1890

*Mar. 4, 5.

*Dec. 9.

OCTAVE COSSETTE (PLAINTIFF).....APPELLANT;

AND

ROBERT G. DUN ET AL. (DEFENDANTS) ..... } RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Appeal—Jurisdiction—Amount in controversy—Supreme and Exchequer Courts Act, ch. 135, *sec.* 29*—Slander and libel—Mercantile Agency—Responsibility for incorrect report—Arts.* 1053, 1054 *and* 1727 *C. C.—Damages—Discretion of the court of first instance as to amount.*

Where the plaintiff in an action for $10,000 for damages obtains a judgment in the Superior Court for Lower Canada for $2,000, and the defendant appeals to the Court of Queen's Bench, where the judgment is reduced below said amount of $2,000, the case is appealable by the plaintiff to the Supreme Court, the value of the matter in controversy as regards him being the amount of the judgment of the Superior Court. (Taschereau and Patterson JJ. dissenting.)

Persons carrying on a mercantile agency are responsible for the damages caused to a person in business when by culpable negligence, imprudence or want of skill, false information is supplied concerning his standing, though the information be communicated confidentially to a subscriber to the agency on his application therefor.

The amount of damages awarded by the judge who tries the case in his discretion in the court of first instance, should not be interfered with by a court of appeal, unless clearly unreasonable and unsupported by the evidence, or there be some error in law or fact, or partiality on the part of the judge. *Levi* v. *Reed*, 6 Can. S.C.R. 482, and *Gingras* v. *Desilets*, Cassels's Digest 117, followed. (Taschereau J. expressing no opinion on the merits.)

APPEAL and cross-appeal from a judgment of the Court of Queen's Bench for Lower Canada (Appeal

---

PRESENT.—Sir W. J. Ritchie C. J., and Fournier, Taschereau, Gwynne and Patterson JJ.

1890

COSSETTE
v.
DUN.

Side) partly confirming a judgment of the Superior Court and reducing the amount awarded by the Superior Court from $2,000 to $500.

This was an action for slander and libel against Dun, Wiman & Co, who carry on in this country a mercantile agency for collecting information concerning persons in trade and commerce. The appellant complained that through false and incorrect reports made by the respondents to the firm of Hurteau & Brother, one of their subscribers, as to his commercial standing and especially as regards hypothecs on his real estate, he suffered heavy loss and was brought almost to the verge of bankruptcy and ruin. He claimed $10,000 damages. The respondents pleaded that the communication was privileged; that they were merely the agents of their subscribers for obtaining the information which they communicated to them—also that they sent a report correcting the preceding false reports. The material facts are as follows (1):

Cossette the appellant, was the owner of a saw and planing mill at Valleyfield, was doing a large business and was a contractor of large buildings, such as churches, market halls, &c., and to carry on his business and contracts he required a large credit in business circles, especially amongst the lumber merchants.

His credit was perfect up to February 1886, and all his circumstances of the most favourable character.

Amongst other contracts, he had one for erecting a church at Longueuil, the cost of which was about one hundred and fifty thousand dollars.

About the middle of February, 1886, Hurteau & Brother, lumber merchants of Montreal, and the main suppliers of the appellant, seeing that the requirements

(1) See also report of this case in M.L.R. 3 S.C. 345.

1890

COSSETTE v. DUN.

of his affairs had caused the appellant to augment lately his purchases on credit by about five thousand, ($5,000.00) whilst his ordinary credit was already about twenty thousand dollars ($20,000.00), and that new orders from him were coming in more frequently, applied to the agency of respondents, of which they were subscribers, in order to obtain additional information as to appellant's exact position as far as his real estate was concerned.

The appellant Cossette had always represented to them that his immovables were clear of mortgages and encumbrances. But they wanted to ascertain the fact in such a way as to leave no room for any doubt or anxiety.

It being customary to add a fee to their annual subscription to obtain a certificate from the registry office, they applied to the respondents for "a special report from the Registry Office," offering to pay whatever additional cost might be required.

In conformity with that demand, the respondents provided them with a report which read as follows:

"February 27th, 1886.—Find by the valuation roll "of Valleyfield that he has three lots in Valleyfield. "No. 1, Cadastral No. 589, valued at $700. At Registry "office find sale by licitation, to Elizabeth Anderson, "of this lot and several other; mortgages for $4,000 "payable to Antoine Leduc. Another for $6,000 to "the corporation of St. Anicet, sale dated 1st April "1885, so that there is an encumbrance of $10,000 not "discharged. This amount was due by the late Alex. "Anderson.

"No. 2. Cadastral 788, on which is the mill, valued "at $3,200 by valuation roll, mortgaged for $160. "Two dollars per year rent, *rente foncière non rachetable*.

"No. 3. Cadastral 851, valued at $1,200 clear.

1890

COSSETTE v. DUN.

"His stock on lot 788 is valued by the corporation "at $10,000.—3,400,500, N.Y."

In consequence of that report Hurteau & Brother began to curtail Cossette's credit, but applied again to the respondents assuring them that the report could not be correct, and asking for an additional and more minute inquiry.

The respondents then applied to Mr. Joron, a notary public, their local agent at Valleyfield, for information, and on the 18th March, 1886, he reported as follows:

"He owns personally and alone a large mill and all the property for his woodyard; would say that that property, taking its location, should be worth from $15,000 to $20,000, *on which we are sure there was no mortgage a year and a half ago.* This gentleman has been doing a fine business, and the following statement, which is altogether true, will show it: In 1883, a gentleman by the name of Emile Prevost, who is now the proprietor of the Loudon Bros.' mill in this town, went into partnership with Mr. Cossette with a capital of $1,500. During twenty-two months that he was with him he increased his capital to $200 or $300 more. At the end of twenty-two months they separated, and though he had to pay interest on the surplus and capital put in by Mr. Cossette he got, when retiring, $6,000 cash from Mr. Cossette for his share in the partnership. Mr. Cossette has been continuing to do a good, a very good business, since, and if we understand well he has been particularly lucky in a contract which he has made for wood last summer at some place near Three Rivers. Mr. Cossette owns some property beside that; he has his private house, worth about $2,500, and some other vacant lots; would think that, should he get out of business at the present time, he could realize a sum varying from $15,000 or $20,000, or perhaps $25,000.

1890

COSSETTE v. DUN.

He is one of the joint contractors of the Longueuil church; he has built the market hall here and has done good work; also the Roman Catholic church, in partnership with Mr. E. Prevost, and there also they have succeeded in doing splendid work. He is an active young man, married, about 32 or 35 years of age, of regular habits, honest and attentive to business. We understand that he has always kept his mill and wood insured."

The respondents did not act on this but on the 29th March, 1886, persisting in their report, as far as appellant's real estate was concerned, they added, gratuitously, the following report:

"March 29, 1886.—The valuation given in last report is considered about correct. He is not considered worth much over and above liabilities. He is a Pontifical Zouave. Began with no capital. Had to compromise in 1877 or 1878 with Ross, Ritchie & Co., lumber dealers, Three Rivers. Started manufacturing at Valleyfield with Emile Prevost. They made some money, but last year separated, and he paid Prevost $6,000 cash. Prevost, who is a smart fellow, then bought Loudon Bros.' saw mill, and since then they have been at loggerheads. Last year Cossette bought a large amount of lumber, without capital, and has now most of it and cannot dispose of it. Looks for public honors. Has tried for the mayoralty several times. His business manager is not considered capable, is said to be extravagant, and has failed when in business for himself. The impression is considerable care should be exercised in credit transactions.—3400-500-N. Y."

The consequence of this report was that Hurteau & Brother closed down upon Cossette. An order which he had received for lumber was not executed. Without assigning any reason, they refused to give him

any further credit, and notified him that he would have to pay up the whole of his indebtedness. He wrote asking for the renewals which he had been in the habit of getting. They refused, and forced him to pay $12,000. To meet this sudden call upon him he was obliged to realise at once and to sacrifice a portion of his property. His mill at Valleyfield was burned down about this time ; but it appeared that he had a very small amount of insurance, and the defendants hastened to apprise Hurteau & Brother of this fact. Hurteau & Brother then investigated Cossette's affairs and found that the report made by the defendants was untrue ; that he had had no mortgage upon his property. It appeared that the agent of the defendants had made a mistake as to the numbers of the properties, the three properties indicated as belonging to him were in reality not situated near his mill but at the other end of the town, and did not belong to Cossette at all, nor were they entered in his name, and the mistake could only arise from gross carelessness. Hurteau & Brother then found that they had done an injustice to Cossette, and offered him all the money necessary to rebuild his mill. The Town of Valleyfield, however, came to his relief, and advanced money for the purpose of re-building the mill.

