

DECISION IN CASE TO RECOVER TAXES

Town vs. Margaret Sherard. Judgment of Judge Carleton—A Matter of Considerable Local Interest

CARLETON COUNTY COURT.
Town of Woodstock vs. Margaret Sherard. Judgment of Judge Carleton J.C.C. October 7th, 1913.
This is an action to recover taxes assessed by plaintiff against defendant, on the valuation of personal property only, for the years 1908 (\$70.) 1909 (\$75.) 1910 (\$75 and 1911 (\$80), making a total claim of \$300.

No defence on the merits was offered to the action.

On behalf of the defendant it is contended, as a matter of law, that no action, either in debt or assumpsit, will lie for the recovery of rates and taxes assessed upon personal property; that the Acts of Assembly 1896 and 1906 apply only to taxes assessed on real estate.

There are many Acts relating to the Town of Woodstock, beginning with the original incorporation act in the year 1856. There were acts passed in 1873, 1875 and 1877 under the provisions of some or all of which taxes might be collected by execution or distraint. It is admitted that up to 1896 (Cap. 58, Sec. 9) no provision was made for the recovery of taxes by suit at law.

Taxes are a proportioned contribution by the citizen out of his estate, levied by legal authority, for the support and perpetuity of public government; the obligation to pay them does not arise out of contract, express or implied; in the absence of a Statute they cannot be recovered as a debt.

By the Act of Assembly, 1896, before mentioned, the assignee, purchaser or holder of real estate was made liable for the taxes assessed against such real estate—that is, for the taxes assessed against it in the name of the assignor or grantor—and the same shall be a debt due by him under this act, and . . . may be sued for and recovered against him by action of debt.

This section, it will be observed, had application only to real estate that had passed out of the hands of the person who had it at the time the assessment was made; the assessed owner could not be sued but his successor in title could.

In 1906 came the Act (Cap. 61, sec. 7), under which the suit is instituted. Its language is very comprehensive: "The town may . . . sue any person, firm, corporation or company ASSESSED IN SAID TOWN FOR TAXES . . . and recover the same . . . and in such action it shall not be necessary to set forth any special matter, but it shall be sufficient to declare that the defendant is indebted to the town . . . whereby an action hath accrued," &c.

The Caps are mine. The argument of the learned counsel for the defendant is, that section 7 of the act of 1906 must be read into section 9 of the act of 1896; that it authorizes a suit against any person, firm, corporation or company assessed for taxes on real estate—and real estate only.

I cannot accept this view. An act may be amended by repeal, by substitution or addition, or by a combination of a whole or part of these methods. I think that the act of 1906 is to be read as supplementing the act of 1896, in addition to it and not into it, and thereby conferring additional powers of suit in no manner minimizing or controlling or restraining the previous legislation.

This "blanket act" (if I may so term it) of 1906, (in my judgment and I so decide) gives all the statutory power necessary to maintain a suit for the recovery of taxes assessed against an individual, firm, company or corporation whether the same be levied on real estate, personal property or income as a whole, in part or in conjunction.

Another ground urged by the defendant (indeed, in point of order it was the first ground taken) against the successful prosecution of this suit is that the action is framed in assumpsit when it should have been framed in debt.

The technical distinction between assumpsit and debt is very narrow—it is one of form. Assumpsit, called in practice, promises, is of large and extensive application. It lies to recover damages for the breach of a simple contract—a promise express or implied; it seeks damages for the non performance of a paral agreement. Debt lies to recover a liquid-

ated or certain sum of money affirmed to be due. Alleging a promise is the only real distinguishing mark between the two forms of action. In actual, though perhaps not legal substance the actions are identical. To one, the plea of general issue is: "did not undertake and promise"; to the other: "was never indebted." By the C. L. P. Act specifying the form of action was abolished, and INDEBITATUS ASSUMPSIT became obsolete.

The provisions of the C. L. P. Act, as to pleading, do not govern in this Court. We follow the rules used in England prior to the general rules of Hilary Term 4 Wm. IV. With us the niceties of assumpsit and debt still prevail unless they have been abolished, amended or qualified by our County Court Act.

Sec. 28, Cap. 116, Con. Stat. N. B., 1903, (the County Court Act), provides, by reference to schedule, a form for the writ of summons in all personal actions. By the prescribed form the plaintiff has only to "set out the cause of action in a brief form." By sec. 41 of the same chapter, particulars must accompany plaintiff's demand—when the action is such that by the practice of the Supreme Court the defendant would be entitled thereto—and be inserted in the writ as part of the complaint or declaration.

