his property. It was alleged that at the time these deeds were passed, Filion was proprietor and in possession of the land now owned by the defendant. De Beaujeu, *père*, died in 1832, leaving to Madame de Beaujeu the usufruct of all his property, including the claim against Filion, who previous to this date, had sold to third parties all the property hypothecated in favour of De Beaujeu. On the 26th of December, 1839, the *détenteurs* of this property, including the defendant, by *acte de transaction* with the plaintiff, G.S. De Beaujeu, (acting in his own name, and as attorney for his mother, the *usufruitière* under the will,) acknowledged themselves to be the proprietors of these lands, and that said lands formerly belonged to Filion, and were included in the general hypothecation of his property under the obligation. It was further agreed, with the view to avoid an action *en déclaration d'hypothèque* on the part of Madame de Beaujeu, that the *détenteurs*, in case there remained a balance due after Madame de Beaujeu had discussed the property of Filion, should each pay her one-eleventh part of such balance, in four instalments, the first of which was to be payable three months after the discussion, and the remainder annually. This agreement was made with the condition that Madame de Beaujeu should deduct one-fourth from the balance of her claim; the whole without novation of Madame de Beaujeu's hypothecary claim on the property.

On the 19th of February, 1847, Mad. De Beaujeu died, leaving her property by will to her son, the plaintiff, and her daughter; and on the 18th of August, 1859, the plaintiff instituted the present action against the defendant for the sum of £474 personally due under the *acte de transaction*, and for £1,355 for his (the plaintiff's) claim under the obligation and mortgage. The defendant pleaded, first, that he had purchased the property from Filion in 1826, prior to the obligation of 1829, and that on the 23rd of September, 1829, Filion transferred to DeBeaujeu, *père*, the balance due for said land, and that by taking this transfer, DeBeaujeu had bound himself not to bring any hypothecary claim against the property. Further, that at the date of the *transaction* of 1839, the defendant had acquired the prescription of ten years against any claim under the mortgage of 1821, and that he had been induced to become a party to the *transaction* through erroneous and fraudulent representations. The defendant's second plea was that the plaintiff could bring no action against him until he had discussed the property of Filion. This exception being maintained, and it being also held by the judgment of the Court below that the plaintiff had no hypothecary right of action, he instituted the present appeal. The grounds of appeal were that the discussion of Filion's property was clearly established, and that the hypothecary right of action was acknowledged in the *acte de transaction*.

DRUMMOND, J., after stating the facts, said: We are all unanimous in the opinion that the defendant was not bound to point out the effects of Filion that could be discussed, as the plaintiff pretends, and we think that the proof of discussion is not sufficient. Without entering into the other points of the case, we think there was no error in the judgment, and that it must be confirmed.

Duval, C. J., Meredith, and Mondelet, JJ., concurred.

R. & G. Laflamme, for Appellant.

Doutre & Daoust, for Respondent.

J B. T. DORION, (defendant in the Court below,) Appellant; and KIERZKOWSKI, (plaintiff in the Court below,) Respondent, (2) ZEPHIR DORION, (defendant in the Court below,) Appellant; and THE SAME, Respondent.

Usurious Interest—Premium.

An action by assignee to recover back usurious interest under the old law.

Held, that the money having been paid by only one of the assignors and his wife, the assignee could not legally claim under an assignment from the whole family.

Quære as to premium charged by agent.

These were appeals from a judgment of the Superior Court, rendered at Montreal on the

31st of December, 1863, by *Smith*, J., condemning the defendants jointly and severally to pay the plaintiff the sum of £3958, and interest. The following were the circumstances that gave rise to the action: On the 11th of November, 1845, by deed passed at Montreal, the plaintiff, Kierzkowski, acting as well for himself as for the DeBartzch family, including himself and wife, L. T. Drummond and wife, S. C. Monk and wife, and Count Rottermund and wife, acknowledged himself indebted to Marie Louise Cousineau, represented by her son and attorney, the Appellant, in the sum of £4,875, for money lent for the purpose of paying off mortgages on the De Bartzch property. This loan was to be repaid with interest in eight years. During the six months following the 11th of November, 1845, Mad. Cousineau paid £3,375 to hypothecary creditors indicated by the borrowers. In 1853, she died, and left the Appellant and two other children her universal legatees. On the 21st of October, 1862, the respondent as assignee of the rights of the DeBartzch family, instituted the present action against the Appellant as well personally as the legatee and heir of Madame Cousineau his mother, and against Zephir Dorion, his brother. In this action it was declared that although the deed of 11th November, 1845, stated that £4,875 had been paid to the DeBartzch family, in reality they had only received £3325, the balance, £1,550, being retained by Dorion, the attorney of Mad. Cousineau, as usurious premium upon the loan; and a claim was made to recover back from the Appellant as representing Mad. Cousineau, the sum of £5,329, which it was alleged had been repaid her in excess of the amount of the loan.