Twelve days after the institution of the action the respondents, having heard of the falsity of their reports, informed Messrs. Hurteau & Brother of their mistake.

Evidence having been taken as to damages suffered the Superior Court awarded the appellant $2,000 damages, but on appeal to the Court of Queen's Bench the damages were reduced to $500.

In the Supreme Court, when the case came up for argument, Mr. Justice Taschereau stated that he thought a question of jurisdiction arose as to the amount in controversy. Counsel for the appellant and

1890

COSSETTE v. DUN.

respondents, being desirous to obtain a final decision on the merits of the appeal, agreed to argue the case subject to the objection taken by the Court as to the jurisdiction.

Belcourt for appellant:

The jurisprudence of the Province of Quebec and of France, as a matter of principle, admits of no distinction as to the responsibility that mercantile agencies incur by giving inaccurate information, no matter whether this information be given to all their customers or to only one or two subscribers (1).

Information furnished for pay, as a business matter, and not gratuitously, cannot be confidential.

In the present case the communications were not confidential even from the point of view of American and English jurisprudence, because: 1. The character of a communication is to be determined by its nature and object, and not by the purely accidental fact of its being made to only one or a few persons. Each and every one of the subscribers could have obtained it. It was not information collected for the exclusive use of Hurtean & Brother, but for the use of the subscribing public. 2. Inaccurate and libelous facts were given that had not been asked for. 3. It was very easy to verify the information given. 4. It cannot be shown how these reports could have been made in good faith.

From this tissue of falsehoods it is evident that there was malice, either on the part of the respondents' employees at Montreal, or on the part of their correspondent at Beauharnois.

Cossette might have been ruined had not an accidental circumstance (a fire) brought about the discovery of the untruthfulness of these reports.

(1) *Carsley* v. *Bradstreet*, M.L.R., 2 S.C. 35. Arts. 1053, 1054. C. C. *Girard* v. *Bradstreet*, M. L.R. 3 Q. B. 69. Journal des tribunaux de commerce, Vol. 32, p. 541, Vol. 33, p. 488 and Vol. 34, p. 202.

The amount of damages granted by the Superior Court ($2,000) not being excessive the Court of Appeal should not have changed it. *Levi* v. *Reed* (1); *Gingras* v. *Desilets* (2).

By condemning Cossette to pay all the costs of the appeal the Court of Appeal decided that Cossette should have nothing at all.

Lash Q.C. and *Girouard* Q.C. for the respondents.

Under the circumstances the communications complained of were privileged. *Todd* v. *Dun, Wiman & Co.* (3); *Waller* v. *Lock* (4); Paterson on "The Liberty of the Press (5)"; and the occasion being privileged, to use that term, the onus of showing express malice and absence of good faith rested on the plaintiff. *Clark* v. *Molyneux* (6); *McIntee* v. *McCullough* (7); *Spill* v. *Maule* (8); *Fountain* v. *Boodle* (9).

This case should be decided according to the principles of the English Law, and a privileged communication according to the law of England is stated in Starkie on Slander (10), and cases quoted. These principles have been generally adopted by the courts of the Province of Quebec, which shows most conclusively that in matters of this kind the English law must prevail; *Ferguson* v. *Gilmour* (11); *Poitevin* v. *Morgan* (12); *Durette* v. *Cardinal* (13); *Pacific Mutual Insurance Co.* v. *Butters* (14); see also *Dewe* v. *Waterbury* (15); *Carsley* v. *Bradstreet* (16).

As to the French jurisprudence the last decision is that of *Wallaerd* v. *Wys* (17) in 1884 referred to by the appellants.

(1) 6 Can. S.C.R. 482.
(2) Cassels's Digest 116.
(3) 15 Ont. App. R. 87.
(4) 7 Q. B. D. 619.
(5) P. 191.
(6) 3 Q. B.D. 237.
(7) 2 E. & A. (Ont.) 390.
(8) L. R. 4 Ex. 232.
(9) 3 Q. B. 5.
(10) See Wendell's ed. 1843. Vol. 1, p. 292.
(11) 5 L.C.R. 145.
(12) 10 L. C. J. 93.
(13) 4 R. L. 232.
(14) 17 L.C.J. 309.
(15) 6 Can. S.C.R. 143.
(16) M.L.R. 3 Q.B. at p. 83.
(17) 34 Journal des Tribunaux de Commerce 302.

1890

COSSETTE v. DUN.

But it can hardly be cited as favorable to his pretention. Here is the *Jugé* : " Lorsqu'il est démontré que les reseignements fournis sur la situation ou le crédit des négociants, par une agence de renseignements commerciaux, ont été donnés et libellés par l'agence *confidentiellement*, dans les limites d'informations permises, et sans intention de nuire aux négociants sur le compte desquels les correspondants de l'agence prenaient des informations, *il n'y a faute et responsabilité* encourue à l'égard des négociants qui se plaignent des reseignments fournis, *que si ces renseignements sont notoirement inexacts.*"

If we compare this last decision with the one given in 1862, we can safely conclude that the jurisprudence of the *Tribunaux de Commerce* is in a fair way of reform and progress. As in England, they are slowly but surely bending the law to the usages of society.

It is perfectly evident that there is not much difference between the French and the English law on the subject of mercantile agencies and of its privileges and immunities. As remarked by Mr. Justice Cross in *Carsley* v. *Bradstreet*, " the difference will be found more in the practical application of the law than the principles themselves." The French jurisprudence is perhaps more favorable to the agency acting, as the appellants did in this instance, upon a special request from an interested subscriber, and in a private and confidential manner. The communication being then confidential no action for damages is possible under the French law unless actual malice be proved. So says Mr. Justice Cross, quoting Gareau *des Injures* (1) : " What in France would be considered a confidential communication would not give a title to a claim for reparation unless dictated by actual malice, while in England the same idea has given rise to a multitude of

(1) Vol. 1, p. 120.

fine distinctions elaborated by the judges under the term of privileged communications."

One word as to the measure of damages. The report of the 29th of March could not have caused any damage, as it only reached M. M. Hurteau & Frère on the very day they discovered the mistake it contained. The report of the 27th of February, no doubt, caused some inconvenience to the appellant, but no serious injury as its confirmation had not been obtained. The books of the appellant were produced in court, and they showed that the appellant, who at the time was doing a business of about $35,000 a year, was sustained by means of renewals of his paper; and judging from the books it does not seem that he was specially harassed in February and March, 1886, in consequence of the report of the 27th of February. The appellant had made heavy purchases in November and December for the Longueil church from Hurteau & Frère, all on time. Three notes to Hurteau & Frère became due between the 27th of February and the day of the fire, one for $1,317.61, dated the 24th November, 1885, at 3 months; another for $1,950, and a third one $2,000, given in December, at 2 and 3 months and due in February and March, which were all renewed. From the books, no note was paid to these parties during that time. Judging from the statement of his monthly sales, as given by Emond, the appellant does not seem to have suffered in that particular; indeed, his cash sales amounting to less than a couple of hundred dollars a month is a sure indication of a small general business. The judge in the court below seemed to have taken into consideration the damage done to the appellant as the partner of one Préfontaine for the construction of the Longueuil church. But it is evident that the court cannot consider the damage, if any, suffered by "Cossette & Pré-

1890

COSSETTE v. DUN.

fontaine." When we consider that Mr. Carsley, with immense interests at stake amounting to millions of dollars, was only awarded $2,000 for a false and damaging communication published to the entire mercantile community, not only by means of their printed circular, but also by the medium of newspapers to which it had been given, it is almost impossible to resist the conclusion that the amount awarded is excessive. When examined *sur faits et articles*, appellant was unable to make a statement of his loss. To the question: "Pouvez-vous chiffrer le montant des dommages que vous avez soufferts par suite de ces rapports," he answers: "Le montant des dommages sera prouvé dans la cause. Je considère que ce ne serait pas cinquante mille piastres qui m'indemniseraient de tout ce que j'ai en à souffrir. Quant aux détails, je ne puis pas les donner à présent." These details were never given and no special damage has been proved. The case was investigated according to the old system of *enquête*, and the judge of the court below was not in a better position than the judges of this court to appreciate this question of damages.