It is not the effect of this to make certain, by particulars, the nature of the action which a defendant is expected to answer?

I admit that my question may be answered by saying the same particular would be used for assumpsit as for debt; that in no sense do they convey any further information and that the plea to an action for debt would not be good to assumpsit and CONVERSO.

That the tendency at the present time is one of disfavor to mere technical objections, which do not mislead, I gather from reading the case of Dube vs. Pond, 37 N. B. R. 138. This case was originally argued before me on the rules of pleading existing at the time of the passing of the general rules of Hilary Term, 4 Wm. IV, and was argued before the Supreme Court on entirely different grounds. I was then given to understand, though the report hardly shows it, that the Court took the view I have above intimated.

If I had been bringing the action I would certainly have framed it in debt; it would then not have admitted of dissensions or discussion. But it has been laid otherwise, and, over and above the rules of pleading and County Court Act, there is still the strong language of Sec. 7 of the Act of 1906: "it shall be sufficient to declare that the defendant is indebted to the town . . . whereby an action hath accrued." This, in my opinion, makes good everything that is necessary.

Both the contentions herein dealt with were made before me in double form—(a) against the certificates "A", "B", "C" and "D" being admitted in evidence; (b) to support a motion for a non-suit. Leave is, therefore, reserved to move for a non-suit.

A verdict will be entered for the plaintiff for \$300.

J. W. CARLETON, J. C. C.

\$100 REWARD, \$100

The readers of this paper will be pleased to learn that there is at least one dreaded disease that science has been able to cure in all its stages, and that is Catarrh. Hall's Catarrh Cure is the only positive cure now known to the medical fraternity. Catarrh being a constitutional disease, requires a constitutional treatment. Hall's Catarrh Cure is taken internally acting directly upon the blood and mucous surfaces of the system, thereby destroying the foundation of the disease, and giving the patient strength by building up the constitution and assisting nature in doing its work. The proprietors have so much faith in its curative powers that they offer One Hundred Dollars for any case that it fails to cure. Send for list of testimonials. Address F. J. CHENEY & Co., Toledo, O.

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THE YOUNGER SET

mounted to her own room and dropped, breathless, on the bed, tearing the envelope from end to end. And from end to end and back again and over again she read the letter—at first in expectancy, lips parted, color brilliant, then with the smile still curving her cheeks, but less genuine now, almost mechanical, until the smile stamped on her stiffening lips faded and the soft contours relaxed, and she lifted her eyes, staring into space with a wistful, questioning lift of the pure brows.

What more had she expected? What more had she desired? What was she seeking there that he had left unwritten? What was she searching for of which there was not one hint in all these pages?

And now Nina was calling her from the hall below, and she answered gayly and, hiding the letter in her long glove, came down the stairs.

"I'll tell you all about the letter in the train," she said. "He is perfectly well and evidently quite happy, and, Nina—"

"What, dear?"

"I want to send him a telegram, May I?"

"A dozen if you wish," said Mrs. Gerard, "only if you don't climb into that vehicle we'll miss the train."

So on the way to Wyomsett station Eileen sat very still, gloved hands folded in her lap, composing her telegram to Selwyn. And once in the station, having it by heart already, she wrote it rapidly:

Nina and I are on our way to the Berkshires for a week. House party at the Craigs. We stay overnight in town. E. E.

But the telegram went to his club and waited for him there, and meanwhile another telegram arrived at his lodgings signed by a trained nurse. And while Miss Erroll in the big, dismantled house lay in a hollid covered armchair waiting for him, while Nina and Austin, reading their evening papers, exchanged significant glances from time to time, the man she awaited sat in the living room in a little villa at Edgewater.

"How long has she been asleep?" asked Selwyn under his breath.

"An hour. She fretted a good deal because you had not come. This afternoon she said she wished to drive, and I had the phaeton brought around, but when she saw it she changed her mind. I was rather afraid of an outbreak—they come sometimes from less cause than that—so I did not urge her to go out. She played on the piano for a long while and sang some songs—those curious native songs she learned in Maine. It seemed to soothe her. She played with her little trifles quite contentedly for a time, but soon began fretting again and asking why you had not come. She had a bad hour later. She is quite exhausted now."

