

Div. Ct. C.]

FAIR V. JAMES, &C.—ROONEY V. LEWIS, ES QVAL.

[Quebec Rep.]

the primary debtor. They have also there a local superintendent of the line, Mr. Larmour, who acts under instructions received by him from Montreal, at which latter place the chief offices of the company in Canada are situate. The general manager again receives his instructions from the Board of Directors in London, England, where the head office of the company is situate.

I think from the above consideration that Brantford stands in a different position from that of a principal station. It appears to be the place where the business of the line is centred and carried on.

The case of *In re Brown & The London and North Western Railway Co.*, 4 B. & S. 326, is cited by the garnishees to shew that a railway corporation only carries on business within the meaning of the English County Court Act, at the place where their head office is situate and the general business of the company is transacted. But in the above case the defendants had their head office and general place of business in England, where they might be sued. Suppose their head office was in France and the business in England was carried on through instruction from such head office, would it be held that the company did not carry on business in England, and therefore that they could not be sued there?

The case I have supposed is very much like the position of the Grand Trunk Railway Co. as respects this Province. The City of Montreal, where the garnishees have their chief offices in Canada, is not in this Province, and our courts have no jurisdiction there. It is unto us a foreign country. To compel the plaintiff to go there to prosecute this matter would be to deny him any relief, for the Act under which these proceedings are taken does not apply to that Province.

When therefore the Legislature enacts that these proceedings may be taken against a garnishee at the place where he carries on his business, it must mean, I think, where the business is carried on in this Province. To put any other construction on the act would be to render its provisions nugatory.

Now the Buffalo and Golerich line of railway is a distinct branch not owned by the garnishees, like their main line, but leased by them and worked under a special arrangement with the Buffalo and Lake Huron Railway Company*. If the question is as to what place in this Province the garnishees carry on their business as regards this line, I think the answer would be Brantford, for the reasons I have already stated, and as I think it my duty to put such a construction on the act as will give effect to its provisions, I hold that the proceedings have in this case been properly instituted in this court, and that I have jurisdiction in the matter.

If it should be held that the garnishees could not be proceeded against at Brantford on the ground, that although their principal business as regards this line is carried on here, yet that it is so carried on under instructions from Montreal, would it not in effect be saying that neither

could they be proceeded against at Montreal, because the business there is carried on under instructions from the head office in England.

QUEBEC REPORTS.

SUPERIOR COURT—IN REVIEW.

ROONEY V. LEWIS, *es qual.*

Held, that under Con. Stat. Can. cap. 17, sec. 33, the only recourse against the first appraiser of the collector was an appraisal by two merchants as therein prescribed. An importer who preferred to pay the duties exacted by the collector had no action to recover them back.

[14 L. C. J. 155.—February 28, 1870.]

MONDELET, J.—The plaintiff, a merchant and importer of this city, brought an action, in 1866, in the Circuit Court for the District of Montreal, against defendant, the then acting collector, to recover \$186 40, which he alleged was illegally exacted from him by the defendant, being an excess on the valuation of goods imported by plaintiff from Scotland. It is pretended that the fair value of these goods was \$560 20, and not \$746 40, and moreover, that the duty at the Custom House here should have been measured on the fair market price in the principal markets in Scotland at the time of the purchase. The defendant, on the contrary, maintains that it is to be determined by the fair value of the principal markets at the time of the exportation. It was, of course, necessary for the plaintiff to prove, first, the time of purchase; second, the time of exportation; third, the fair value of the principal markets of Scotland. Strange to say, none of these indispensable proofs are to be found in the answers of the witnesses, who, on a *commission rogatoire*, were examined in Scotland on behalf of plaintiff. It appears by the evidence that Rooney had made an advance of £500, for the purpose of getting the goods, but at what time we do not know, nor is it shown when the goods were manufactured, delivered and exported. The invoice has not been substantiated by proper evidence. The groundwork, or rather what should have been the groundwork of his claim, is therefore altogether wanting. I need not dilate upon the question as to whether the appraisal is to be made on the fair value of the goods at the time of the exportation or at that of the purchase. The law is clear; there can be no two opinions on that point. It is at the time of the exportation, and not at the time of the purchase. A difficulty was started at the hearing of the case with respect to the plaintiff, subsequent to the notice he gave of his intention of paying under protest, paying, instead of having the appraisal revised by two merchants, as he was invited by the acting collector to do. Is this a renunciation? Is the plaintiff deprived of his recourse? We find in our statute a word, upon the interpretation of which turns the solution of the question as to whether Rooney, not having resorted to the mode of submitting his claim to appraisers, and choosing to pay rather than do it, has or has not waived his right of any recourse. A case which was decided by the Supreme Court of the United States (*Rankin et al v. Hoyt*), in 1846, is cited against the pretensions of the plaintiff in the present case. By

* Since giving this judgment the Grand Trunk Railway have purchased the Buffalo and Lake Huron line, and the purchase was ratified by an Act of last Session, 33 Vic. cap. 9 (Can.).—Eds. L. J.