SIR W. J. RITCHIE C. J.—The action in the present case is one of damages against a mercantile agency for slander, libel and defamation contained in false and malicious reports.

The judgment appealed from to the Supreme Court has been rendered by the Court of Queen's Bench, Montreal, on the 26th of March, 1889, partly confirming a judgment of the Superior Court of Montreal, dated the 12th November, 1887, and partly reducing the amount awarded by the court of first resort.

The Court of Queen's Bench having reduced the amount of the judgment of the Superior Court to $500 the question has now been raised whether this court

1890

COSSETTE v. DUN.

Ritchie C.J.

has jurisdiction to entertain this appeal. I think it certainly has, because it appears to me that the question before us is not as to $1,500 but simply whether the plaintiff has a right to have the judgment obtained by him in the Superior Court for $2,000 restored. Therefore the question we have to determine is: Did the Court of Queen's Bench do right in interfering with the judgment of the Superior Court, which awarded the plaintiff $2,000 damages? As I think they did wrong we should now reverse that judgment and give the judgment the Court of Queen's Bench should have given, that is to say, instead of varying we should affirm the judgment of the Superior Court; and therefore the right of the plaintiff to hold his judgment in the Superior Court for $2,000 was the question before the Court of Queen's Bench and is the matter now in controversy before us in this court. Under these circumstances the case, to my mind, is clearly appealable.

The agreement under which the information complained of was furnished to Hurteau & Brother is as follows:

TERMS OF SUBSCRIPTION TO THE MERCANTILE AGENCY.

Memorandum of the agreeement between Dun, Wiman & Co., proprietors of the mercantile agency on the one part, and the undersigned, subscribers to the said agency, on the other part, viz:—

The said proprietors are to communicate to us, on request for our use in our business, as an aid to us in determining the propriety of giving credit, such information as they may possess concerning the mercantile standing and credit of merchants, traders, manufacturers, &c., throughout the United States and the Dominion of Canada. It is agreed that such information has mainly been, and shall mainly be obtained and communicated by servants, clerks, attorneys and employees, appointed as our sub-agents, in our behalf, by the said Dun, Wiman & Co. The said information to be communicated by the said Dun, Wiman & Co., in accordance with the following rules and stipulations, with which we, subscribers to the agency aforesaid, agree to comply faithfully, to wit:

1890

COSSETTE v. DUN.

Ritchie C.J.

1. All verbal, written or printed information communicated to us, or to such confidential clerk as may be authorized by us to receive the same, and all use of the Reference Book hereinafter named, and the notification sheet of corrections of said book, shall be strictly confidential, and shall never, under any circumstances, be communicated to the persons reported, but shall be exclusively confined to the business of our establishment.

2. The said Dun, Wiman & Co. shall not be responsible for any loss caused by the neglect of any of the said servants, attorneys, clerks and employees in procuring, collecting and communicating the said information, and the actual verity of correctness of the said information is in no manner guaranteed by the said Dun, Wiman & Co. The action of said agency being of necessity almost entirely confidential in all its departments and details, the said Dun, Wiman & Co. shall never, under any circumstances, be required by the subscriber to disclose the name of any such servant, clerk, attorney or employee, or any fact whatever concerning him or her, or concerning the means or sources by or from which any information so possessed or communicated was obtained.

3. The said Dun, Wiman & Co., are hereby requested to place in our keeping for our exclusive use, a printed copy of a Reference Book, containing ratings or markings of estimated capital and relative credit standing of such business men, in such states as may be agreed upon, prepared by them or the servants, clerks, attorneys and employees aforesaid, together with notification sheet of corrections. We further agree that upon the delivery to us of any subsequent edition of the Beference Book, the one now placed in our hands shall be surrendered to them, and also upon the termination of our relations as subscribers, the copy then remaining in our hands shall be given up to the said Dun, Wiman & Co., it being clearly understood and agreed upon that the title to said Reference Book is vested and remains in said Dun, Wiman & Co.

4. We will pay in advance fifty dollars for one year's services, from date hereof, of said Dun, Wiman & Co, together with the use of said Reference Book, pursuant to the foregoing conditions ; and subject always to the conditions and obligations above mentioned, the same sum annually thereafter, in advance, unless within ten days after the commencement of any subscription year we notify Dun, Wiman & Co. in writing to the contrary.

5. Dun, Wiman & Co. are hereby permitted to reserve to themselves the right to terminate this subscription at any time, on the repayment of the amount for the unexpired portion thereof.

6. If the inquiries for detailed reports during the year shall exceed

150 in number, the excess we agree to pay for at the rate of thirty-three and one-third dollars per hundred.

7. The subscriber agrees to accept as the aforesaid Reference Book quarto edition issued in March and September.

23rd day of June, 1885.

(Signed) A. HURTEAU & FRERE,
92 Rue Sanguinet, Montreal

To extend to August, 1886.

To include Mercantile Test and Legal Record.

Les parties admettent que le document ci-haut est une vraie copie de la souscription signée par Messieurs A. Hurteau & Frère, à laquelle il est fait référence dans la déposition de M. Hurteau, pour les fins de la présente cause.

Montréal, 12 mars, 1887.

TRUDEL, CHARBONNEAU,
LAMOTHE & DE LORIMIER,
Avocats du Demandeur.
D. GIROUARD,
Avocat des Défendeurs.

The information asked for by Hurteau & Brother was in reference to the real estate of the plaintiff and to incumbrances or hypothecs thereon (if any) and to that alone. This by a proper and careful examination at the Record Office could easily have been obtained and of this Cossette would have had no cause to complain, and if a truthful answer had been returned to this enquiry by no possibility could Cossette have been damnified for two reasons; first, because the records are for the purpose of being examined; secondly, had they been examined with any degree of reasonable care, they would have shown that the plaintiff's property was unincumbered.

The following is the first report complained of:—

FIRST REPORT.

OCTAVE COSSETTE,
Sawmill, Valleyfield, Que.

February 27, 1886.—Find by the valuation roll of Valleyfield that he has three lots in Valleyfield; No. 1, cadastral No. 589, valued at $700. At Registry Office find sale by licitation, to Elizabeth Anderson, of this lot and several others; mortgages for $4,000,

1890

COSSETTE v. DUN.

Ritchie C.J.

payable to Antoine Leduc. Another for $6,000 to the Corporation of St. Anicet, sale dated 1st April, 1885, so that there is an incumbrance of $10,000 not discharged. This amount was due by the late Alex. Anderson.

No. 2 Cadastral 788, on which is the mill, valued at $3,200 by valuation roll, mortgaged for $160. Two dollars per year rent: *rente foncière non rachetable.*

No. 3, Cadastral 851, valued at $1,200, clear.

His stock on lot 788 is valued by the Corporation at $10,000. 3,400—500—N.Y.

all of which is entirely false from beginning to end.

After attention had been called to this report, on the 29th March a second report was made as follows :

March 29th, 1886.—The valuation given in last report is considered about correct. He is not considered worth much over and above liabilities. He is a Pontifical Zouave. Began with no capital. Had to compromise in 1877 or 1878, with Ross, Ritchie & Co., lumber dealers, Three Rivers. Started manufacturing at Valleyfield with Emile Prévost. They made some money, but last year separated, and he paid Prévost $6,000 cash. Prévost, who is a smart fellow, then bought Loudon Bros.' sawmill, and since then they have been at loggerheads. Last year, Cossette bought a large amount of lumber, without capital, and has now most of it and cannot dispose of it. Looks for public honors. Has tried for the mayoralty several times. His business manager is not considered capable ; is said to be extravagant, and has failed when in business for himself. The impression is considerable care should be exercised in credit transactions. 4400—500—N.Y.