As he went out the nurse said: "If you wish to return to town, you may, I think. She will forget about you for two or three days, as usual. Shall I telephone if she becomes restless?"

"Yes. What does the doctor say today?" The slim nurse looked at him under level brows. "There is no change," she said. "No hope, Captain Selwyn."

"No hope, Captain Selwyn." He stood silent, tapping his leg with the stiff brim of his hat; then wearily, "Is there anything more I can do for her?"

"Nothing, sir."

"Thank you."

He turned away, hiding her good night in a low voice.

Chapter 24

THE winter promised to be a busy one for Selwyn. If at first he had been afraid of enforced idleness, that worry, at least, vanished before the first snow fell, for there came to him a secret communication from the government suggesting, among other things, that he report three times a week at the proving grounds on Sandy Hook; that experiments with chaotic as a burning charge might begin as soon as he was ready with his argon primer.

This meant work—hard, constant, patient work. But it did not mean money to help him support the heavy burdens he had assumed. If there were to be any return, all that part of it lay in the future, and the future could not help him now.

Yet, unless still heavier burdens were laid upon him, he could hold on for the present. His bedroom cost him next to nothing; breakfast he cooked for himself, luncheon he dispensed with, and he dined at random—anywhere that appeared to promise seclusion, cheapness and immunity from anybody he had ever known.

As for his clubs, he hung on to them, knowing the importance of appearance in a town which is made up of them. But this expense was all he could carry, for the demands of the government on his time were such

as to leave him no time for anything but work. He was sent for oftener, and a physician was now in practically continual attendance.

Also three times a week he boarded the Sandy Hook boat, returning all ways at night because he dared not remain at the reservation lest an imperative telegram from Edgewater find him unable to respond.

So, when in November the first few hurrying snowflakes whirled in among the city's canyons of masonry and iron, Selwyn had already systematized his winter schedule, and when Nina opened her house, returning from Lenox with Eileen to do so, she found that Selwyn had made his own arrangements for the winter and that, according to the programme, neither she nor anybody else was likely to see him oftener than one evening in a week.

To Boots she complained bitterly, having had visions of Selwyn and Gerald as permanent fixtures of family support during the season now imminent.

"I cannot understand," she said, "why Philip is acting this way. He need not work like that. There is no necessity, because he has a comfortable income. If he is determined to maintain a stuffy apartment somewhere, of course I won't insist on his coming to us, as he ought to, but to abandon us in this manner makes me almost indignant. Besides, it's having anything but a salutary effect on Eileen."

"What effect is it having on Eileen?" inquired Boots curiously.

"Oh, I don't know," said Nina, coming perilously close to a pout, "but I see symptoms—indeed, I do. Boots—symptoms of shirking the winter's routine. It's to be a gay season, too, and it's only her second. The idea of a child of that age informing me that she's had enough of the purely social phases of this planet! Boots, I've given up all hopes of that brother of mine for her, but she could marry anybody if she chose—anybody—and she could twist the entire social circle into a court of her own and dominate everything. I don't know what to do with the girl. Philip never comes near us—once a week for an hour or two, which is nothing—and the child misses him. There, the murder is out! Eileen misses him. What to do about it I don't know—Boots, I don't know."

Lansing had ceased laughing. He had been indulging in tea—a shy vice of his which led him to haunt houses where that out of fashion beverage might still be had. And now he sat, cup suspended, cancer held weakly against his chest, gazing out at the peeling snowflakes.

"Boots, dear," said Nina, who adored him, "tell me what to do. Tell me what has gone amiss between my brother and Eileen. Something has. And whatever it is it began last autumn—that day when you remember the incident?"

Boots nodded. "Well, it seemed to upset everybody somehow. Philip left the next day. Do you remember? And Eileen has never been quite the same. Of course I don't ascribe it to that unpleasant episode—even a young girl gets over a shock in a day. But the change—whatever it is—is dated from that night. They, Philip and Eileen, had been inseparable. It was good for them for her too. And as for Philip—why, he looked about twenty-one! Boots, I—I had hoped—expected—and I was right! They were on the verge of it!"

"I think so, too," he said. "Hello! Somebody's coming, and I'm off!"

"I'm not at home; don't go!" said Nina, laying one hand on his arm to detain him as a card was brought up. "Oh, it's only Rosamund! Please! I did promise to go to the Craigs' with her. Don't if you don't," said Boots blandly. He could not endure Rosamund, and she detested him, and Nina, who was perfectly aware of this, had just enough of perversity in her to enjoy their meeting.

