

against the defendants, it remains to me to assess the damages, and in view of the extreme youth of the minors, whose father was only 25 at the time of his death, I assess these damages at \$600 for the widow and \$600 for the infant children, in all, \$1,200. No special damages are proved, but the deceased was engaged in commerce supporting his wife and household, and had the prospect of a long life before him, and his untimely end may well be regarded as a great blow and loss to his family.

Duhamel & Pagnuelo for plaintiff.

L. A. Jetté for defendants.

ANSELL V. SIMPSON.

Sale by Collector of Customs—Goods pledged for Customs Duties.

The plaintiff complained of the defendant in his quality of Collector of Customs at Montreal. The defendant was advertising for sale and proceeding to sell certain goods which he alleged had been transferred to defendant as security only. Plaintiff obtained an order from a judge on the 9th October last on which the sale was suspended. The defendant pleaded that the plaintiff being indebted to the Government in the sum of \$3,900.85, transferred to defendant as security for such indebtedness the goods in question, and it was understood that plaintiff should have 60 days within which to pay his indebtedness, within which delay defendant agreed with plaintiff, with the permission of the Commissioner of Customs, that he should not sell or transfer said goods. That said goods were advertised for sale on the 10th of October, 1876, long after the expiration of said 60 days, after repeated notices to plaintiff, which defendant in his said capacity had a right to do.

TORRANCE, J. I do not think that the plaintiff has much to complain of. On the 23rd of June, 1876, he received a written notice from the defendant that if the duties payable by him to the Government were not paid on or before the 26th of June, the goods in question would be sold by public auction. The statute 31 Vic. c.6, sections 13 and 60, provides for the sale in this form of goods of importers for unpaid duties, and I am at a loss to see what ground there is for the complaint against the defendant.

Robidoux for plaintiff.

A. Robertson, Q. C., for defendant.

CALMEL V. CITY OF MONTREAL.

Assessment—By-law.

Held, that taxes paid under an existing by-law cannot be recovered until the by-law has been set aside.

The plaintiff, in May, 1876, instituted an action to recover from the city the sum of \$500 alleged to have been unduly levied from him under a pretended by-law of the city imposing a tax of \$500 upon butchers' stalls.

TORRANCE, J. The by-law has not been set aside or declared invalid, and clause 44, under which the tax of \$500 has been imposed, seems to be plain enough in itself. It is true that a conviction made under the penalty clause has been quashed, but I am not prepared to say that the defendant has any action to recover until the by-law has been set aside, if such action could ever lie. It was admitted, I think, at the bar that such an action as the present would not lie in England. Under the circumstances, the plaintiff having paid his money under an existing by-law cannot recover.

W. H. Kerr, Q. C., for plaintiff.

R. Roy, Q. C., for defendant.

SUPERIOR COURT IN REVIEW.

Montreal, Nov. 30, 1877.

Present :—TORRANCE, DORION, and PAPINEAU, JJ.

THOMPSON V. MACKINNON.

Trade Mark—Sale of Business.

The defendant, Mackinnon, who had carried on for several years the trade of a biscuit maker, used a label, or trade-mark, consisting of the word, "Mackinnon's," under which was engraved a boar's head, holding a bone in his jaws. This label was used upon every box of biscuits manufactured by defendant, and the biscuits themselves were branded with the name "Mackinnon." The defendant having sold to the plaintiff his estate and effects, stock-in-trade, "with the good-will and all advantages pertaining to the name and business of the said John Mackinnon," *held*, that the sale passed the trade-mark.

DORION, J., cited Adams on Trade-marks, p. 103 : "Where a business is sold, the entire good-will and the right to use the trade-mark pass to the purchaser without any express mention being made of them in the deed of assignment, and the Court will restrain any subsequent