DUROCHER v. *SARAULT.*

The note of this case on p. 96 was printed as handed to us by one of the counsel, but it appears that the counsel on the other side take exception to the presentation of the case. They write:

"Le rapport indique comme prétention des mis en cause, que le gardien d'office a un droit de rétention sur les effets saisis jusqu'à paiement de ses frais d'enlèvement et de garde. La contestation de la règle ne portait pas sur cette question, déjà décidée à maintes reprises. Nous prétendions que la règle émanée ne pouvait être déclarée absolue parceque les mis en cause n'avaient jamais refusé d'obtempérer à l'injonction du tribunal leur ordonnant de livrer les effets au nouveau gardien; qu'ils avaient toujours été prêts à livrer les dits effets, et qu'ils l'étaient encore à première réquisition du gardien volontaire et aussitôt qu'on leur offrirait l'opportunité de dresser procès-verbal. Le Juge Johnson décide que ce n'est pas au nouveau gardien à faire les démarches nécessaires à sa prise de possession des effets, mais bien au gardien d'office, qui doit même avancer les débourses de transport."

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, February 26, 1884.

Before DORION, C.J., MONK, RAMSAY, TESSIER, & BABY, JJ.

LORD et al. (defts. below), Appellants, and DUNKERLY (plff. below) Respondent.

Charter-party—Demurrage—Loading "with all despatch"—Custom of port—Tenders of large steamships.

The stipulation in a charter-party, that the vessel shall be loaded with all despatch, is to be interpreted as meaning according to the custom of the port, which in this case was that vessels should be loaded in their due turn, as reported.

There was evidence that by the custom of the port extra large vessels were loaded by tender; held, that the lighters of such vessels were entitled to be loaded whenever they came into port as though the vessel herself were there; more especially as the lighters were only taking "bunker" coal for the vessel they were attending, i.e., coal for consumption, which by the regulations of the port had precedence over coal for cargo.

The appeal was from a judgment of the Superior Court, Montreal, (Torrance, J.), reported in 3 Legal News, p. 176.

RAMSAY, J. This case presents a great resemblance to the case of *Lord & Elliott*, decided in favour of the appellant in this Court, but which has since been reversed by the Privy Council.* It appears to me that the likeness is only superficial, and that the judgment now to be rendered must turn on a question totally different from that decided by the Privy Council.

The charter-parties in the two cases are not precisely similar, but it is important to consider their differences, as we view this case. Both fixed no specified time for discharging and loading, and both had express stipulations that the charterers should use despatch. In the former case the majority of this Court considered that in a coaling station such as Sydney, where the pier is merely the continuation of the mines, the facilities of the mines had to be considered in giving a fair interpretation to the charter-party. The Privy Council took a different view, and basing their judgment on the answer of Mr. Gisborne that "the facilities of the pier were greater than the production of the mine," they held, that "in consequence of the delay in getting the coals down from the mines, there was not a sufficient supply at the port, by which the loading of the "Hibernia" was delayed. This deficiency of coals was the cause of the "Gresham" not sooner obtaining her cargo." Probably in this case the same question could not arise, for the charter-party contains a stipulation not to be found in the other, namely: That the "Tagus" should load in the usual manner, with a full and complete cargo of coals, which was to be *brought alongside, as is customary at ports of loading and discharge.* There is also no evidence to establish that the facilities of the pier were greater than

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* See 6 Legal News, p. 146.