

ONTARIO NATURAL GAS CO. v. GOSFIELD.

Natural gas—Power of municipality to allow boring on highway for—R.S.O., 1887, c. 184, s. 575.

Natural gas is a "mineral," and within the meaning of the Municipal Act, R.S.O., 1887, c. 184, s. 565. Judgment of STREET, J., 19 O.R. 391, affirmed.

Robinson, Q.C., and H. S. Osler, for appellants.

Lytleworth, Q.C., for respondents.

HIGH COURT OF JUSTICE.

Chancery Division.

MEREDITH, J.]

[Dec. 1.]

RE CENTRAL BANK.

CANADA SHIPPING COMPANY'S CASE.

Banks and banking—Bill of lading—Promise to transfer—Acquisition of goods attached by process in foreign country before bill of lading delivered—Conflict of law—Proof of foreign law.

A customer of a bank in Ontario arranged with the bank to make advances to him with which to purchase cattle for exportation and sale in England, and undertook to forward the cattle to Montreal and place them in the hands of the shippers for England, who were to make out the bills of lading in favor of and forward them to the bank.

After the cattle were in the hands of the shippers (the company), but before the bills of lading were made out, a judgment creditor of the customer in the Province of Quebec caused a writ of *saisie-arret* to be served on the company, the effect of which, by Quebec law, is to order the party served to hold the property for the benefit of the judgment creditor.

The company, however, made out the bill of lading to the bank and forwarded the cattle, and at the trial of the action the Quebec judge held that the writ attached on the cattle before the bill of lading was made out, and judgment was given against the company for the value of the cattle, which the company were obliged to pay.

In the winding-up proceedings of the bank in Ontario, the company sought to prove a claim for the amount of the judgment.

On an appeal from the Master, it was *Held* [affirming the Master], that the bank acquired some interest in the cattle when placed on board the steamship good against the customer and the company, and that under the agreement the possession and a special property passed to it; and the company so receiving the cattle held them for the bank.

It was contended that the law of Quebec, by which a vendor of goods without actual delivery only acquired the *jus ad rem* and not the *jus in re*, should prevail.

Held, that if there was any difference between the law of Quebec and of Ontario it should be proved like any other fact, which was not done here, and that under the circumstances in this case it must be found as a fact that it was the intention of the bank and its customer that their agreement should be governed by the law of Ontario; and as the bank had not only a right to, but a property in and the possession of the cattle, the writ of *saisie-arret* was not effectual.

Held, also, following *Suler v. The Merchants Bank*, 24 Gr. at p. 374, that to acquire by anticipation a property in a non-existing bill of lading is to acquire by anticipation some right or title of the previous owner to the goods of which it is but the symbol before the date of the acquisition of the symbol.

Held, also, that the bank became entitled to the bill of lading as soon as the cattle were received by the company, and could not be prejudiced by delay in the manual operation of filling up and signing the form and delivering it, and so had "acquired" it before they actually "held" it, and the appeal was dismissed with costs.

Moss, Q.C., for the appeal.

Meredith, Q.C., *contra*.

BOYD, C.]

[Dec. 3.]

ALDRICH v. ALDRICH.

Husband and wife—Alimony—Condonation of matrimonial offences—Revival of same by husband's subsequent adultery—Effect of husband's adultery—Evidence.

Condonation of matrimonial offences is always on the condition that there shall be no repetition of any matrimonial offence in the future. And the effect of a husband's subsequent adultery is to revive previously condoned acts of cruelty.

The evidence of one witness, by confession of loose character, is not sufficient to prove adultery unless corroborated.