On March 18th, the defendants had received, through Mr. Dawes, the chief clerk of their agency in Montreal, the following very favorable report:

March 18, 1886.—He owns personally and alone a large mill and all the property for his woodyard ; would say that that property, taking its location, should be worth from $15,000 to $20,000, on which we are sure there was no mortgage a year and a half ago. This gentleman has been doing a fine business, and the following statement, which is altogether true, will show it : In 1883, a gentleman by the name of Emile Prévost, who is now the proprietor of the Loudon Bros.' mill in this town, went in partnership with Mr. Cossette with a capital of $1,500. During twenty-two months that he was with him he increased his capital to $200 or $300 more. At the end of twenty-

two months they separated, and though he had to pay interest on the surplus and capital put in by Mr. Cossette, he got, when retiring, $6,000 cash from Mr. Cossette for his share in the partnership. Mr. Cossette has been continuing to do a good—a very good—business since, and if we understand well, he has been particularly lucky in a contract which he has made for wood last summer at some place near Three Rivers. Mr. Cossette owns some property besides that; he has his private house, worth about $2,500, and some other vacant lots; would think that, should he get out of business at the present time, he could realize a sum varying from $15,000 to $20,000, or, perhaps, $25,000. He is one of the joint contractors of the Longueuil Church. He has built the market hall here, and has done good work; also, the Roman Catholic church, in partnership with Mr. E. Prévost, and there, also, they have succeeded to do splendid work. He is an active young man, married, about 32 or 35 years of age, of regular habits, honest and attentive to business. We understand that he has always kept his mill and wood insured.

Which, however, was not furnished to Hurteau & Brother, but which the defendant's clerk says was read to the book-keeper of Cossette, but which Cossette's book-keeper denies, claiming that only a portion of it was read, namely, to the $6,000 mentioned therein. On the 29th March, notwithstanding this favorable report of the 18th March, and notwithstanding that their attention had been called to the report of the 27th February, the report of the 29th March, above set out, was made; and on April 13, 1886, Cossette having called on the defendants, the following entry was made by them in their books:

Cossette, Octave—Saw-mill and lumber, Beauharnois Valleyfield, Que., Canada—J. E. L., April 13, '86—Calls and states that our report of Feb. '86, *in re* his property is incorrect, that he does not own the properties there mentioned; but his properties are cad. Nos. sub. div. 141-d, 141-e, 141-8, 141-10, 141-11, 141-12, 141-13, in parish of Ste. Cécile, which cost $2,400, and are mortgaged for $1,200; cad. Nos. 137, 138 and 141, in Valleyfield; bought from sheriff for $1,440, clear half of Nos. 507, 508, on which was his mill, lately burned, clear of incumbrance, and he shows us certificates from registry office, which carry out his statement as to properties. Denies also that he ever compromised with Ross, Ritchie & Co.; says he had bought two

1890

COSSETTE v. DUN.

Ritchie C.J.

barges of lumber for them, which he instructed them to send him in charge of a tug, but they did not follow out his instructions, and allowed them to sail without the tug, the barges got caught in a gale of wind and foundered, the amount of the purchase was $1,600, and he paid Ross, Ritchie & Co. $800, which he considers was more than they were entitled to, as they had not carried out his instructions.

And it was not until a month after, namely, the 17th May, 1886, that they reported that

COSSETTE, OCTAVE.—Mill and Lumber, Valleyfield. Beauharnois County, Quebec, Canada.

W. W. J., May 17, 1886.—Having sent for a special inquiry by messenger to the Registry Office at Beauharnois, we have learned that our report of his real estate position in February last was a mistake and altogether erroneous, the wrong cadastral numbers having been taken. Mr. Cossette's statement of April 13, in correction of our report, seems to be a statement of facts apparently. We have also written Ross, Ritchie & Co., of Three Rivers, who confirm Mr. Cossette's statement as to the settlement of the barge load matter referred to in previous reports, and by enquiry at the Insurance Companies, we learn that the loss sustained through his fire in April was between 15 and $20,000, and on this he received an insurance of about $3,200, the Royal and the Insurance Association being the only two companies interested. Mr. Cossette has been granted a bonus of several thousand dollars from the town and stands well among fair judging men. He is a good energetic business man and doing quite well. 3400—500—N.Y.

It may be that as between Hurteau & Bro. and the agency that they were not authorised to communicate to Cossette the information furnished, and there may have been a breach of contract on the part of Hurteau & Bro., but this is a question the agency and the employer must, I think, settle between themselves. It is clear, however, that the information was given to be acted upon, and was acted upon to Cossette's detriment, and but for his mill being burnt would, if not contradicted, have resulted in his utter ruin. It is difficult to understand, if acted upon, how it could be kept from the knowledge of the party injured; he would necessarily require to know why confidence had been lost in him, and if not informed of the reason how

1890

COSSETTE v. DUN.

Ritchie C.J.

could he correct the information, if erroneous, and withheld from him? I am unable to understand what duty the agency was under to supply information to their customers except in virtue of the contract between them by which, for a valuable consideration, they undertook to do so. But even as between themselves, could it have been contemplated that false information should be supplied?

But apart from this contract in reference to the plaintiff in this case with other third parties what duty was there on the part of the agency to intermeddle with the plaintiff's property, affairs or business? And if they did so intermeddle, was there not a higher duty due to the party inquired of that the information supplied in reference to him should be true? Whenever, by culpable negligence or the want of proper precaution, not truthful but false information is supplied, whereby a third party is damnified in his business, property or credit, why should the party so injured by the wrongful act of the agency not be indemnified for the loss he has sustained by the injury done him by the agency who by their act caused the damage?

In this case no proper precautions appear to have been exercised. Surely no man has a right to propagate a false statement, injurious to the credit of another, without having satisfied himself of its truth or falsity before adopting and promulgating it as truthful and useful information. Would it not be a most dangerous and unreasonable doctrine to hold that a man's reputation and credit could be destroyed by secret false information, furnished, as it were, behind his back, and the knowledge of which is withheld from him, and the truth of which the agency is under no obligation to guarantee? Cossette does not appear to have had any connection or contract

1890

COSSETTE v. DUN.

Ritchie C.J.

with the agency. They had no interest in his business, but appear to have intermeddled with it for certain reward, paid them without his authority, and made statements, unfounded in fact, in reference thereto, with a view to such statements being acted upon and which were acted upon to his injury. There was no duty, as I have said, cast on the agency to furnish this information except their contract to do so, to which Cossette was no party. They furnished it voluntarily for pure gain. I cannot conceive that if a man who for gain and reward voluntarily intermeddles with another man's business, and issues false reports in reference thereto to be acted upon by the party receiving it, is in any way privileged so to do; if he does it I think he does it at his peril. I by no means intend to dispute the proposition in English law, that "a communication made *bonâ fide* on any subject matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, although it contains criminatory matter which, without this privilege, would be slanderous and actionable (1)." This company may be and probably is useful to the mercantile world, but it is clear its usefulness must depend on the care they take to promulgate only truthful information. I think, therefore, the damage in this case was caused solely by the fault of the agency; that there was on their part and on the part of those whom they employed the greatest and most culpable negligence, carelessness and impropriety without taking any reasonable or proper precautions to ascertain the truth of the statements.

But apart from discussing this question on general principles or principles applicable to English law, I

(1) 5 E. & B. 348. 2 C.B. 569.

think that this case, if ever a case did, clearly comes within Articles 1053 and 1054 of the Civil Code of Lower Canada which provide as follows :

1053. Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

1054. He is responsible, not only for the damage caused by his own fault, but also for that caused by the fault of persons under his control and by things which he has under his care.

But in addition to all I have said the agency attempted to discredit Cossette entirely apart from the information asked for. Thus, on March 28, 1886, after they had in their possession the report of the 18th March, of their own mere motion they reported that Cossette was not considered worth much over and above liabilities, an unfounded and incorrect statement. "That he was a Pontifical Zouave." What that had to do with his credit it is difficult to discover, unless it was by way of disparagement, of the truth of which, however, there is no evidence. "That he began with no capital; that he had to compromise in 1877 or 1878 with Ross, Ritchie & Co., lumber dealers, in Three Rivers." A statement quite untrue and no attempt made to show that the agency had any grounds whatever to justify or excuse this statement. "That he last year bought a large amount of lumber without capital and has now the most of it and cannot dispose of it," of the truth of which likewise no evidence was offered. "That he looks for public honors," of which there was no evidence. "Has tried for the mayoralty several times," which is contradicted by the evidence, and is not sufficient to disparage the credit of Cossette. The report goes on to attack his credit through his business manager thus: "His business manager is not considered capable; is said to be extravagant and has failed when in business for himself," without show-

1890

COSSETTE v. DUN.

