

defendant was in possession of the lots he erected buildings upon them with his own materials.

Held, that even if the contract amounted to a contract of exchange, it was subject to be rescinded in the same manner and for reasons similar to those which would avoid a sale, and, if the contract be set aside for bad faith on the part of the defendant, the plaintiff has options similar to those mentioned in articles 417, 418, 1526 and 1527 of the Civil Code, that is to say, he may either retain the property built upon, on payment of the value of the improvements, or cause the defendant to remove them without injuring the property, or compel the defendant to retain the property built upon and to pay its value, besides having the right to recover damages according to the circumstances.

The judgment appealed from was reversed. Appeal allowed with costs. *Duclos*, K.C., for appellants. *St. Louis*, K.C., for respondents.

Que.] G.T.R. CO. v. MILLER. [Nov. 10, 1903.

Railways—Negligence—Braking apparatus—Railway Act (1888), s. 243—Sand valves—Notice of defects in machinery—Provident society—Contract indemnifying employer—Indemnity and satisfaction—Lord Campbell's Act—Art. 1056 C. C.—Right of action.

The "sander" and sand-valves of a railway locomotive, which may be used in connection with the brakes in stopping a train, do not constitute part of the "apparatus and arrangements" for applying the brakes to the wheels required by s. 243 of the Railway Act of 1888.

Failure to remedy defects in the sand-valves, upon notice thereof given at the repair shops in conformity with the company's rules, is merely the negligence attributable to the company itself; therefore, the company may validly contract with its employees so as to exonerate itself from liability for such negligence and such a contract is a good answer to an action under article 1056 of the Civil Code of Lower Canada. *The Queen v. Grenier*, 35 S.C.R. 42, followed.

GIROUARD, J., dissented on the ground that the negligence found by the jury was negligence of both the company and its employees.

Judgment of King's Bench, Q.R. 12 K.B. 1, affirming judgment in review, Q.R. 21 S.C. 346, reversed. Appeal allowed with costs.

Lafleur, K.C., and *Beckett*, for appellants. *R. C. Smith*, K.C., and *Montgomery*, for respondents.

Que.] WINTERER ? v. DAVIDSON. [Dec. 9, 1903.

Appeal—Amount in dispute—Future rights.

In an action en separation de corps, the decree granted separation and ordered the husband to pay \$1,500 per year alimony. It was paid for some years and the husband having died his widow brought suit to enforce