

III. Que des empêchements sont survenus à la mise à exécution du règlement.

Le premier chef de défense n'est pas fondé. Du moment qu'un chemin est situé dans les limites de la municipalité; la présomption de droit, est qu'il est sous la direction de la corporation.

Le deuxième moyen n'est pas fondé non plus. Les jugements cités du juge Stuart s'appuient sur une thèse impossible et qui, admise, renverserait tout notre droit municipal. Le juge Stuart se base sur l'art. 535; mais en rapprochant cet article des articles 536 et 793, il paraît évident que le savant magistrat en a exagéré la portée. Que fait-il d'ailleurs des articles 748 et 758 du Code Municipal, qui sont si clairs, si formels?

Le troisième chef d'exception est le seul bien fondé. Le règlement en question a toujours été en contestation entre les parties, tantôt sur appel au conseil de comté, tantôt sur requête à la Cour, etc.: et dès lors la corporation a été prudente de ne pas exiger la mise à exécution d'un règlement qui était constamment sur le point d'être annulé. En matière de pénalité il faut qu'il y ait faute. Or il n'y a pas faute—et l'action doit être renvoyée avec dépens.

*E. Cimon*, pour le demandeur.

*J. Gagné*, pour le défendeur.

(C. A.)

#### COURT OF APPEAL.

LONDON, March. 15, 1888.

BETHELL V. CLARK.\*

*Sale—Stoppage in transitu—Delivery on board ship.*

*The purchasers of goods directed the vendor, who carried on business at Wolverhampton, to consign the goods to a vessel then loading in the East India Docks for Melbourne. The vendor accordingly delivered the goods to a railway company as carriers to be forwarded and shipped. Subsequently the vendor, hearing of the insolvency of the purchasers, gave notice to the carriers to stop the goods, but too late to prevent shipment, and the vessel left the port for Melbourne with the goods on*

*board. Before her arrival the vendors claimed the goods from the shipowners as their property.*

*Held, that the transit was not at an end till the goods reached Melbourne, and that the vendors were, till then, entitled to stop them in transit.*

Appeal from a judgment of the Queen's Bench Division (Mathew and Cave, JJ.), 57 L. T. Rep. (N.S.) 627.

The special case, stated under Order LVII., rule 9, is fully set out in the report in the Court below, and shortly the facts were as follows:

On the 1st of June, 1885, Messrs. Tickle & Co., of London, ordered from Messrs. Clark & Co., of Wolverhampton, ten hogsheads of hollow ware, and on the 28th of June, 1885 wrote to the vendors asking them to consign the goods "to the *Darling Downs* to Melbourne, loading in the East India docks here." The vendors delivered the goods to the North-western Railway Company to be forwarded to the ship, and the railway company carried them to Poplar, and forwarded them thence by a lighterage company as their agents to the vessel, receiving and forwarding to the purchasers the mate's receipt on shipment.

The vendors, being informed that the purchasers were insolvent, gave notice to the railway company to stop the shipment, but the notice was too late, the goods being already on board the vessel. The *Darling Downs* sailed to Melbourne with the goods on board, but before her arrival the vendors wrote to Messrs. Bethell & Co., her owners, claiming the goods in question as their property. The goods being also claimed by the trustee of the estate of the purchasers, Messrs. Bethell & Co. interpleaded, and the question for the Court was whether the trustee or the vendors were entitled to the possession of or property in the goods.

The trustee appealed.

*R. T. Reid*, Q. C., and *Plumtre*, for the vendors, were not called on.

LORD ESHER, M. R.—In this case, purchasers having become insolvent, the unpaid vendors had, according to the law merchant, a right to stop the goods *in transitu*, even though the property in them might have

\* 59 L. T. Rep. (N. S.) 808.