Ritchie C.J.

ing in any way the truth of this or where or how this information was obtained, and winds up with "the impression is considerable care should be exercised in credit transactions."

Considering that the only information asked for was a report of the amount of mortgages or hypothecs affecting Cossette's real property, if evidence of malice was required in this case, which I do not think it was, I can scarcely conceive that stronger evidence of malice could be shown than these volunteered, unasked for and reckless statements, without a tittle of evidence to show that defendants even believed them to be true, or that they had any reason whatever for thinking or believing them to be true.

This leaves the case then a mere question as to the amount of damages to which Cossette is entitled. The court of first instance arrived at the conclusion that the plaintiff had established his claim to $2,000. I cannot say that this is a wrong conclusion. In a case of this kind we have no means of weighing in very nice scales the exact amount of damages the plaintiff may have sustained. A grievous wrong was clearly done him, calculated to wreck his business and utterly ruin his credit. He has conclusively shown that in fact for the time being it had that effect, and therefore he was entitled to very substantial damages. He has clearly shown, from his business being entirely disarranged, and his credit, for the time being, utterly destroyed, he was, for the purpose of raising money, compelled to sell his property below the ordinary rate. The general evidence shows he lost $1,500 to $2,000, though it is true that the specific items of this loss were not shown; that he also lost by reason of Hurteau & Bro.'s refusal to supply him with lumber, it is stated, four or five hundred dollars, and was otherwise, beyond all doubt, greatly damaged in his

1890

COSSETTE v. DUN.

Ritchie C.J.

business and credit. If we were to allow the judgment now appealed from, which not only reduced his judgment of $2,000 to the comparativaly trifling sum of $500, and which judgment also has mulcted him in the costs of the appeal court, to stand, it is obvious that he will be, after paying those costs, practically without the slightest remuneration for the wrong done him, and this without any fault or wrong on his part.

I therefore think the appeal should be allowed, and the judgment of the Superior Court restored, and also that the cross-appeal be dismissed, with costs to the appellant in this court and in all the courts.

FOURNIER J.—L'appelant en cette cause était demandeur en Cour Supérieure dans une action en dommage de $10,000.00.

La cour rendit jugement en sa faveur pour la somme de $2,000.00. Les défendeurs Dun *et al.* ayant porté ce jugement en appel à la Cour du Banc de la Reine, cette dernière réduisit à $500.00, le montant de $2,000.00 accordé par la Cour Supérieure. De ce dernier jugement le demandeur Cossette s'est porté appelant devant cette cour. Ce jugement de $2,000.00 réduit à $500.00 est-il appelable pour le demandeur ? Les intimés prétendent que ce jugement n'est pas appelable parce que la matière en litige se trouve réduite à $1,500.00, montant de la déduction faite par la Cour du Banc de la Reine sur celui de la Cour Supérieure.

La cause de *McFarlane* v. *Leclaire* (1) décidé au Conseil Privé est invoquée au soutien de cette prétention. Il est vrai que dans cette cause, le Conseil Privé a déclaré que lorsqu'il s'agit de déterminer le montant d'appel :

The correct course to adopt is to look at the judgment as it affects the *interest* of the parties who are prejudiced by it and who seek to relieve themselves by an appeal.

(1) 15 Moo., P. C. 181.

1890

COSSETTE v. DUN.

Fournier J.

Cette règle n'est pas posée d'une manière absolue, car Lord Chelmsford fait l'observation suivante :

In order to ascertain the value of the matter in dispute it is necessary to advert to the nature of the proceedings.

La règle qu'il faut référer au jugement pour s'assurer comment les intérêts de la partie qui s'en plaint en sont affectés, résulte du cas particulier dans lequel se trouvait l'appelant McFarlane. Il était tiers saisi dans la cause de *Leclaire* v. *Delesderniers* dans laquelle le montant demandé n'était que de £417 0s. 8d. par conséquent au-dessous du montant, pour pouvoir appeler au Conseil Privé. Mais les effets dont il se trouvait en possession comme tiers saisi étaient estimés à £1642 14s. 5d. La cour du Banc de la Reine avait permis à McFarlane d'appeler du jugement sur la saisie-arrêt. Leclaire demanda par pétition au Conseil Privé d'annuler cette permission. C'est sur cette pétition que s'est élevé le débat de savoir quel était le jugement dont le montant devait servir de règle au droit d'appel. Etait-ce le jugement principal dont le montant n'était que £417 0s. 8d., ou celui sur la saisie-arrêt, de £1,642 14s. 5d. Dans le premier cas il n'y avait pas d'appel, dans le second le droit était évident. C'est dans ces circonstances que le conseil a déclaré :

The correct course to adopt is to look at the judgment as it affects the interest of the parties who are prejudiced by it, and who seek to relieve themselves from it by appeal.

C'est aussi ce qu'il faut faire dans le cas actuel pour apprécier l'intérêt de l'appelant. Il n'est pas intéressé seulement dans la différence entre les deux jugements. Il n'est pas correct de dire que l'appelant ne se plaint que de cette partie du jugement qui le prive de $1,500, différence entre les deux jugements.

Dans cette cause la demande était pour $10,000. Le jugement de première instance a accordé $2,000, montant suffisant pour l'appel à cette cour. Ce jugement

1890

COSSETTE v. DUN.

Fournier J.

a été ensuite réduit à $500 par la Cour du Banc de la Reine. L'intérêt de l'appelant a-t-il cessé d'être de $2,000 ? Non parce qu'il n'a fait aucun acquiescement à ce jugement, et que par son factum en appel il conclut à ce que le montant accordé par la Cour Supérieure soit rétabli à $2,000, à ce que le jugement de la Cour Supérieure lui accordant $2,000 soit confirmé. D'un autre côté les intimés qui prétendent que les faits portés à leur charge étaient des communications privilégiées ne pouvant donné lieu à aucune action en dommage, se sont portés contre-appelants du jugement qui les a condamnés à $500 et ils demandent à cette cour de les relever de cette condamnation et de renvoyer purement et simplement l'action de l'appelant. Ainsi la matière en litige d'un côté, c'est le montant du jugement de $2,000 et de l'autre, par le contre-appel, le droit d'action de l'appelant. Son action était de $10,000. Les intimés par contre-appel ont mis la question du montant d'appel hors de contestation en concluant par leur factum :

That the cross appeal should be maintained and the action for damages altogether dismissed.

Toute la matière en litige est de nouveau mise en contestation, à commencer même par le droit d'action. On sait qu'en faisant application de la règle posée par le Conseil Privé, de référer au jugement et aux procédures pour déterminer le montant d'appel, il est clair que dans ce cas il est de $2,000 pour l'appelant tandis qu'il est de $10,000 pour les intimés. Le montant d'appel peut être différent pour les deux parties comme le déclare ce jugement du juge du Conseil Privé. La cause d'*Allan* v. *Pratt* (1) est aussi invoqué contre le droit d'appel en cette cause. Le Conseil Privé a confirmé la règle qu'il avait adopté dans la cause de *McFarlane* et *Leclaire* et décidé que le droit d'appel du

(1) 13 App. Cas. 780.

1890

COSSETTE v. DUN.

Fournier J.

défendeur est déterminé par le montant accordé au demandeur. Cette decision n'est applicable qu'à un défendeur condamné à moins de $2,000. Elle n'est pas applicable à un demandeur qui a obtenu un jugement fixant ses dommages à $2,000 et qui demande à être réintégré dans les droits acquis par ce jugement. L'appel est ici pour $2,000. Pour prétendre que l'intérêt de l'appel est moins de $2,000, il faudrait prouver qu'il a acquiescé au jugement dont il se plaint. Il a fait précisement le contraire et son intérêt est en entier pour les $2,000. Peut-on présumer que le jugement qui n'accorde que $500, est plus correct que celui qui accorde $2,000. C'est évidemment le cas de regarder au jugement et à la procédure pour décider qu'il doit y avoir appel. En conséquence je suis d'avis qu'il y a appel.

Au mérite je suis du même avis que le juge en chef.

