

DOMINION SUPREME COURT.

OWEN V. OUTERBRIDGE (P. E. I.)
Ships and Shipping—Chartered Ship—
Perishable Goods—Ship Disabled by
Excepted Perils—Transit—Reasonable
Time—Carriage—Bail.

If a chartered ship be disabled by
excepted perils from completing the
voyage, the owner does not necessarily
lose the benefit of his contract, but
may forward the goods by other means
to the place of destination and earn
the freight.

The option to tranship must be exer-
cised within a reasonable time, and
if repairs are decided upon they must
be effected with reasonable despatch,
or otherwise the owner of the cargo
becomes entitled to his goods.

Quaere—Is the ship owner obliged
to tranship?

If the goods are such as would per-
ish before repairs could be made, the
shipowner should either tranship or
deliver them up or sell, if the cargo
owner does not object, and this duty
is the same if a portion of the cargo,
severable from the rest, is perishable.
And if in such a case the goods are
sold without the consent of their owner
the latter is entitled to recover from
the shipowner the amount they would
have been worth to him if he had re-
ceived them at their destination at the
time of the breach of duty.

Appeal dismissed with costs.
Davies, Q. C., for appellant; Peters,
Q. C., attorney general P. E. I., for
respondent.
May 13, 1896.

MOSS V. THE QUEEN (EX. C.)

Constitutional Law—Navigable Waters—
Title to Soil in Bed of Crown—
Dedication of Public Lands by Pres-
umption of Dedication—Use—Ob-
struction to Navigation—Public Nuis-
ance—Balance of Convenience.

The title to the soil in the beds of
navigable rivers is in the Crown in
right of the provinces, not in right
of the Dominion. *Dixon v. Snodgrass*
(23 U. C. P. 235) discussed.

The property of the Crown may be
dedicated to the public, and a pres-
umption of dedication will arise from
facts sufficient to warrant such an in-
ference in the case of a subject.

Under 23 V. c. 2, s. 35 (P. C.) power
was given to the Crown to dispose of
and grant water lots in rivers and
other navigable waters in Upper Can-
ada, and under it the power to grant
the soil carried over to the power to
dedicate it to the public use.

The user of a bridge over a navi-
gable river for thirty-five years is suf-
ficient to raise a presumption of ded-
ication.

If a province before confederation
had so dedicated the bed of a navi-
gable river for the purpose of a bridge,
that it could not object to it as an ob-
struction to navigation, the Crown, as
representing the Dominion, on assum-
ing control of the navigation, was bound
to permit the maintenance of the bridge.

An obstruction to navigation cannot
be justified on the ground that the
public benefit to be derived from it
outweighs the inconvenience it causes.
It is a public nuisance though of very
great public benefit, and the obstruc-
tion of the slightest possible degree.

Appeal dismissed with costs.

Robinson, Q. C., for appellant;
Leitch, Q. C., for respondent.
May 13, 1896.

NEW BRUNSWICK RAILWAY CO.

V. KELLY (N. B.)

Registry Laws—Registered Deed—
Priority Over Earlier Unregistered
Conveyance—Notice—Suit to Post-
pone.

In 1888 N. conveyed a parcel of land
to a railway company, who did not
register their deed. In 1873 he made
a deed in favor of K. of land which
the company claimed was comprised
in their conveyance, and a suit was
brought by K. to have the deed
equity was brought praying for a de-
creed postponing the later deed, which
was registered, to that of the com-
pany. To prove notice to K. of the
earlier conveyance, two witnesses
swore that in conversation with them
K. had admitted knowledge that the
company owned the land.

Held, affirming the decision of the
Supreme Court of New Brunswick (33
N. B. Rep. 119) that it was necessary
for the company to prove actual notice
that they had made the deed, and
that giving them entire credit their
evidence was not sufficient.

Appeal dismissed with costs.

Blair, attorney general of N. B., for
the appellants; Pugsley for the respon-
dent.
May 13, 1896.

CITY OF HALIFAX V. LITHEGOW

(N. S.)

Municipal Corporation—Repair of
Streets—Pavements—Assessment on
Property Owners—Double Taxation—
24 V. c. 33 (N. S.)—25 V. c. 50, s. 14
(N. S.)

By section 14 of the Nova Scotia
statute, 23 V. c. 50, the city council
of Halifax was authorized to borrow
money for covering the streets of the
city with concrete or other perma-
nent material, one half the cost to be
a charge against the owners of the
respective properties in front of which
the work should be done, and to be
a first lien on such properties. A con-
crete sidewalk was laid, under author-
ity of this statute, in front of L's prop-
erty, and he refused to pay half the
cost on the ground that his predecessor
in title had in 1867, under the Act
24 V. c. 33, furnished the material to
construct a brick sidewalk in front of
the same property, and that it would
be imposing a double tax on the prop-
erty if he had to pay for the concrete
sidewalk as well.

