

rait à placer chaque année une somme qui faciliterait plus tard l'établissement des enfants ;

" Considérant que pour obtenir ces fins, il peut être accordé au demandeur une allocation annuelle de \$600, sauf à l'augmenter s'il y avait lieu, payable chaque mois par paiements de \$50, qui seront versés moitié ès-mains de la femme du demandeur et moitié ès-mains de ce dernier ; et en entier ès-mains de la femme sur ordonnance du juge, sur demande à cet effet par le curateur, si la mauvaise conduite du demandeur justifiait la chose ;

" Déclare qu'il y a erreur dans le jugement de la Cour Supérieure en date du 21 avril 1883, et rendant le jugement que la Cour Supérieure aurait dû prononcer, accorde au demandeur à titre de provision alimentaire pour lui et sa famille, la somme de \$600 par année, à être payée par paiements de \$50 le premier de chaque mois à compter du ——— ; autorise le curateur à verser cette somme ès-mains de la femme du demandeur, comme expliqué ci-dessus ; condamne le défendeur ès-qualité à payer les frais tant en Cour Supérieure qu'en Cour de Révision," etc., etc. Judgment reversed.

Geoffrion, Rinfret & Dorion for plaintiff.

Pagnuelo & St. Jean for defendant.

SUPERIOR COURT.

MONTREAL, April 30, 1883.

Before TORRANCE, J.

MANTHA et al. v. SIMARD et al.

Insolvency—Déconfiture.

In order to prove insolvency or déconfiture, it must be shown that the assets of the debtor are less than his liabilities.

This was a demand to recover \$671.43, amount of four promissory notes made by defendants for \$669.71 in all, and \$1.72 for goods.

The notes were not due on the 19th January, when the action began, and the plaintiffs to maintain their demand had to allege insolvency, and also to prove it, on the part of the debtors.

PER CURIAM. The chief issue is the question of insolvency. The defendants certainly intimated that they could not then meet their engagements. But the fact to be established by the plaintiffs was insolvency, which is the same thing as *déconfiture*, Ancien Denisart *vo. Déconfiture*. "Déconfiture" means that the assets of a man are less than his liabilities.—C. P. 180. Hector Cadieux, the agent of plaintiffs, says:—"Il m'a dit qu'il était incapable de rencontrer ses affaires, qu'il avait perdu trop d'argent. . . . Il ne m'a pas dit qu'il ne pouvait pas payer dans le moment, mais qu'il était incapable de faire face à ses obligations,

qu'avec du délai, il liquiderait lui-même et qu'il paierait lui-même. . . . Je lui ai demandé s'il pourrait nous payer avec du délai: il m'a répondu: qu'il ne savait pas, qu'il liquiderait."

It is evident to the Court that the process of liquidation was necessary to establish insolvency, and meanwhile the Court holds that insolvency has not been proved, and therefore that the action should be dismissed save as to the sum of \$1.72. As to costs, seeing the circumstances of the case, the Court will give no costs.

Profontaine, for plaintiffs.

Infontaine, for defendants.

SUPERIOR COURT.

MONTREAL, June 18, 1883.

Before LORANGER, J.

HALL v. McSHANE.

Charter Party, Interpretation of—Opening of Navigation.

A charter party stipulated that a steamship in England should "with all convenient speed sail and proceed to Montreal, to arrive there "between opening of navigation, 1879," etc. The vessel arrived 18th May, navigation having been open on the 1st May. Held, that the stipulation as to date of arrival was not a condition precedent, and further, that no specific time being fixed, arrival on the 18th May was within the terms of the contract.

The action was by the owners of a steamship, claiming for "dead freight," under the following circumstances:—The defendant, through his agent, David Shaw, contracted with the plaintiffs, owners of the steamships Cervin and Bernina, to charter these vessels for the transportation of cattle from Montreal to London during the season of navigation of 1879. The charter party was dated Glasgow, 17th January, 1879, and contained the following conditions and stipulations: "That the said ships shall, "with all convenient speed, sail and proceed "to Montreal, to arrive there *between* opening of "navigation, 1879, and thereafter run regularly "and with all despatch between Montreal and "London; to be despatched from Montreal in "regular rotation with other steamers under "charter to same charterer, up to 1st October, "1879," etc.

The plaintiffs alleged that in accordance with this contract, the steamer "Cervin" proceeded