L'appelant, constructeur et propriétaire de moulin à scie, a poursuivi les intimés qui font affaires, en la cité de Montréal et ailleurs, comme agence commerciale et de renseignements concernant la position et la solvabilité des commerçants, pour la somme de $10,000, pour avoir fourni à MM. Hurteau et frère, avec lesquels il était en affaires pour un montant considérable, de faux renseignements au sujet de son crédit et des hypothèques grévant ses propriétés immobilières.

Les intimés ont plaidé que les renseignements fournis à Hurteau et frère, souscripteurs à leur agence ne l'ont été qu'en vertu d'une convention déclarant que ces renseignements sont considérés comme privés, confidentiels et donnés sans garantie quant à leur exactitude. Que ces renseignements ont été donnés de bonne foi par les intimés qui les croyaient corrects et forment en conséquence une communication privilégiée qui ne peut donner lieu à une action en dommage contre eux.

Cette action est fondée sur les articles 1053 et 1727 C.C.

1890

COSSETTE v. DUN.

Fournier J.

Toute personne capable de discerner le bien du mal, est responsable du dommage causé par sa faute à autrui, soit par son fait, soit par imprudence, négligence ou inhabilité

Le mandant est responsable envers les tiers pour tous les actes de son mandataire faits dans l'exécution et les limites du mandat ; excepté dans le cas de l'article 1738, et dans le cas où par la convention ou les usages du commerce, le mandataire en est seul responsable.

Le mandant est aussi responsable des actes qui excèdent les limites du mandat, lorsqu'il les a ratifiés expressément ou tacitement.

L'exception mentionnée en cet article n'a aucun rapport quelconque aux faits de la présente cause. La question de savoir si c'est le droit français ou anglais qui doit servir de règle dans le cas présent est plus que oiseuse. Lorsque la loi s'explique aussi clairement qu'elle le fait dans les deux articles précités, le doute n'est pas permis. Dans la cause de *Carsley* v. *Bradstreet* (1).

L'honorable juge Loranger dont le jugement a été confirmé en appel dit :

It has been said by the plaintiff's counsel that the French Law must apply, and so do I rule.

Cette décision est aussi brève que juste.

En février et mars 1886, l'appelant avait des contrats importants pour la construction d'églises et autres grands édifices, et faisaient des affaires considérables et prospères pour lesquelles il avait besoin de tout son crédit. Ses relations d'affaires principales étaient avec la maison Hurteau et frère, marchand de bois envers lesquels il se trouvait alors endetté en la somme de $23,000. Ceux-ci ayant constaté que depuis quelque temps les besoins de fournitures de bois de l'appelant avait beaucoup augmenté, et que ses demandes devenaient plus fréquentes, jugèrent à propos de demander à l'agence mercantile des intimés dont ils étaient souscripteurs, des informations sur sa position et surtout au sujet de ses immeubles qu'il

(1) M. L. R. 2 S. C. p. 35.

1890

COSSETTE v. DUN.

Fournier J.

leur avait toujours représentés comme exempts d'hypothèque. Sur le rapport de leurs agents et employés ils informèrent faussement Messieurs Hurteau et frère, que les immeubles de l'appelant étaient grevés au montant de plus de $10,000 d'hypothèque, et leur firent rapport de plus qu'il avait dernièrement compromis avec un de ses créanciers, la société Ross, Ritchie et Cie, ce qui était aussi faux que l'existence des hypothèques rapportées comme affectant ses immeubles.

Le 29 mars 1886, les intimés persistant dans les assertions mensongères de leur rapport précédent, firent le suivant sans aucune demande ni sollicitation de la part de Hurteau et frère (1).

Chaque proposition contenue dans ce rapport est une fausseté manifeste. Au lieu de corriger leur premier rapport qui avait indiqué comme dues, par l'appelant des hypothèques affectant des propriétés qui ne lui avaient jamais appartenu, on dirait qu'animés d'un violent désir d'exercer quelque vengeance particulière, ils se plaisent à entasser les faussetés les unes sur les autres sur le compte de l'appelant afin de le ruiner; on le représente comme ne valant guère plus que le montant de ses dettes, ayant commencé les affaires sans capital et compromis en 1877 ou 1878 avec Messieurs Ross, Ritchie et Cie, marchands de bois de Trois-Rivières. On rapporte aussi de prétendues difficultés qu'il a eues avec un nommé Prevost qui avait été son associé, qu'il avait acheté l'année précédente une quantité de bois considérable dont il ne pouvait plus se défaire, qu'il recherchait les honneurs publics, et avait essayé plusieurs fois de se faire élire comme maire, que son gérant d'affaires manquait de capacités, était extravagant et avait failli en affaire pour son compte; qu'enfin on ne saurait être trop prudent avec lui

(1) See p. 226.

dans les affaires à crédit. Tous les faits de ce rapport sont faux et calomnieux. Rien n'était plus facile pour eux que de s'assurer de la vérité. En s'adressant au bureau d'enregistrement, ils auraient eu de suite un certificat correct des hypothèques qui pouvaient exister contre l'appelant. C'est précisément dans ce but qu'ils ont été institués, et c'est un acte impardonnable de négligence grossière et coupable de leur part que d'aller chercher leurs renseignements sur ce sujet ailleurs que dans ces bureaux. Mais il y a encore un fait plus inexplicable de leur part, c'est que pendant que les intimés communiquaient à MM. Hurteau et frère et à leurs bureaux d'agences, cet inconcevable rapport, ils étaient en possession de la preuve de toutes les fausetés qu'il contenait par le rapport de leur agent régulier à Valleyfield, le notaire Joron, en date du 18 mars 1886, déclarant les faits suivants :—

Ce rapport qui contredit directement et prouve la fausseté de toutes les assertions de celui du 29 mars était en la possession des intimés depuis onze jours, lorsqu'il donnait encore communication du rapport mensonger du 29 mars.

Les conséquences des faux rapports que les intimés soutenaient avec tant de persistance ne tardèrent pas à se produire; Hurteau et frère qui étaient les principaux fournisseurs et avanceurs de fonds de l'appelant, décidèrent de lui refuser crédit et de le forcer de payer son compte. Pendant que l'appelant avait le plus besoin d'avances pour l'exécution de ses contrats et qu'il ordonne de nouveaux chargements de bois, il se voit refuser l'exécution de ses commandes; les billets qui deviennent dus doivent être payés en entier et des renouvellements lui sont refusés. Et cela dans le temps de la construction de l'église de Longueuil, lorsque son crédit aurait dû être le double de ce qu'il

(1) See p. 225.

1890
COSSETTE
v.
DUN.
Fournier J.

était, il se voit réduit de $25,000 à $12,000 dans le mois d'avril. Il fut alors obligé de déployer toute son énergie et d'employer toutes ses ressources, réaliser à sacrifice afin de maintenir son crédit et éviter la ruine dont il ne fut sauvé que par un accident. Au milieu de toutes ses difficultés, son moulin et sa manufacture furent détruits par un incendie. Sur ses entrefaites Hurteau se rendit à Valleyfield pour s'enquèrir de la position de l'appelant qu'il trouva satisfaisante après examen des livres de compte, et après s'être enquis de faits rapportés contre lui, et dont il constata l'entière fausseté. Grâce au montant de ses assurances et à la confiance que MM. Hurteau reprenait en lui, l'appelant put éviter la déroute complète de ses affaires. Mais les intimés ne firent absolument rien pour réparer les torts qu'ils avaient commis à son égard; ils ne firent aucune contradiction de leurs faux rapports et ne donnèrent jamais à M. Hurteau communication du rapport de Mr. Joron, qu'après l'émanation de l'action en cette cause. A l'enquête le montant des dommages à été diversement évalué ; fixé à une somme considérable par quelques témoins et à beaucoup moins par d'autres, la cour faisant une appréciation modérée de la preuve a déterminé le montant de ces dommages à la somme de $2,000. Sur appel à la Cour du Banc de la Reine le montant de la condamnation a été réduit à la somme de $500. Cossette a appelé de ce jugement et demande à faire rétablir celui de la Cour Supérieure. La seule question à décider sur le présent appel est celle du montant des dommages qui devrait être accordé.