The defendant admitted in his plea that a sum of £1,500 had been paid to him by the borrowers, but he alleged that this sum was not retained out of the capital of the loan made by his mother, but that it was paid to him by the borrowers as an indemnity for the loss of his time, and for his trouble in negotiating the loan, and that his mother, or himself as her legatee, could not be held responsible for it in any way. The defendant also represented the long period of time that had elapsed before the plaintiff instituted the action. The judgment of the Court below having held that the £1,500 was exacted by Mad. Cousineau as usurious interest, the defendant appealed.

MEREDITH, J. (dissenting). It is evident that this case must be disposed of in exactly the same way as though 16 Vict. Cap. 80, had not been passed. According to my view, the plaintiff having a valid transfer of the rights of the DeBartzch family, had a right of action to recover the excess of interest paid to Madame Cousineau. The Appellant says the condemnation should not have been joint and several against the heirs; and, further, that they should not have been condemned to pay interest from the date of the deed of 1845. I think both these propositions well founded, and that the judgment should be rectified in these respects. Interest should only be computed from service of process.

DUVAL, C. J. It is undoubted that the action *condictio indebiti* is given to the debtor in a case like this, which, through a misconception on the subject of usury, was made an exception to the general rule that the *condictio indebiti* is not given to the debtor who has paid a sum of money with his eyes open. This exception was made because it was strangely thought that usury was forbidden by the laws of God, parties who took it being liable to a criminal prosecution in France, and to excommunication. These antiquated notions rested upon principles which are now known to have been erroneous. Still, it would be the duty of the judges to yield respect to the law and to aid a party in recovering money though paid voluntarily and in a manner highly beneficial to his interests, if the case came under the law. We come, then, to the consideration of the facts.

As to Zephir Dorion, brother of the agent who managed the loan, there is no proof against him whatever, and therefore the action against him should have been dismissed. The real actor was J. Bte. T. Dorion, who carried the whole matter through. I am convinced that his mother knew nothing of the usurious transaction. He admits that he got more than six per cent., and that he pocketed the surplus. His admission must be taken against himself. The case would then

stand in this position: Judgment could be pronounced under no circumstances against any one but J. Bte. Dorion. There could be no *solidarité* of condemnation, and thus the amount due by each would be reduced accordingly. Then, again, interest should not have been allowed on this money. The truth is there are objections at every stage of the proceedings. However, the judgment of the Court is based upon this: the respondent has obtained an assignment of the rights of the heirs DeBartzch, and brings his action as their assignee. Now, it is certain that the assignee has no more right than his assignors: they had no right in this case, for the money was not paid by them. This, in my view of the case, puts an end to the action. We must have dismissed the action if brought in the name of the assignors, and therefore we must dismiss it when brought in the name of the assignee. We restrict our judgment to this, that Mr. Kierzkowski has brought his action upon an assignment of rights which never existed. The judgment of the Court, in the first case, is that the judgment appealed from is erroneous, because by the evidence adduced, it is established that the sum of money claimed under the transfer of 18th March, 1862, was paid through and by the Hon. L. T. Drummond and Dame Josephte Elmire Debartzch, his wife, who alone can claim the amount, if usuriously and illegally exacted as pretended, and the other assignors, who have paid no part of said sum of money, have no right of action against the Appellants to recover any part of the sum, and consequently the judgment is reversed. In the case of Zephir Dorion, appellant, the judgment is also reversed, on the ground that the plaintiff has not proved the allegations of his declaration.

Mondelet, and Berthelot, JJ., concurred.

Leblanc, Cassidy & Leblanc, for the Appellants; *R. & G. Laflamme*, for the Respondent.

June 6.

VALLS, (defendant in the Court below,) Appellant; and THE BRITISH AMERICAN LAND Co., (plaintiffs in the Court below,) Respondents.

Damages—Assignment.

An action founded on an assignment. Assignment held to be valid.

This was an appeal from a judgment of the Superior Court in the District of St. Francis, rendered by *Short*, J., on the 19th of March, 1863, by which the appellant was condemned to pay the sum of $200, and interest.

