

pal owner, and may be applied by him in payment of an antecedent debt owed by him.

3. The furnishers of necessary supplies upon a completed voyage, having, prior to possession taken by the mortgagee, obtained a draft from the master and principal owner upon the consignees, covering the amount of such supplies, thereby obtain an assignment of freight earned upon such voyage *pro tanto* and are entitled to receive the same in priority to the mortgagee.

4. The mortgagee of a vessel, in taking possession, becomes entitled to all freight accruing due, subject to the claim for necessary supplies for the last voyage, which is privileged, and ranks before him. His rights are not greater than the owner's rights. *Pickford et al. & Dart et al.*, Dorion, C. J., Cross, Tessier, Church, J.J., (Tessier, J., *diss.*), June 20, 1888.

#### SUPERIOR COURT—MONTREAL.\*

*Interpretation of written document—Admissibility of extrinsic evidence.*

*Held:*—That where a deed of sale sets out in detail the various properties and goods thereby transferred, the Court cannot take into consideration any other documents between the parties or any extrinsic evidence, but must look at the deed alone to decide what property has passed thereunder.—*In re Mullarky*, insolvent, and *Clary et vir*, petitioners, Jetté, J., Dec. 23, 1887.

*Testamentary executor—Power to substitute—Liability for misappropriation by agent.*

*Held:*—1. That under Art. 913 C. C. an executor has no power to substitute another person for himself, but merely to appoint an attorney for determinate acts.

2. That the appointment by an executrix of a salaried agent to collect and invest the moneys of the estate and to handle the funds, was a delegation of the powers of the executrix prohibited by art. 913 C. C. and not the mere appointment of an attorney for determinate acts.

3. That the executrix could not escape

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liability for the misappropriations committed by her agent, by simply establishing that such agent was not notoriously unfit at the time of his appointment; and that the immunity granted to the mandator empowered to substitute under art. 1711 C. C. does not apply to the case of a testamentary executrix.

4. That when a testamentary executrix employs an agent as attorney, she is bound to supervise his management of the matters entrusted to him, and to take all due precaution and securities.

5. That in the present case the executrix had acted carelessly and without due precaution in making cheques payable to her agent instead of to the borrowers on the proposed mortgages, and in signing deeds without sufficiently examining their contents.—*Gemley v. Low, Johnson, J.*, May 30, 1888.

*Licences—Cité de Montréal—Expiration.*

*Jugé:*—Que les licences que la cité de Montréal accorde pour vendre sur les marchés publics les produits de la campagne, expirent au premier de mai chaque année, quelque soit la date à laquelle cette licence a été prise, et quand même l'officier chargé de l'émettre l'aurait prolongé au-delà de cette date.—*St-Michel v. La Cité de Montréal*, Teller, J., 5 mai 1888.

*Release of joint and several debtor—Partnership—Evidence.*

*Held:*—1. That an ostensible partnership with respect to third persons may exist between traders, without there being an actual partnership between the parties entitling the one to claim from the other contribution to the partnership debts.

2. Consequently, in such a case of ostensible partnership, a release given by creditors to the ostensible but not actual partner does not enure to the benefit of the real partner.

3. A partnership cannot be proved as between the alleged partners by oral evidence, unless there is a *commencement de preuve par écrit*.—*McIndoe v. Pinkerton*, Davidson, J., June 29, 1888.