Les intimés ont invoqué leur prétendue bonne foi dans la communication des renseignements, mais outre que la bonne foi ne peut être une excuse des dommages causés par leur imprudence, négligence ou incapacité, il y a une preuve positive de la négligence grossière et coupable de leur agent dans la collection des renseigne-

ments. En prenant comme appartenant à l'appelant des lots qui ne lui appartenaient pas et en faisant rapport à Hurteau et frère qu'ils étaient grevés d'hypothèques, leur agent a nécessairement agi par malice, imprudence, négligence grossière ou incapacité, car il était facile d'obtenir du bureau d'enregistrement des renseignements certains. Ce fait seul suffirait pour rendre les intimés responsables du dommage causé. Mais indépendamment de cela il est prouvé qu'ils avaient en mains le rapport du notaire Joron, un de leurs agents, établissant la fausseté de toutes les informations qu'ils avaient communiquées à MM. Hurteau et frère et qu'ils n'en firent aucune communication qu'après avoir été poursuivis. Ceci forme une preuve de malice et d'intention de faire tort à l'appelant que rien ne contredit dans la preuve des intimés.

La prétention des intimés que leur communication à Hurteau et frère était confidentielle et que la nature d'une telle communication les exempte de responsabilité pour dommage, est inadmissible. Elle est contraire à la loi et à la jurisprudence établie.

Il est inutile d'aller chercher soit dans le droit anglais soit dans le droit américain la solution de cette question. Les principes de ces législations n'étendent pas la responsabilité aussi loin que les art. 1053, 1054 du code civil de la province de Québec. Ces articles ne font pas de la malice un des éléments de la responsabilité, ni de la bonne foi une exemption de cette responsabilité. Pour qu'il y ait responsabilité, il suffit qu'il y ait faute imprudence, négligence ou inhabillté.

Le quasi-délit,(dit Laurent) (1), existe dès qu'il y a faute la plus légère, la moindre imprudence suffit ; telle est la tradition, telle est la doctrine, telle est la jurisprudence. Pour qu'il en fût autrement dans le cas de renseignements inexacts, il faudrait une exemption écrite dans la loi, et il est inutile d'ajouter que la loi ne fait aucune exemption à la règle générale et absolue de l'art. 1382 (correspondant à notre article 1053).

(1) Vol. 20, p. 512.

1890

COSSETTE v. DUN.

Fournier J.

Sans doute la jurisprudence française considère comme privilégiée certaines confidences, telles que celles qui sont faites dans certains cas, comme par exemple les informations données par un maître au sujet du caractère d'un serviteur qu'il a eu à son service, par un marchand au sujet d'un commis. Mais ces informations sont données gratuitement à titre de service. De plus toutes les communications que l'on désire garder secrètes ou confidentielles ne peuvent pas être faites pour rémunération, Sirez Rev. Gen. (1), et non pas vendues comme une marchandise à tant par rapport ou souscription annuelle à des rapports fournissant régulièrement des renseignements sur les affaires des commerçants. C'est un genre d'affaire adopté par les agences commerciales qui font ce commerce de renseignement, moyennant considération pécuniaire. La jurisprudence française considère ces agences mercantiles, quant à la responsabilité civile, sur le même pied que tout autre commerce. Des décisions nombreuses ont été rendues par les tribunaux français sur cette question. Le factum de l'appelant en contient plusieurs auxquelles il serait facile d'en ajouter d'autres.

La Cour de Liége a rejeté cette théorie de prétendu privilège des lettres et rapports (2), des agences commerciales en se fondant sur le motif qu'elles faisaient profession de vendre des renseignement d'affaires aux marchands.

Journal des tribunaux de commerce pour l'année 1885, p. 302, pour l'année 1877, (Vol. 26,) p. 16.

Dans la province de Québec, il y a déjà plusieurs décisions à ce sujet. *Carsley* v. *Bradstreet* (3) ; and in Appeal (4) : *Girard* v. *Bradstreet*, judgment of Justice

(1) 1. 1883, p. 457.

(2) Journal du Palais, jurisprudence étrangère 1885, p. 25.

(3) M.L.R. (2 S. C.), p. 35.

(4) M.L.R., 3 Q.B., p. 83.

McKay, confirmed in Appeal in 1875 (15 February) (1).

Le jugement de la Cour Supérieure avait condamné l'intimé à $2,000, mais la Cour du Banc de la Reine l'a réduit à $500. C'est sur ce point que repose principalement le présent appel. Lorsque l'on considère toutes les circonstances qui ont été rapportées plus haut, peut-on dire que la condamnation à $2,000 soit exagérée. Certainement non. D'abord la preuve testimoniale, non seulement justifie ce montant, mais la négligence grossière et coupable dans la collection des renseignements, la persistance malicieuse des intimés à en faire usage pendant qu'ils en connaissaient la fausseté d'après le rapport du notaire Joron, sont des circonstances qui auraient justifié un plus fort montant de dommages.

Pour réformer ce jugement quant au montant, il faudrait démontrer qu'il y a eu erreur de fait ou de droit, ou partialité de la part du juge. Il n'y a absolument rien de tel dans ce cas, comme la Cour du Banc de la Reine l'a reconnu en admettant la responsabilité des intimés et en les condamnant à $500 de dommages. Les deux cours n'ont différé que sur l'appréciation des dommages laissés à l'arbitrage des juges, c'est le cas de faire l'application de la règle qu'aucune erreur n'étant démontrée le jugement doit être confirmé.

Cette question de la différence d'appréciation des dommages par les cours Supérieure et d'Appel a été déjà soulevée devant cette cour, dans les causes de *Levi* v. *Reid* (2) et dans celle de *Désilets* v. *Gingras* (3). Dans ces deux causes la cour se fondant sur les autorités du droit français et pour les raisons contenues dans ces deux jugements auxquels je réfère, a rétabli le montant des dommages tels qu'ils avaient été fixés en premier lieu par la Cour Supérieure. Pour les mêmes raisons je suis d'avis que le jugement de la Cour du Banc de

(1) 3 M.L.R., Q.B., p 69. (2) 6 Can. S.C.R., p. 482.
(3) Cassels' Dig. 116.

1890

COSSETTE v. DUN.

Fournier J.

la Reine en cette cause doit être réformé et le montant de $2,000 de dommages accordé à l'appelant, en premier lieu, par la Cour Supérieure, soit rétabli. En conséquence, l'appel doit être alloué avec dépens.

TASCHEREAU J.—I am of opinion to quash this appeal. The case is not appealable. The plaintiff, now appellant, obtained a judgment for $2,000 in the Superior Court. The defendants thereupon brought an appeal to the Court of Queen's Bench, where they succeeded in getting the judgment reduced to $500. The plaintiff now appeals to this court from the Court of Queen's Bench. Upon this appeal, the only controversy clearly is as to the $1,500 which the Court of Queen's Bench reduced from the judgment of the Superior Court. Now it seems to me that we cannot entertain the appeal. The right principle on which to establish what is the amount in contestation, when the amount is the limit of the right of appeal, is, as laid down by the Privy Council in *Macfarlane* v. *Leclaire* (1) re-affirmed in *Allan* v. *Pratt* (2) that the judgment appealed from is to be looked at as it affects the interests of the party who thinks he is prejudiced by it, and who seeks to relieve himself from it by appeal. Here, the appellant only complains of that part of the judgment which deprived him of $1,500. This judgment clearly affects his interests as to $1,500 only and he only appeals from a judgment of $1,500. Upon his appeal there can be no contestation whatever as to the $500 for which the appellant succeeded in the court below.

GWYNNE J.—I entertain no doubt that this is an appealable case. The plaintiff recovered judgment in the Superior Court in the Province of Quebec for

(1) 15 Moo. P.C.C. 181. (2) 13 App. Cas. 780.

1890

COSSETTE v. DUN.

Gwynne J.

$2,000 damages in an action for libel. The only defence offered to the action was that the matter complained of, although admitted to be false, was a privileged communication, as having been made in the course of their business by the defendants as commercial agents for the purpose of obtaining information concerning persons engaged in trade to a person who had employed them to obtain for him certain particular information as to the condition of and charges upon certain real property of the plaintiff. The defendants appealed from the judgment of the Superior Court to the Court of Queen's Bench at Montreal in appeal, insisting that no action lay against them upon the ground that the communication complained of was privileged and that although it was in point of fact untrue it was made in good faith and without actual malice. The falsehood of the matter complained of was, it may be observed, attributable to very gross carelessness upon the part of the persons employed by the defendants to obtain the information which they were asked to obtain for the person who had requested them to obtain the information. The Court of Appeal held the judgment of the Superior Court to be free from error upon the ground for which the appeal had been taken, namely, that the matter complained of as a libel was a privileged communication, made *bonâ fide* and without actual malice, but they reduced the damages to $500 and condemned the now appellant to pay the costs of the appeal, although he had succeeded upon the ground of error taken to the judgment of the Superior Court. From this judgment the plaintiff now appeals and the question before us is whether or not the Court of Appeal at Montreal did or did not err, in our opinion, in rendering that judgment. We are bound to give the judgment which, in our opinion, that court should have given, and to do so the same

1890

COSSETTE v. DUN.

