

It was not without some hesitation I arrived at the conclusion that the plaintiffs could recover under their action as brought, and I did so upon the principle laid down by the text writers, that if a party enters into a contract in his own name for the benefit of others, either he may be sued, because he entered into the contract, or those persons for whom he entered into it may be sued, and *e converso* the agent may sue, or the parties for whose benefit the contract was effected may sue; so therefore an action may be maintained by all the partners on a guarantee given in terms to one only, if given for the benefit of all, or it may be maintained by that partner alone to whom it was given. Here the mortgage, as I have said, was given to one partner, by him transferred to another partner, and suit is brought by the firm, the actual owner of the mortgage, and under the rule of law above cited, the action was properly brought.

There now remains the question as to the right of the mortgagees to recover the amount of freight in question earned by the vessel.

The evidence appears to be conclusive, that about the 12th of November, 1879, the plaintiffs, availing themselves of a right conferred upon them by law, took possession of the schooner under the mortgage, and not only provided her with a new outfit, but also found a cargo for her, gave the defendant, Bernier, as master, an advance of \$50 on his wages, who acknowledged the plaintiffs as his employers, made advances to the crew, and provided the vessel with supplies; and the plaintiffs, as such mortgagees in possession, are, by the ruling authorities in English commercial law, held entitled to all the rights of an owner. These are the principles maintained by the judgment of the Superior Court, and consequently the judgment must be confirmed.

*Kerr, Carter & McGibbon* for plaintiffs.

*Duhamel, Pagnuelo & Rainville* for defendants.

SUPERIOR COURT,

MONTREAL, May 31, 1881.

*Before* TORRANCE, J.

MORIN V. BERGER.

*Infringement of patent—Provisional order.*

TORRANCE, J. The case is before the Court on

the merits of a petition for a provisional order against the defendants. The action began in January, 1880, and claimed damages against the defendants for infringement of a patent, issued in favour of plaintiff, with a prayer for an injunction against the defendants, prohibiting them from using the invention. In February, 1880, the plaintiff presented a petition praying for a provisional order against the defendants prohibiting them from using the invention during the suit. Issue has been joined on the principal demand as well as on the petition, and evidence at great length has been produced on the issue on the petition for a provisional order. The enquête began in February, 1880, and was only closed in the month of November. The order asked for is in the discretion of the Court, and in view of the great delays which have taken place in the completion of the enquête on the petition, seeing that the enquête on the main demand may easily be disposed of, I think it right to order the parties to complete their enquête on the principal demand before disposing of the petition, which is, as I have said, one of the demands of the principal action. I give this order after perusal of the enquête taken on the provisional petition.

*Robidoux* for plaintiff.

*Beique & McGoun* for defendant.

SUPERIOR COURT.

MONTREAL, May 9, 1881.

*Before* CARON, J.

THE MOLSONS BANK V. LIONAIS, & HON. L. T. DRUMMOND, T. S.

*Incidental demand filed during contestation of a saisie-arrêt by the garnishee must be served on the defendant—The proper remedy a new writ—Monies not due at the time of the issuing of the writ, can not be attached.*

CARON, J. Un bref de saisie-arrêt après jugement a été émané et signifié au tiers saisi, qui l'a contesté sur différents moyens de forme. Pendant que cette contestation se débattait, la demanderesse produisit une demande incidente qui fut seulement signifiée au tiers-saisi et non au défendeur. Cette demande avait pour but de demander une condamnation contre le tiers-saisi, pour des argens devenus dûs et échus pour du loyer, depuis l'émanation du bref de saisie-arrêt. Cette demande incidente a été contestée par le tiers-saisi.