

BROWN v. LECLERC.

Quebec.]

*Loading of steamer—Accident—Neglect of usual precaution—
Liability of employer.*

Where two stevedores are independently engaged in loading the same steamer, and, owing to the negligence of the employees of the one, an employee of the other is injured, the former stevedore is liable in damages for such injury. The failure to observe a precaution usually taken in and about such work is evidence of negligence. Gwynne, J., dissenting.

Appeal from judgment of Q. B., Montreal (1 B. R. 234) dismissed with costs.

Geoffrion, Q. C., for appellant.

Bonin, Q. C., for respondent.

MARTINDALE v. POWERS.

Quebec.]

Quality of plaintiff—General denegation—Art. 144, C. C. P.—Don mutuel—Property excluded, but acquired after marriage.

Held, 1. Affirming the judgment of the court of Q. B., Montreal (1 B. R. 144), the quality assumed by the plaintiff in the writ and declaration is considered admitted, unless it be specially denied by the defendant. A *défense au fond en fait* is not a special denial within the meaning of art. 144, C. C. P.

2. Where by the terms of a *don mutuel* by marriage contract, a farm in the possession of one of the sons of the husband under a deed of donation was excluded from the *don mutuel*, and subsequently the farm in question became the absolute property of the father, the deed of donation having been resiliated for value, it was held that by reason of the resiliation the husband had acquired an independent title to the farm, and it thereby became charged for the amount due under the *don mutuel* by marriage contract, viz: \$5,000, and that after the husband's death the wife (the respondent in this case) was entitled, until a proper inventory had been made of the deceased's estate, to retain possession of the farm. Taschereau & Gwynne, JJ., dissenting.

Appeal dismissed with costs.

Racicot, Q. C., and *Amyrauld* for appellant.

Baker, Q. C., for respondent.