Held, reversing the judgment of the
Supreme Court of Nova Scotia, that
there was nothing dubious or uncer-
tain in the act under which the con-
crete sidewalk was laid; that it au-
thorized no exception in favor of
property owners who had contributed to
the cost of sidewalks laid under the
act of 1867; and that to be called upon
to pay half the cost of a concrete side-
walk in 1891 would not be paying
twice for the same thing, because in
1867 the property had contributed
bricks to construct a sidewalk which,

stood, without at least a surrender of
the advantage he had received
therefrom.

The debtor's assent to allow such re-
pudiation and grant better terms to
the one creditor, would be no fraud
upon the other creditors, and as such
imperative and of no effect.

Appeal dismissed with costs. Kap-
pele for the appellants; Loughheed, Q. C.,
for the respondent.
May 13, 1896.

CARTER V. LONG (Ont.)

Trust—Principal and Agent—Advan-
ces to Agent to Buy Goods—Trust
Goods Mixed With Those of Agent—
Replevin—Equitable Title.

If an agent is entrusted by his prin-
cipal with money to buy goods this
money will be considered a trust fund
in his hands and the principal has the
same interest in the goods when
bought as he had in the funds pro-
curing it.

If the goods so bought are mixed
with those of the agent, the principal
has an equitable title to a quantity
to be taken from the mass equivalent
to the portion of the money advanced
which has been used in the purchase
as well as an unpaid balance.

Under the present system of pro-
cedure in Ontario an equitable title to
chattels will support an action of re-
plevin.

Judgment of the court of appeal (23
Ont. App. 12) affirmed, with costs. Gib-
bons, Q. C., for appellant; Cramer for
respondents.
June 6, 1896.

PURDON V. PAVEY (Ont.)

Action—Jurisdiction to entertain—
Mortgage on foreign lands—Action
to set aside—Secret trust—Lex rei
sitae.

An insolvent firm assigned for the
benefit of creditors. Shortly after the
assignment a brother of E. D., a mem-
ber of the firm, died in Oregon, U. S.,
and left real estate there which he de-
vised to his parents for life and at
their death to E. D., who some months
after sold his interest to his father,
and was situated in and upon the pre-
mises of the London Machine Tool Co.
(describing the premises on the north
side of King street in the city of Lon-
don); and in a schedule referred to in
the mortgage was this additional de-
scription: "and all machines * * *

In a chattel mortgage the goods cov-
ered are described as follows: "All
of which said goods and chattels are
now the property of the said mortgagor
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side of King street in the city of Lon-
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the mortgage was this additional de-
scription: "and all machines * * *

In course of construction or which
shall hereafter be in course of con-
struction or completed, while any of
the moneys hereby secured are unpaid,
being in or upon the premises now oc-
cupied by the mortgagor, or which he
now or shall be on any other premises
in the said city of London."

Held, affirming the decision of the
court of appeal and of the divisional
court (18 Ont. P. R. 544), that the de-
scription in the mortgage could not
extend to goods wholly manufactured
on premises other than those describ-
ed in the mortgage, and if it could
the description was not sufficient.

The Supreme court will not interfere
on appeal with an order made by a
provincial court granting leave to amend
the pleadings, such order being a
matter of procedure within the discre-
tion of the court below.

A purchaser of goods from the mak-
er of a chattel mortgage in considera-
tion of the discharge of a pre-existing
debt is a purchaser for valuable con-
sideration within sec. 5 of The Bills of
Sale Act.

Appeal dismissed with costs. Mo-
Evo for the appellant; Gibbons, Q. C.,
for the respondents.
June 6, 1896.

RENNIE V. BLOOM (Ont.)

Chattel Mortgage—Mortgage in pos-
session—Trespassing—Negligence—
Willful default—Sale under powers—
Slaughter sale—Practice—Parties—
Agent or bailiff—Assignment for the
benefit of creditors—Revocation of
a mortgage in possession selling
mortgaged goods, which constituted
the general stock of a trader, must
conduct the sale in such a manner as
a merchant would do in the ordinary
management of his business, and
where the goods were sold recklessly
or imprudently, at unusually low
prices and without taking proper pre-
cautions to prevent them being lost
or damaged, the mortgagee is willfully
in default and liable to account not only
for what he actually received but also
for what he might have obtained for
the goods, of which he was the trustee,
had he acted with proper regard
for the interest of the mortgagor.