Rosamund came in breezily, sables powdered with tiny flecks of snow, cheeks like damask roses, eyes of turquoise.

"How d'ye do!" she nodded, greeting Boots as she closed with Nina. "I came, you see, but do you want to be jammed and mangled and trodden on at the Craigs'?" No! That's perfect! Neither do I. Who is the adorable Eileen? Nobody sees her any more."

"She was at the Delmour-Carnes yesterday."

"Was she? Curious I didn't see her. They say," she said, smiling, "that some very heavy play goes on in that cunning little new house of yours, Mr. Lansing."

"Really?" he asked blandly.

"Yes, and I'm wondering if it is true."

"I shouldn't think you'd care, Mrs. Fane, as long as it makes 'Where is the adorable Eileen?'"

Rosamund flushed, then, always alive to humor, laughed frankly.

"What a nasty thing to say to a woman!" she observed. "It fairly reeks impertinence. Mr. Lansing, you don't like me very well, do you?"

"I dare not," he said, "because you are married. If you were only free, a vicarious matrimony!"

Rosamund laughed again and sat stroking her muff and smiling. "Curious, isn't it," she said to Nina, "the in-born antipathy of two agreeable human beings for one another?" And

again to Nina: "Dear, have you heard anything about Alice Ruthven? I think it is the strangest thing that nobody seems to know where she is. And all anybody can get out of Jack is that she's in a nerve factory or some such retreat and a perfect wreck. She might as well be dead, you know."

"In that case," observed Lansing, "it might be best to shift the center of gossip. De mortuis nil nisi bonum, which is simple enough for any body to comprehend."

"That is rude, Mr. Lansing," flashed out Rosamund, and to his astonishment he saw the tears start to her eyes.

"I beg your pardon," he said sulkily. "You do well to care more for Alice Ruthven than you give me credit for caring about anybody. People are never wholly worthless, Mr. Lansing—only the very young think that."

Boots said respectfully: "I am sorry for what I said, Mrs. Fane. I hope that your friend Mrs. Ruthven will soon recover."

Rosamund looked at Nina, the tears still rimming her lids. "I miss her frightfully," she said. "If somebody would only tell me where she is—I know it could do no harm for me to see her. I can be as gentle and loyal as anybody—when I really care for a person. Do you know where she might be, Nina?"

"I? No, I do not. I'd tell you if I did, Rosamund."

"Don't you know?"

"Why, no," said Nina, surprised at her persistence.

"Because," continued Rosamund, "your brother does."

"Why do you say that?" she asked. "Because he does know." He sent her to Clifton. The maid who accompanied her is in my service now. It's a low way of finding out things, but we all do it."

"He sent Alice to Clifton?" repeated Nina incredulously. "Your maid told you that?"

Rosamund finished the contents of her slim glass and rose. "Yes, and it was a brave and generous and loyal thing for him to do. I care for Alice, and I honor your brother for what he did."

She stood with pretty golden head bent, absently arranging the sables around her neck and shoulders.

"I have been very horrid to Captain Selwyn," she said quietly. "Tell him I am sorry, that he has my respect. And—if he cares to tell me where Alice is—I shall be grateful and do no harm."

"Good night," said Boots to Nina. Then he beckoned Rosamund down to her brougham with a silent formality that touched her present sentimental mood. She looked from her carriage window, looking at him where he stood, hat in hand, in the thickly falling snow.

"Thank you," in refusal.

"I thank you for being nice to me. Please believe these often less-mathematical than perversity in me. I—I have a heart, Mr. Lansing—such as this. And often those I torment most I care for most. It was so with Alice. Good-by."

Boots' salute was admirably formal. Then he went on through the thickening snow, swung vigorously across the avenue to the park wall and, turning south, continued on parallel to it under the naked trees.

Now he began to understand something of the strange face of his friend Selwyn. He began to comprehend the curious economies practiced, the continued absence from an club and coterie, the choke of the sordid lodging whither Boots, one night, seeing him on the street by chance, had shamelessly tracked him, with no excuse for the intrusion save his affection for this man and his secret doubts of the man's ability to take care of himself and his occult affairs.