The facts were these: The respondents, by deed of sale executed at London, England, on the 9th of January, 1855, purchased from Maria A. Cunningham, and Percy Arthur Cunningham, her husband, lots 5 and 6, in the 14th Range, and lot 6, in the 13th Range, Ascot, for the sum of £307 10s, stg. This land was purchased as free from all incumbrance, but on the 14th of October, 1858, the respondents were sued by the Appellant, Anna Maria Valls, in a hypothecary action, to *délaisser* the land, or pay a mortgage due her of $1,200, for an annual allowance stipulated in her favor in the deed of settlement between the heirs of the late Hon. W.B. Felton, (the Appellant being his widow, and Maria A. Cunningham, his daughter,) for which the land was hypothecated. The respondents discovering the position of affairs, and finding their recourse against Percy Cunningham at that time of little worth, made an offer to the Appellant to purchase her claim against Cunningham and his wife, to hold it, in order that, if they came into possession of property thereafter, the Company might obtain indemnity for their loss, and prevent further mortgage from accruing. The Appellant agreed to assign to the respondents her *demande*, as well what had accrued as what might thereafter accrue, against Maria Cunningham and her husband, under the deed of settlement, for the sum of $200, and the assignment was made accordingly. Some time after this, Cunningham upon the death of his father, came into possession of property and a title, and amongst other property he acquired a farm known as *The Edson Place*, in Barnston, worth $1,200. The Appellant, though she had transferred her debt to the Respondents, caused an action to be instituted against Sir Percy Cunningham for £325, the amount of her claim under the deed of settlement, obtained judgment against him as an absentee, and caused *The Edson Place* and some other property to be seized and sold.

The respondents alleged that they had no

intimation of these proceedings, and the present action was instituted to recover $1,600 as damages for the acts of the Appellant who, after transferring her claim to them, had levied some $1,600 by execution against the property of Sir Percy Cunningham.

To this action the Appellant pleaded, by peremptory exception, that the assignment was made for the purpose of enabling the respondents to bring an action against Cunningham and his wife in England, and that the only sum intended to be permanently transferred was the sum of $200, paid by the respondents in discharge of the mortgage on the land named in the assignment.

The case proceeded to judgment without any evidence being adduced on the part of the defendant, except answers to interrogatories on *faits et articles*, but before judgment the plaintiffs limited their *demande* to $200, with interest from the time they had paid this sum, and judgment went in their favor accordingly. The defendant now appealed, contending that the assignment was illegal and could not be enforced, and that she had only received from the proceeds of the Sheriff's sale the sum of $100, less the costs.

The judges of the Court of Appeals (Duval, C.J., Meredith, Drummond, Mondelet and Polette, JJ.,) were unanimously of opinion that there was no error in the judgment of of the Court below, and that it must be confirmed with costs.

Felton & Griffith, for Appellant.
Sanborn & Brooks, for Respondents.

Quebec, June 19th.

(Duval, C.J., Aylwin, Meredith, Drummond, and Mondelet, JJ.)

WOODMAN, and GENIER, (Montreal case,) Preliminary exception rejected.

Quebec, June 20th.

(Duval, C. J., Aylwin, Drummond, Mondelet and Badgley, JJ.)

O'NEILL, and THE MAYOR OF QUEBEC, Judgment confirmed.

(Duval, C. J., Aylwin, Drummond, and Mondelet, JJ.)

BELL and STEPHEN, confirmed.

BROWN and LOWRY, confirmed.

LAROCHELLE and MAILLOUX, reversed.

LEPAGE and STEVENSON, confirmed.

KEMPT and LETELLIER, confirmed, Drummond, J., dissenting.

KEMPT and LAMONTAGNE, confirmed, Drummond, J., dissenting.

BETTERSWORTH and HOUGH, confirmed.

BLAIS and BLOUIN, confirmed.

RECENT ENGLISH DECISIONS.

CHANCERY APPEAL CASES.

Incomplete Gift—Parol declaration of Trust.—A father put a cheque for £900 into the hand of his son of nine months old, saying, "I give this to baby for himself," and then took back the cheque and put it away. He also expressed his intention of giving the amount of the cheque to the son. Shortly afterwards the father died, and the cheque was found amongst his effects:—*Held*, under the circumstances, that there had been no gift to or valid declaration of trust for the son. Jones *v.* Lock, Ch. Ap. 25. Lord Cranworth said: "It was all quite natural, but the testator would have been very much surprised if he had been told that he had parted with the £900, and could no longer dispose of it. It all turns upon the facts, which do not lead me to the conclusion that the testator meant to deprive himself of all property in the note, or to declare himself a trustee of the money for the child. I extremely regret this result, because it is obvious that, by the act of God, this unfortunate child has been deprived of a provision which his father meant to make for him."

BILLS WITHDRAWN.—Owing to the pressure of business at the end of the session, the bill for the establishment of public libraries, and also the bill for doing away with public executions, to which we have before alluded, were not carried through, and were withdrawn.

THE COUNTY OF TWO MOUNTAINS.—Mr. Daoust, M.P.P., the defendant in the case of *Regina v. Daoust*, reported in the last number of the *Journal*, resigned his seat as representative of the County of Two Mountains in the Legislative Assembly, on the 6th of July last, but has since been re-elected by his constituents.