Where the plaintiff's right of action
arises from the willful default of a
mortgagee in possession, the agent or
bailiff acting for the mortgagee is not
a proper party to be joined as a de-
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After the commencement of the action
the plaintiff made a general assign-
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to execute or accept the benefits
thereof, whereupon the assignee not-
ified the plaintiff in writing of such re-
fusal and that the assignment had not
been registered, but no formal re-
conveyance was made.

Held, that under the circumstances
the plaintiff was not precluded from
proceeding with his action, and that
the execution of a written instrument
was not necessary to restore the as-
signor to his original rights.

Appeal allowed with costs. O'Dono-
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Debtor and Creditor—Composition and
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Arrangement of Terms of Settlement
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Upon default to carry out the terms
of a deed of composition and discharge
a new arrangement was made re-
specting the realization of a debtor's
assets and their distribution, to which
all the executing creditors appeared
to have assented.

Held, that a creditor who had bene-
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and by his action gives the body of
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conveyance was made.

HARMONY HALL.

Fellow Andrew G. Boldly Takes
the Bull by the Horns.

The President Makes a Lucid Ex-
planation of the Policy.

Some Questions and Answers—Doubtful About
Mr. Blanchard—An Awful Threat.

Fellow Andrew G. was in his place
last evening, and the meeting was no
sooner called to order than he rose to
speak.

"Mr. President," he said, "observe
the Globe today makes the following
statement:

"It will be difficult to satisfy the
country that a Minister of Finance
'and a Minister of Trade and Com-
merce, a Minister of Customs and a
Minister of Internal Revenue are
'necessary, the four of whom deal
'with matters which have so near a
'relation to each other that one man
'man with a good deputy and an ef-
'ficient secretary or two might dis-
'charge them all," said Fellow An-
drew G., "if that is the kind of sup-
port my government is to look for in
this quarter."

"My government," echoed Fellow
John V., "is a sneer. He thinks he
owns it already."

There was instant danger of an open
rupture, and the President hastened
to intervene.

"Fellows," said the President, "our
dear Fellow Laurier has made six-
teen cabinet ministers and a solicitor
general. The Tories never had as
many. We always denounced the
Tories for having too many. To be
consistent with our record we had to
have more. It is one of the vital prin-
ciples of our Noble Order that we pro-
fess one thing and do the opposite. I
may further remark that Fellow Lau-
rier has increased two of the salaries
by \$2,000 each. We always denounced
the Tories for their extravagance. To
sustain our record we must of course
make the expenditures greater. Fel-
low Laurier also regrets very deeply
that he could not at once give offices
and salaries to a lot more worthy
men, and has made special mention of
Francis Langille, a noble Fellow,
who speaks excellent French, and
was a zealous promoter of that great
political highway—the Bala des Cha-
leux railway. The new era is now on.
The motto is: 'Great who can, and the
devil take the purses.' Are you in it?"

"Not quite as much as we would
like," said one of the Fellows. "We
applaud Fellow Laurier's methods of
reducing the expenditure by increas-
ing it, but we would like some reason-
able cutbacks. I do not observe that
Fellow Laurier has made any special
reference to any of us."

"But you will notice," said the Pres-
ident, "that Fellow Laurier, in an-
nouncing his cabinet, also says that
he intends to take such action as will
secure efficiency and economy in the
department of trade and commerce,
in addition to the increase of salaries
referred to. That certainly means
more offices and more salaries."

"Yes," admitted the Fellow, "there
is something in that. More offices and
more salaries are certainly involved
in that statement. But are you sure
he said economy?"

"He so reported in the Telegraph,"
replied the President.

"Well," said the Fellow, "in that
case of course there may be some
Pickins there—if Quebec doesn't get
in ahead."

"In political trade and commerce,"
said a back bench, "I'll back Quebec
again the world."

"I'll take you," said Fellow John L.,
and nominate Fellow Andrew G. as
my champion. Come now, Quebec
again, I'll back Quebec again the world."
rejoined the other Fellow.

"I don't gamble again the game. But
the trader you mentioned won't do
us any good. He fights for his own
hand, and if that should be again
so much the worse for us. I feel sick
that's how I feel."

"Mr. President," said a Fellow, "I
wish to ask a question. The Tele-
graph in discussing the Tory record,
says:

"No man who was not a partizan of
the government could hope for any
'preference in the civil service or
'could obtain the humblest position
'