Into the doorway of Selwyn's lodgings Lansing turned. When the town was young a Lansing had lived there in pomp and circumstance—his own great-grandfather—and he smiled grimly, amused at the irony of things terrestrial.

A slattern at the door halted him. "Nobody ain't let up them stairs without my knowin' why," she mumbled.

"I want to see Captain Selwyn," he explained.

"Hey?"

"Captain Selwyn!"

"Hey? I'm a little deaf!" screamed the old crone. "Is it Cap'n Selwyn you want?"

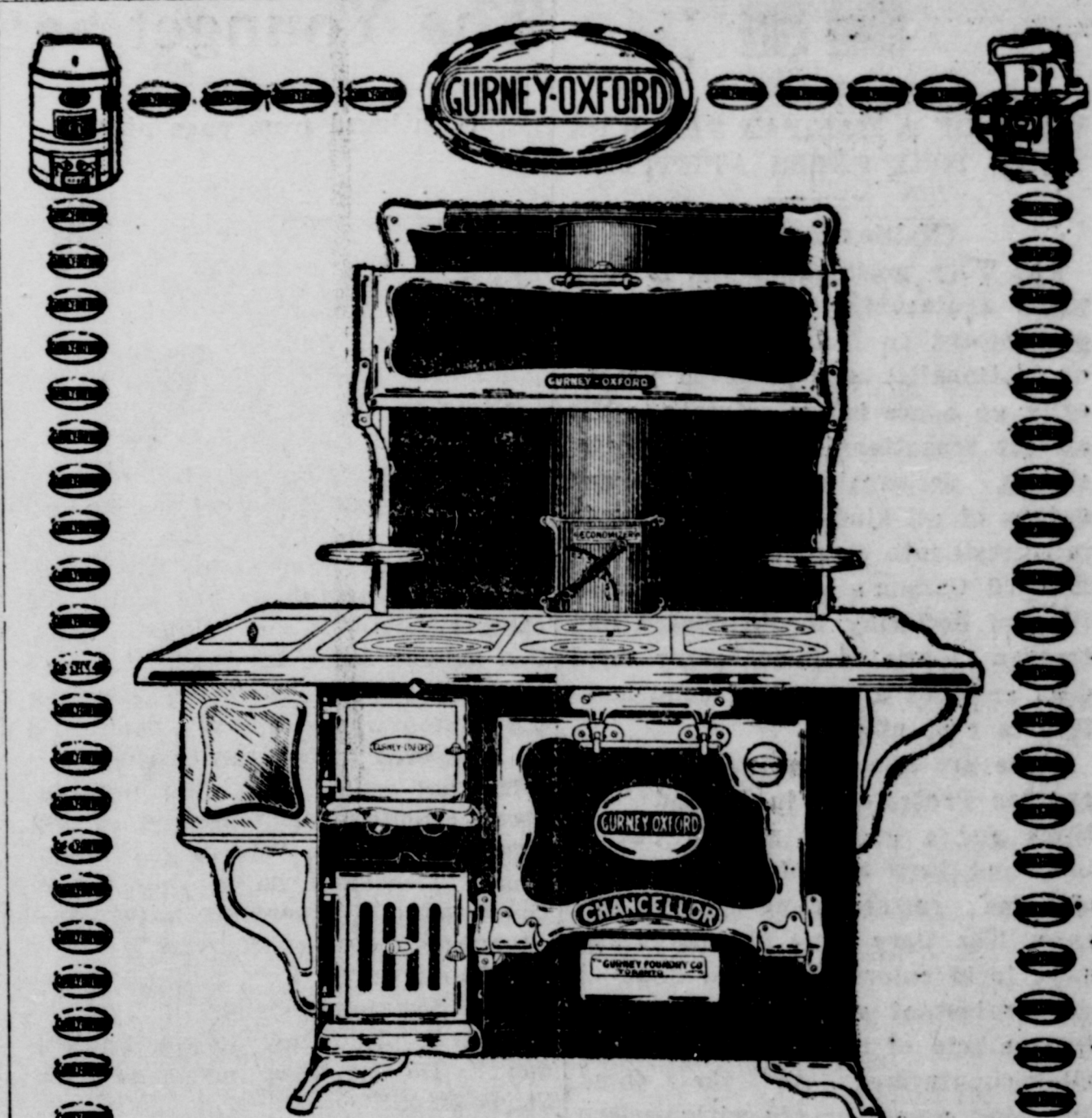
Above, Selwyn, hearing his name screamed through the shadows of the ancient house, came to the stair well and looked down into the blackness.