Gwynne J.

question must be before us as was before it, namely, whether the plaintiff was not entitled, and is not therefore still entitled, to retain the judgment which was rendered in his favor by the Superior Court for $2,000, and whether the Court of Appeal at Montreal has not erred in interfering to deprive him of that judgment and to substitute therefor a judgment for $500. This is, to my mind, clearly a question involving a sum of $2,000 as the amount in litigation.

Then upon the merits, while concurring with the Court of Appeals and the Superior Court that the action well lay, I am of opinion that the Court of Appeals did err in reducing the damages. Whatever privilege the defendants might have insisted upon if the information they had given to their client had been confined to the particular matter they were requested to obtain information upon (as to which, or as to the effect which their great negligence which occasioned that information to be false should have on the question of privilege I express no opinion) it is clear that the defendants wholly voluntarily communicated to their client matter which was not only absolutely without foundation in point of fact, and gravely and injuriously affecting the character and solvency of the plaintiff, but was altogether outside of the matter they were asked to obtain information upon, which was simply as to the charges upon a particular piece of property belonging to the plaintiff, a piece of information which could have been obtained by a search upon the piece of land in the Registry Office, and which by reason of the gross negligence of an agent employed by them was not done.

Upon the question of reduction of damages I am of opinion that the cases of *Gingras* v. *Desilets* (1) and of *Levi* v. *Reid* (2) in this court must be taken as establishing

(1) Cassels's Dig. 116. (2) 6 Can. S.C.R. 482.

the principle which is well settled in England and conformable with sound sense, namely, that no court has any right to reduce the verdict of a jury as to damages where a jury is the tribunal, or of a judge adjudicating without a jury, on the ground of the damages being excessive in cases in which, like the present, the damages recoverable are not ascertainable by the application of any rule prescribing a measure of damages, or are not determinable by precise calculation, unless the damages awarded be so excessive, having regard to the evidence, as to shock the understanding of reasonable persons; to be so outrageous, in fact, that *no reasonable* twelve men, if the tribunal be a jury, could give; and that no judge, if a judge be the tribunal, could rationally give, that is without like shock to the understanding of reasonable persons. The question is not what damages the judge sitting in appeal thinks he would have given if he had tried the case, but whether the judge who did try the case can with propriety be said (as in the case of a jury) to have acted altogether beyond the bounds of reason in awarding the amount of damages which he has awarded. This cannot well be said in the present case, for some of my learned brothers think the damages given by the learned judge of the Superior Court to be reasonably moderate in their view of the evidence. Not having tried the case I cannot for my part precisely say what damages I should have given if I had tried it; I think it sufficient to say that in my opinion the Court of Queen's Bench in appeal should not set aside a judgment on the ground of excessive damages, or have reduced the amount awarded in the present case, unless upon the ground that the amount awarded by the Superior Court was altogether and palpably beyond the bounds of reason; and this cannot, I think,

1890

COSSETTE v. DUN.

Gwynne J.

with any propriety be said in the present case, whether I should or should not have given the same amount myself if I had tried the case.

I think, therefore, that the appeal must be allowed with costs of this court and of the Court of Appeals in the Province of Quebec, and that the judgment of the Superior Court should be restored.

PATTERSON J.—It is not, and cannot be, disputed that, in construing the 29th section of the Supreme and Exchequer Courts Act., R.S.C., ch. 135, we are bound by the principles enunciated and acted on by the Judicial Committee of the Privy Council in *Macfarlane* v. *Leclaire* (1), in 1862, and in *Allan* v. *Pratt* (2), in 1888. That section declares that no appeal shall lie from any judgment rendered in the Province of Quebec in any action, &c., wherein the matter in controversy does not amount to the sum or value of $2,000, unless under circumstances which do not exist in this case. The decisions cited show that the controversy to be considered is that which is carried to this court, and which is not necessarily co-extensive with that originally entered upon. Whatever ambiguity there may seem to be in the section may be made to disappear, without doing any violence to the language, by simply bringing the word "wherein" into more direct connection with the word "appeal," as *e. g.*: "No appeal wherein the matter in controversy does not amount to the sum or value of $2,000 shall lie," &c.

It is very usual to find that the value in controversy on an appeal is less than that which was originally in contest, and we have in *Macfarlane* v. *Leclaire* an instance where the value to the appellant was much higher than it could have been to the respondent.

(1) 15 Moo. P.C.C. 187. (2) 13 App. Cas. 780.

There are many cases where the limitation founded on the amount in controversy seems to act unequally between the parties, as when a plaintiff claiming more than $2,000 obtains judgment for less. In that case the defendant could not appeal, while if the defendant had succeeded the limitation would not have stood in the way of an appeal by the plaintiff. *Macfarlane* v. *Leclaire* affords an example of this occasional absence of reciprocal power to appeal, and shows that it does not, as has been sometimes thought, tell against the construction now given to section 29.

The principle, as stated by Lord Chelmsford in *Macfarlane* v. *Leclaire* and repeated by Lord Selborne in *Allan* v. *Pratt*, is that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal.

In this action the plaintiff, Cossette, claimed $10,000 damages. The court of first instance awarded him $2,000. From that judgment the plaintiff did not appeal. The defendants appealed, and on their appeal the Court of Queen's Bench sustained the plaintiff's right of action but reduced the damages to $500.

From that judgment there are two appeals to this court.

The plaintiff appeals, complaining of the deduction of $1,500 from his damages, and the defendants appeal on the ground that the judgment ought to be altogether in their favor.

If these two appeals could properly be treated as one appeal, it might be plausibly urged that the whole amount of $2,000 was in controversy. I cannot however see my way to that position. The effect would be to put us in the position of the Court of Queen's Bench hearing the appeal from the Superior Court, whereas we have to review the judgment of the

1890

COSSETTE v. DUN.

Patterson J.

Queen's Bench only. The appeals from that judgment are separate appeals. The defendants by their appeal seek to be relieved from the judgment for $500. That is the extent to which their interests are affected by the judgment.

The plaintiff's case is that his interests are affected to the extent of $1,500, by the deduction of that amount from his damages. Thus, the amount in controversy on the one appeal is $1,500 only, and on the other $500 only.

I think, therefore, that both appeals are unauthorised.

I should be better pleased to come to a different conclusion. Not that I object to the limitation of the right of appeal; I think it is founded on wise policy, and should be frankly given effect to in all proper cases. But, having considered the appeals on their merits, I am satisfied that the courts decided correctly when they sustained the plaintiff's right of action. Nor would I have been disposed to disturb the judgment of the Court of Queen's Bench with regard to the amount of damages. The appeal to us is from that court only, and having regard to the fact that the damages, though technically unliquidated, are nevertheless brought by the evidence to some extent within the range of approximate calculation, and the court has, in the exercise of its undoubted jurisdiction, and after a careful consideration of such data as are available, fixed the amount at $500, I should hesitate before saying that the judgment was wrong in this particular. At the same time the award of the costs of the appeal against the plaintiff who successfully repelled the attack upon his right of action, though the court estimated his damages on a different scale from that which seemed proper to the judge who tried the action, strikes me as harsh and even unjust, and in

1890

COSSETTE v. DUN.

Patterson J.

order to relieve the plaintiff from that hardship I should be strongly tempted to concur with those of my learned brothers who think that the plaintiff's appeal should be allowed and the judgment of the Superior Court restored.

On the question of jurisdiction, however, I am of opinion that both appeals should be quashed without costs.

Appeal allowed with costs and judgment of the Superior Court restored.

Solicitors for appellant: *Trudel, Charboneau & Lamothe.*

Solicitors for respondents: *Girouard & DeLorimier.*