

the security of letters of credit which were not securities of the kind mentioned in s. 20 of the Savings Banks Act, R.S.C., c. 122, and the loan was, therefore, null; and that it was a radical nullity, being contrary to public order, and the repayment could not be enforced. Arts. 989, 990, C.C. The Superior Court dismissed the contestation, and its judgment was varied by the Court of Queen's Bench, which held that the bank could not recover interest on the loan.

*Held*, affirming the decision of the Court of Queen's Bench (Q.R. 3 Q.B. 315), that assuming the loan to have been *ultra vires* the borrower could not avail himself of its invalidity to repudiate his obligation to pay his debt, nor could his creditors; that a contract of loan and one of pledge are so far independent that the one may stand and the other fall; and that the contestation was rightly dismissed.

*Held*, also, on cross-appeal, reversing the decision of the Court of Queen's Bench, that the bank was entitled to interest on its claim, as well as to the principal money.

Appeal dismissed with costs, and cross-appeal allowed with costs.

*Drouin*, Q.C., for the creditors, appellants.

*Langelier*, Q.C., and *Fitzpatrick*, Q.C., for La Caisse d'Economie, respondents.

Quebec.]

BAKER v. McLELLAN.

[May 6.

*Construction of deed—Sale of phosphate mining rights—Option to purchase other minerals found while working—Transfer of rights—Ambiguity.*

M., by deed, sold to W. the phosphate mining rights in certain land, the deed containing a provision that "in case the said purchaser, in working the said mines, should find other minerals of any kind whatever he shall have the privilege of buying the same from the said vendor or representatives by paying the price set upon the same by two arbitrators appointed by the parties." W. worked the phosphate mines for five years, and then discontinued it. Two years later he sold his mining rights in the land, which, by various conveyances, were finally transferred to B., each assignment purporting to convey "all mines, minerals, and mining rights already found, or which may hereafter be found," on said land. A year after the transfer to B. the original vendor granted the exclusive right to work mines and veins of mica on said land to W. & Co., who proceeded to develop the mica. B. then claimed an option, under the original agreement, to purchase the mica mines, and demanded an arbitration to fix the price, which was refused, and she brought an action against M. and W. & Co. to compel them to appoint an arbitrator and for damages.

*Held*, affirming the decision of the Court of Queen's Bench, that the option to purchase other minerals could only be exercised in respect to such as were found when actually working the phosphate, which was not the case with the mica in respect to which B. claimed it.

*Held*, also, that any ambiguity in the agreement granting the option must be interpreted against the purchaser.

Appeal dismissed with costs.

*McDougall*, Q.C., for the appellants.

*Aylen* for the respondents