"What is it, Mrs. Clodden?" he said sharply, then, catching sight of a dim figure springing up the stairs: "Here, this way! Is it for me?" and as Boots came into the light from his open door, "Oh," he whispered, "deadly pale under the reaction."

"Nobody ain't let up them stairs!"

"I thought it was a telegram!"

(Continued on page ten.)



Equal Heat In Every Part of The Gurney-Oxford Oven

Every woman well knows the bad results from constantly opening the oven door to move a cake to another shelf or turn a pan of biscuits. Often the shifting or the cold air striking in proves utterly disastrous to her baking.

The Divided Flue on the Gurney-Oxford range equally distributes the heat to all parts of the oven which is regulated to the exact temperature required by means of the Economizer.

This wonderful time-labor-and-money-saving device controls the heat of the whole range.

It is worked by a small handle which moves around a series of six notches. The housewife soon learns that by moving the handle to No. 1 she has a very hot oven, to No. 3 a moderate oven, and that No. 6 checks the fire so as to burn scarcely any coal while she goes out shopping. On her return she simply moves the handle to the number that gives the required heat and the result is prompt.

Of inestimable value also is the Broiler Attachment and the Special Grate.

But a most delightful feature about the Gurney-Oxford is its constant bright and shining appearance.

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SUIT STARTED FOR \$100,000 DAMAGES

MONTREAL HERALD BRINGS ACTION AGAINST THE MONTREAL STAR

MONTREAL, Oct. 9.—A suit for one hundred thousand dollars damages on account of an alleged conspiracy to destroy the Montreal Herald and to ruin its business, was entered in the Superior Court today by the Herald Company, Limited. The defendants are the Montreal Star Publishing Company, Limited, the Montreal Standard Publishing Company, Limited, the International News Service (at New Jersey, Corporation controlled by William Randolph Hearst), Sir Hugh Graham, owner of the Star and Standard, and Charles F. Crandall, managing editor of the Star.

Particulars of the allegations upon which the suit is based are given in the plaintiff's declaration, alleging a protracted and widespread conspiracy on the part of the defendants and other persons unknown, to prevent the Montreal Herald from having access to certain sources of supply from which daily newspapers secure their circulation-building features.

It is also alleged that the Canadian defendants formed a so-called syndicate and induced the New Jersey defendant to break its contract with the Toronto World and transfer its service to their syndicate. The Toronto World was thereby prevented from delivering to the Herald the features and services which it had contracted to deliver. The Toronto World yesterday secured an interim injunction restraining the New Jersey Corporation from delivering its services to the Star Syndicate until further hearing.

How beautiful our town would look if everybody would buy those splendid Ramsay's Paints for sale by A. E. Jones. They seem to be made to give just that touch of finish every house requires.

WORTH REMEMBERING.

The treatment for patent leather is to sponge with warm water and let dry. When still warm, rub a little sweet oil well into the leather and rub well off again. This will prevent shoes from cracking.

Dates stuffed with peanut butter and rolled in powdered sugar, are a tasty accompaniment when eating boiled rice.

Left-over spaghetti or macaroni is nice cooked in a baking dish with a cream sauce and shredded green and red peppers cut over the top. Sometimes cheese is added to the mixture, again bread crumbs.

To revive the appearance of a suit that is becoming so worn as to be shiny in certain spots, a small quantity of distilled white vinegar, diluted in water, rubbed on with a white woollen cloth, will raise the nap and give it a look of newness that will make the suit of good service for some weeks to come.

HAIR HINTS

WORTHY OF ATTENTION OF PEOPLE WHO WISH TO PRESERVE THE HAIR.

Always have your own brush and comb at home or at hair dresser's. Never use a brush or comb found in public places, they are usually covered with dandruff germs.

Wash your hair brush weekly with soap and warm water to which may be added an antiseptic.

Shampoo the hair every week or so with pure soap and water.

Use Parian Sage every day, rubbing thoroughly into the scalp.

Parian Sage, which comes in a large 50 cent bottle, is guaranteed by E. W. Mair to destroy dandruff germs and abolish dandruff—to stop hair from falling and scalp from itching, or money refunded.

To put life and beauty into dull-dry or faded hair and make it soft and fluffy surely use Parian Sage—it is one of the quickest acting hair-tonics known.